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Contents

Federal Register

Vol. 71, No. 158

Wednesday, August 16, 2006

Agricultural Marketing Service
RULES
Beef promotion and research, 47074–47076
Cotton classing, testing, and standards
Classification services to growers; 2006 user fees, 47073–47074
PROPOSED RULES
Almonds grown in California, 47152–47154
NOTICES
Cotton program:
American Pima Spot Quotations; amendments, 47163

Agricultural Research Service
NOTICES
Meetings:
National Animal Disease Center Scientific Review Panel, 47163–47164

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Natural Resources Conservation Service
See Rural Housing Service
See Rural Telephone Bank
See Rural Utilities Service

Antitrust Division
NOTICES
National cooperative research notifications:
National Center for Manufacturing Sciences, Inc., 47248
VSI Alliance, 47248

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Committee to Director, 47230

Centers for Medicare & Medicaid Services
NOTICES
Medicare:
Durable medical equipment regional service; applications from independent accrediting bodies, 47230–47232

Coast Guard
RULES
Drawbridge operations:
Maine, 47096–47098
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
McCormick and Baxter Superfund Site, Stockton, CA, 47098–47100
Regattas and marine parades:
Crystal Coast Super Boat Grand Prix, NC, 47094–47096
Thunder over the Boardwalk Airshow; Atlantic City, NJ, 47092–47094
PROPOSED RULES
Regattas and marine parades:
Patapsco River, Inner Harbor, Baltimore, MD; marine events, 47159–47161
NOTICES
Merchant mariner credentials; temporary procedures:
Credential validity; expiration dates extended, 47238–47239

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs and Border Protection Bureau
PROPOSED RULES
Organization and functions; field organization, ports of entry, etc.:
St. Louis, MO; port limits extension, 47156–47157

Defense Department
See Engineers Corps
See Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Homebound definition; correction, 47091–47092
NOTICES
Arms sales notification; transmittal letter, etc., 47185–47191

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47193

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
ABN AMRO Mortgage Group, 47249
Admiral Foundry, 47249
Carm Newsome Hosiery, Inc., 47249
Dura Art Stone, Inc., 47249–47250
J.S. McCarthy Co., 47250
Minnesota Rubber, 47250
Morse Automotive Corp., 47250
Russell Corp.; correction, 47251
Sun Chemical, Inc., et al., 47251–47252
Tower Automotive et al., 47252–47253

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Whatcom County, WA; Cherry Point pier extension, 47191–47192

Environmental Protection Agency
RULES
Pesticide programs:
Pesticide container and containment standards, 47330–47437
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Endothall, 47101–47106

Superfund program:
Carbamates and carbamate-related hazardous waste streams and inorganic chemical manufacturing processes waste; reportable quantity adjustments, 47106–47122
Toxic substances:
Health and safety data reporting; chemical additions, 47130–47141
High production volume challenge program orphan (unsponsored) chemical manufacturers; preliminary assessment information reporting requirements, 47122–47130
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Hampshire; withdrawal, 47161–47162
NOTICES
Committees; establishment, renewal, termination, etc.:
FIFRA Scientific Advisory Panel, 47204–47208
Meetings:
Scientific Counselors Board Executive Committee, 47208–47209
Pesticide, food, and feed additive petitions:
BASF Corp., 47216–47217
Morse Enterprises Ltd., Inc., 47217–47218
Salicylic acid residue; tolerance exemption, 47218–47220
Pesticide programs:
Tolerance reassessment decisions—
Oxtetracycline, 47210
Streptomycin, 47209–47210
Pesticide registration, cancellation, etc.:
Cypermethrin, 47210–47212
Inorganic chlorates, 47212–47213
Kincaid Inc., 47213–47215
Morse Enterprises Ltd. Inc., 47215–47216

Executive Office of the President
See Trade Representative, Office of United States

Federal Accounting Standards Advisory Board
NOTICES
Meetings, 47220

Federal Aviation Administration
RULES
Class E airspace, 47078–47079
Investigative and enforcement procedures:
Civil monetary penalties inflation adjustment
Correction, 47077–47078
PROPOSED RULES
Airworthiness directives:
Learjet, 47154–47156
NOTICES
Aeronautical land-use assurance; waivers:
Franklin-Wilkins Airport, TN, 47286

Federal Communications Commission
RULES
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services, 47141–47150
Radio stations; table of assignments:
Arizona, 47151
California, 47151
Oklahoma, 47150
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47220–47222
Applications, hearings, determinations, etc.:
TCR Sports Broadcasting Holding, LLP, 47222–47223

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47224

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alaska, 47239
Ohio, 47239

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 47197–47200
Environmental statements; availability, etc.:
AmerenUE, 47200
Susquehanna Power Co., et al., 47200
Hydroelectric applications, 47200–47204
Applications, hearings, determinations, etc.:
Distrigas of Massachusetts LLC, 47193–47194
Dominion Energy Kewaunee, Inc., et al., 47194
Erie Boulevard Hydropower, L.P., 47194
Mississippi Canyon Gas Pipeline, LLC, 47194–47195
Northern Natural Gas Co., 47195–47196
Rockies Express Pipeline LLC, 47196
Texas Gas Transmission, LLC, 47196–47197

Federal Maritime Commission
NOTICES
Agreements filed, etc., 47224–47225
Ocean transportation intermediary licenses:
Sony Supply Chain Solutions (America), Inc., et al.
Correction, 47225
T.T.G. International Freight Forwarders et al., 47225–47226

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 47226
Permissible nonbanking activities, 47226

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, determinations, etc., 47242–47243

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration
See Indian Health Service
NOTICES
Privacy Act; systems of records, 47226–47230

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47232–47234

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47237–47238

Housing and Urban Development Department
PROPOSED RULES
Manufactured home installation program; comment period extension, 47157–47158
NOTICES
Grant and cooperative agreement awards:
Brownfields Economic Development Initiative, 47239–47241
Community development technical assistance programs, 47241–47242

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth and Families, 47234–47237

Information Security Oversight Office
NOTICES
Meetings:
Public Interest Declassification Board, 47258

Interior Department
See Fish and Wildlife Service
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Gross proceeds payments to attorneys; reporting requirements
Correction, 47079–47080
PROPOSED RULES
Income taxes:
Expatriated entities and their foreign parents; section 7874 guidance; cross reference
Correction, 47158–47159
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47322–47326
Meetings:
Taxpayer Advocacy Panels, 47327

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 47169
Cased pencils from—
China, 47169–47170
Corrosion-resistant carbon steel flat products from—
Korea, 47170
Honey from—
China, 47170–47171
Lined paper products from—
Indonesia, 47171–47174
Countervailing duties:
Lined paper products from—
Indonesia, 47174–47177
Meetings:
India Business Summit, 47177

International Trade Commission
NOTICES
Import investigations:
Power supply controllers and products from—
Taiwan, 47245–47246

Justice Department
See Antitrust Division
NOTICES
Meetings:
Heavy duty diesel engine consent decrees; teleconference, 47246
Pollution control; consent judgments:
Asarco Inc., et al., 47246–47247
Brockton, MA, 47247
ConocoPhillips Co., 47247–47248

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47248–47249

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47243–47245

National Aeronautics and Space Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Centennial Challenges 2006 Beam Power Challenge, 47256
Centennial Challenges 2006 Tether Challenge, 47255–47256
Centennial Challenges 2007 Astronaut Glove Challenge, 47256–47257
Centennial Challenges 2007 Lunar Regolith Excavation Challenge, 47257–47258

National Archives and Records Administration
See Information Security Oversight Office

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47177–47179
Endangered and threatened species:
Anadromous fish take—
Southwest Fisheries Science Center; Southern Oregon/Northern California Coast coho salmon, et al., 47179–47180
Recovery plans—
Hood Canal summer chum salmon, 47180–47184
Reports and guidance documents; availability, etc.:
Hurricane Intensity Research and Development Enterprise external review, 47184–47185

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 47164

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 47192–47193

Nuclear Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Medical Uses of Isotopes Advisory Committee, 47259

Occupational Safety and Health Administration
RULES
State plans:
New York, 47081–47090
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47253–47255

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Benefits payable in terminated plans, allocation of assets, interest assumptions for valuing and paying benefits, 47090–47091
NOTICES
Single employer and multiemployer plans:
Interest rates and assumptions, 47260

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Applications, exemptions, renewals, etc., 47286–47322

Public Debt Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47327–47328

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Hurricane disaster assistance; Community Facilities direct loan and grant program, 47164–47165

Rural Telephone Bank
NOTICES
Loan policies:
Interest rates (FY 2005), 47165–47168

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
Georgia Transmission Corp., 47168–47169

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47261
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 47262–47264
Boston Stock Exchange, Inc., 47264–47276
NASDAQ Stock Market LLC, 47276–47278
New York Stock Exchange LLC, 47278–47280
Philadelphia Stock Exchange, Inc., 47280–47284

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 47284–47286
Meetings:
International Telecommunications Advisory Committee, 47286

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
South Texas Liquid Terminal, Inc., 47322

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
U.S.-Chile Free Trade Agreement; 2005 annual product review and tariff determinations, 47259–47260

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Public Debt Bureau

U.S.-China Economic and Security Review Commission
NOTICES
Meetings:
Annual report preparation, 47328

Separate Parts In This Issue

Part II
Environmental Protection Agency, 47330–47437

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.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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.

7 CFR
28 47073
1260 47074
Proposed Rules:
981 47152

14 CFR
13 47077
71 (3 documents) 47078, 47079
Proposed Rules:
39 47154

19 CFR
Proposed Rules:
101 47156

24 CFR
Proposed Rules:
3286 47157

26 CFR
1 (2 documents) 47079, 47080
Proposed Rules:
1 47158

29 CFR
1956 47081
4022 47090
4044 47090

32 CFR
199 47091

33 CFR
100 (2 documents) 47092, 47094
117 47096
165 47098
Proposed Rules:
100 47159

40 CFR
9 47330
156 47330
165 47330
180 47101
302 47106
355 47106
712 47122
716 47130
Proposed Rules:
52 47161

47 CFR
64 (2 documents) 47141, 47145
73 (3 documents) 47150, 47151

Rules and Regulations

Federal Register

Vol. 71, No. 158

Wednesday, August 16, 2006

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–06–001]

RIN 0581–AC58

7 CFR Part 28

User Fees for 2006 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2006 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2005. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2005 user fee for this classification service was $1.85 per bale. This rule would maintain the fee for the 2006 crop at $1.85 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Effective Date: August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 20, 2006 (71 FR 20350). A 15-day comment period was provided for interested persons to respond to the proposed rule. During the 15-day comment period, one comment was received from the National Cotton Council in support of the proposed rule, the continued use of the legislative formula for establishing the cotton user fees, and the cotton classing services provided.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that may be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.201). Continuing the user fee at the 2005 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2005 user fee for classification services was $1.85 per bale; the fee for the 2006 crop would be maintained at $1.85 per bale.)

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2005 crop, 23,703,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2004 crop of 41.6 cents per pound, 500 pound bales of cotton are worth an average of $208 each. The proposed user fee for classification services, $1.85 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–AC58.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.85 per bale during the 2005 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This rule establishes the user fee charged to producers for HVI classification at $1.85 per bale during the 2006 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2005. Therefore, the 2006 producer's user fee for classification service is based on the 2005 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2005 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.37 per bale. An increase of 3.29 percent, or 8 cents per bale, due to the implicit price deflator of the gross

domestic product added to the $2.37 would result in a 2006 base fee of $2.45 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2006 crop is estimated at 20,268,150 bales. The 2006 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum decreased adjustment of 15 percent). This percentage factor amounts to a 37 cents per bale reduction and was subtracted from the 2006 base fee of $2.45 per bale, resulting in a fee of $2.08 per bale.

However, with a fee of $2.08 per bale, the projected operating reserve would be 35.74 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $2.08 must be reduced by 23 cents per bale, to $1.85 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2006 season fee at $1.85 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.85 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at $1.85 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule maintains user fees for 2006 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2005 and a 15-day comment period was provided for public comment and one favorable comment was received.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.85 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.85 per bale.

* * * * *

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–13476 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–06]

Amendment to the Beef Promotion and Research Rules and Regulations—Final Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the Harmonized Tariff System (HTS) numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the U.S. Customs and Border Protection (Customs).

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2638–S, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; facsimile 202/720–1125; telephone 202/720–1115, or by e-mail at *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5

U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The effect of the Order upon small entities was discussed in the July 18, 1986 **Federal Register** [51 FR 26132]. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

There are approximately 270 importers who import beef or edible beef products into the United States and 198 importers who import live cattle into the United States. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA)[13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of $6.5 million or less.

The final rule will impose no significant burden on the industry. It will merely update and expand the HTS numbers and categories to conform to recent updates in the numbers and categories used by Customs. This final rule will also adjust the live animal equivalencies used to determine the amount of assessments collected on imported beef and beef products. This adjustment reflects an increase in the average dressed weight of cows slaughtered under Federal inspection that has occurred since the inception of the Beef Checkoff Program. Accordingly, the Administrator of AMS has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0202 and merged into OMB control number 0581–0093.

Background

The Act authorized the establishment of a national beef promotion and research program. The final Order was published in the **Federal Register** on July 18, 1986, (51 FR 21632) and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board) appointed by the Secretary of Agriculture (Secretary) from industry nominations composed of 104 cattle producers and importers. The program is funded by a $1-per-head assessment on producer marketing of cattle in the United States and on imported cattle as well as an equivalent amount on imported beef and beef products.

Importers pay assessments on imported cattle, beef, and beef products. Customs collects and remits the assessment to the Board. The term ''importer'' is defined as ''any person who imports cattle, beef, or beef products from outside the United States.'' Imported beef or beef products is defined as ''products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States.''

In 1989, Customs implemented a new numbering system, the HTS, to replace the Tariff Schedule of the United States (TSUS) system. The Department of Agriculture (USDA) updated the TSUS to HTS, in a final rule, published in the **Federal Register** on April 20, 1989, (54 FR 15915) to conform with updates made by Customs. Since the inception of HTS, it has undergone many changes. First, the original 11 digit system has been replaced with a 10 digit system. Additionally, most of the categories regarding imported beef and beef products have been subdivided and the new categories have been assigned HTS numbers. The purpose of this final rule is to update, expand, and revise the table found under § 1260.172 (7 CFR 1260.172) to reflect the current HTS numbers.

As a result of these changes to HTS, there are 20 new categories that cover imported live cattle subject to assessment compared with the previous 8 categories. The 30 categories identifying imported beef and beef products have been expanded to 54 categories.

This final rule simply updates and expands the chart published in the 1989 final rule to conform with recent changes to the HTS numbering system and revises the live weight equivalents used to calculate import assessments. Importers are currently paying the same assessment level for imported beef and beef products that was established when the Order was first published in 1986. At that time, the average dressed weight of cows slaughtered under Federal inspection was determined to be 509 pounds. USDA determined that using the average dressed weight of domestic cows slaughtered under Federal inspection would be most suitable because about 90 percent of imported beef and beef products were similar to domestic cow beef.

The Act requires that assessments on imported beef and beef products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents. Under the Order, the Board may increase or decrease the level of assessments for imported beef and beef products based upon revised determination of live animal equivalencies.

Prior to publishing the proposed rule, USDA received two recommendations concerning importer assessments. The Meat Importers Council of America (MICA) requested to increase the live animal equivalency rate that would reduce the amount of assessments collected from importers of beef and beef products. MICA suggests using the dressed cow weight for calendar year 2000 to recalculate levels of assessments. This average would be 579 pounds. In updating the average dressed cow weight for calendar year 2004, the average would be 614 pounds. The Board recommends using an average dressed cow weight from 1987 to the most current data. The Board states that ''establishing an average over this period of time takes into account short term highs and lows due to the cattle cycle, weather effects, and feed prices.'' This average would be 555 pounds.

Comments

On October 5, 2005, USDA published in the **Federal Register** (70 FR 58095) a proposed rule to amend the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the HTS numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the Customs.

USDA received in a timely manner two comments, one from the Executive Director of the Meat Importers Council of America (MICA) and another from an interested party. The two comments have been posted on AMS' Web site at *http://www.ams.usda.gov/lsg/mpb/rp-beef.htm.* The changes suggested by commenters are discussed below.

Discussion of Comments

The USDA proposed establishing the average carcass weight using a 5-year weighted average carcass weight of domestic cows. Although MICA supports the reduction of assessment levels for imported beef and beef products, MICA contends the basis for determining the assessment should not be the proposed 5-year weighted average carcass weight of all cows slaughtered in the U.S. under Federal inspection because imported beef is derived from a range of classes of stock, including steers, heifers and bulls as well as cows. The commenter recommended that the formula be based on a mix of cow and steer weights. Thus, MICA proposed that the carcass weight used to calculate the assessments on imported beef be based on a ratio of one-third (1/3) of the 5-year average carcass weight of steers and two-thirds (2/3) of the 5-year average carcass weight of cows which would result in an average carcass weight of approximately 663 pounds. While this does not take into account bulls and heifers, the commenter feels that the differences in these two classes would probably balance each other out and, thus, would not materially affect the calculation.

USDA reviewed total imported beef and veal production on a carcass weight equivalent to identify the top 10 countries exporting to the United States in 2005. These countries accounted for more than 99 percent of U.S. beef and veal imports for that year. We then calculated the average carcass weight of cattle slaughtered in each country for the years 2000–2004 by dividing total beef production by the total number of cattle slaughtered. Based on our calculations, the average carcass weight of these 10 exporting countries was 592 pounds during this period, which is the same weight published in the proposed rule. In other words, accounting for all cattle (whether steers, heifers, cows, or bulls) produced by the leading countries from which the United States imports beef leads to the same carcass weight equivalent as that in the proposed rule. Using the recent 5-year average carcass weight of all domestic cows slaughtered in the U.S. under Federal inspection is very representative of the average carcass weight of for those countries importing to the U.S. Consequently, the comment is not adopted.

While expressing general misgivings concerning the program, the second commenter suggested that the assessment rate should be increased to $10 per head. The Act provides that the assessment rate for live imported cattle be $1 per head. Consequently, this comment is not adopted.

Accordingly, it is appropriate to use a 5-year average dressed weight of domestic cows slaughtered under Federal inspection of 592 pounds to calculate assessments on imported beef and beef products.

List of Subjects in 7 CFR part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef, and Beef products.

■ For the reasons set forth in the preamble, title 7 of the CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911.

■ 2. Paragraph (b)(2) of § 1260.172 is revised to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

IMPORTED LIVE CATTLE

HTS No.	Assessment rate (head)
0102.10.0010	$1.00
0102.10.0020	1.00
0102.10.0030	1.00
0102.10.0050	1.00
0102.90.2011	1.00
0102.90.2012	1.00
0102.90.4024	1.00
0102.90.4028	1.00
0102.90.4034	1.00
0102.90.4038	1.00
0102.90.4054	1.00
0102.90.4058	1.00
0102.90.4062	1.00
0102.90.4064	1.00
0102.90.4066	1.00
0102.90.4068	1.00
0102.90.4072	1.00
0102.90.4074	1.00
0102.90.4082	1.00
0102.90.4084	1.00

IMPORTED BEEF AND BEEF PRODUCTS

HTS No.	Assessment rate per kg
0201.10.0510	.01459542
0201.10.0590	.00379102
0201.10.1010	.01459542
0201.10.1090	.00379102

IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS No.	Assessment rate per kg
0201.10.5010	.01459542
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5000	.00379102
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787
0201.30.5000	.00511787
0201.30.8090	.00511787
0202.10.0510	.01459542
0202.10.0590	.00379102
0202.10.1010	.01459542
0202.10.1090	.00370102
0202.10.5010	.01459542
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102
0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5000	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5000	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0900	.00663428
1602.50.1020	.00663428
1602.50.1040	.00663428
1602.50.2020	.00701388
1602.50.2040	.00701388
1602.50.6000	.00720293

* * * * *

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–13477 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2002–11483; Amendment No. 13–33]

RIN 2120–AI52

Revisions to the Civil Penalty Inflation Adjustment Rule and Tables; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This document contains corrections to the preamble of final rule published in the **Federal Register** on May 16, 2006, (71 FR 28518) and an amendment to the regulatory language. That final rule implements adjustments to certain civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This amendment becomes effective August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3137; facsimile (202) 267–5106; e-mail *joyce.redos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule document published in the **Federal Register** on May 16, 2006 (71 FR 28518), contains two errors in the preamble. In addition, the final column was omitted from Table One of the regulatory language and the dates in the two footnotes to Table Two should be the effective date of the rule, not the date of publication. This publication corrects the errors in the preamble and amends the regulatory language.

■ In the May 16, 2006, **Federal Register** (FR Doc. 06–4524), make the following corrections to read as follows:

■ 1. On page 28519, column 2, 10th line from the bottom, correct ''insert effective date of rule'' to read ''June 15, 2006''.

■ 2. On page 28519, column 3, 9th line from the bottom, remove the sentence beginning with the word ''Based'' and insert the following sentence to read ''Based on a new inflation adjustment, as of June 15, 2006, the penalty is $11,000 per day.''

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendment

■ In conclusion of the foregoing, the Federal Aviation Administration amends part 13 of Title 14, Code of Federal Regulations, as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

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

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 44718, 44725, 46101–46110, 46301–46316, 46318, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

■ 2. Amend § 13.305 by revising Table 1 to read as follows:

§ 13.305 Cost of living adjustments of civil monetary penalties.

TABLE 1.—TABLE OF MIMIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS BEFORE DECEMBER 12, 2003, AND FOR HAZARDOUS MATERIALS VIOLATIONS BEFORE AUGUST 10, 2005

United States Code citation	Civil monetary penalty description	Mimimum penalty amount	New adjusted mimimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or adjusted maximum penalty amount
49 U.S.C. 5123(a)	Violation of hazardous materials transportation law, regulation, or order.	$250 per violation, last set 1990.	Same	$30,000 per violation, adjusted 3/13/02.	Same.
49 U.S.C. 46301(a)(1).	Violation under 49 U.S.C. 46301(a)(1)	N/A	N/A	$1,100 per violation, adjusted 1/21/1997.	Same.
49 U.S.C. 46301(a)(2).	Violations under 49 U.S.C. (a)(2)(A) or (B) by a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	Same.
49 U.S.C. 46301(a)(3)(A).	Violation under 498 U.S.C. 46301(a)(1) related to the transportation of hazardous materials.	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	Same.
49 U.S.C. 46301(a)(3)(B).	Violation related to the registration or recordation under 49 U.S.C. chapter 441 of an aircraft not used to provide air transportation.	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	Same.
49 U.S.C. 46301(a)(3)(C).	Violation of 49 U.S.C. 44718(d) relating to limiting construction or establishment of landfills.	N/A	N/A	$10,000 per violation, set 10/9/1996.	Same.
49 U.S.C. 46301(a)(3)(D).	Violation of 49 U.S.C. 44725 relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	$10,000, set 4/5/2000	Same.
49 U.S.C. 46301(a)(5).	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	Same.
49 U.S.C. 46301(b).	Tampering with a smoke alarm device	N/A	N/A	$2,200, adjusted 1/21/1997	Same.
49 U.S.C. 46302(a).	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	$11,000, adjusted 1/21/1997	Same.

TABLE 1.—TABLE OF MIMIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS BEFORE DECEMBER 12, 2003, AND FOR HAZARDOUS MATERIALS VIOLATIONS BEFORE AUGUST 10, 2005—Continued

United States Code citation	Civil monetary penalty description	Mimimum penalty amount	New adjusted mimimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or adjusted maximum penalty amount
49 U.S.C. 46303	Carrying a concealed dangerous weapon	N/A	N/A	$11,000, adjusted 1/21/1997	Same.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	$25,000, set 4/5/2000	Same.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530 relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(2), above.	Same.

[1] FAA prosecutes violations under this section that occurred before February 17, 2002.

■ 3. Amend § 13.305 by revising the footnotes to Table 2 to read as follows:

§ 13.305 Cost of living adjustments of civil monetary penalties.

* * * * *

TABLE 2.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS OCCURRING ON OR AFTER DECEMBER 12, 2003

* * * * *

[1] The maximum penalty for a violation from 12/12/2003 until 6/15/2006 is $10,000.

[2] The maximum penalty for a violation from 4/5/2000 until 6/15/2006 is $25,000.

Dated: Issued in Washington, DC on August 11, 2006.

Rebecca McPherson,

Assistant Chief Counsel.

[FR Doc. 06–6953 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25059; Airspace Docket No. 06–ACE–8]

Establishment of Class E5 Airspace; Higginsville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area airspace extending upward from 700 feet above the surface at Higginsville, MO.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Higginsville Industrial Municipal Airport, MO and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, Airspace Branch, ACE–520G, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

History

On Monday, June 26, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Higginsville, MO (71 FR 36257). The proposal was to establish a Class E5 airspace area to bring Higginsville, MO airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This notice amends part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Higginsville Industrial Municipal Airport, MO. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways 16 and 34 have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Higginsville Industrial Municipal Airport, MO. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1 of the same Order. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Higginsville Industrial Municipal Airport, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO ET Higginsville, MO

Higginsville Industrial Municipal Airport, MO
(Lat. 39°04′22″ N., long. 93°40′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Higginsville Industrial Municipal Airport.

* * * * *

Issued in Kansas City, MO, on August 2, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–6952 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25009; Airspace Docket No. 06–ACE–7]

Modification of Class E Airspace; Keokuk, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Keokuk, IA.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 26, 2006 (71 FR 36189). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 28, 2006. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 2, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–6951 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25007; Airspace Docket No. 06–ACE–5]

Modification of Class E Airspace; Scottsbluff, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Scottsbluff, NE.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, Airspace Branch, ACE–520G, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 26, 2006 (71 FR 36190). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 28, 2006. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 2, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–6949 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9270]

RIN 1545–AW72

Reporting of Gross Proceeds Payments to Attorneys; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9270) that were published in the **Federal Register** on Thursday, July 13, 2006 (71 FR 39548) relating to the reporting of payments of gross proceeds to attorneys.

DATES: These corrections are effective July 13, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy Rose, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6041 and 6045 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9270) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9270), which was the subject of FR Doc. E6–11010, is corrected as follows:

1. On page 39548, column 3, in the preamble, under the paragraph heading ''Paperwork Reduction Act'', second paragraph of the column, line 5, the language ''payments aggregating $600 of more from'' is corrected to read ''payments aggregating $600 or more from''.

2. On page 39548, column 3, in the preamble, under the paragraph heading ''Background'', line 3, the language ''and 6045 of the (Code). These'' is corrected to read ''and 6045 of the Code. These''.

3. On page 39550, column 2, in the preamble, under the paragraph heading ''Summary of Comments'', second paragraph of the column, line 3 from bottom, the language ''section although attorneys fees paid to'' is corrected to read ''section although attorneys' fees paid to''.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13420 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9270]

RIN 1545–AW72

Reporting of Gross Proceeds Payments to Attorneys; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to final regulations (TD 9270) that were published in the **Federal Register** on Thursday, July 13, 2006 (71 FR 39548) relating to the reporting of payments of gross proceeds to attorneys.

DATES: These corrections are effective July 13, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy Rose, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6041 and 6045 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9270) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

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

§ 1.6041–1 [Corrected]

■ **Par. 2.** Section 1.6041–1 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

(a) * * *

(1) * * *

(ii) *Information returns required under other provisions of the Internal Revenue Code.* The payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation), section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers and certain other transactions), sections 6049(a)(1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P(a) or (b) (relating to cancellation of indebtedness). For information returns required under section 6045(f) (relating to payments to attorneys), see special rules in §§ 1.6041–1(a)(1)(iii) and 1.6045–5(c)(4).

* * * * *

(iii) Information returns required under section 6045(f) on or after January 1, 2007. For payments made on or after January 1, 2007 to which section 6045(f) (relating to payments to attorneys) applies, the following rules apply. Not withstanding the provisions of paragraph (a)(1)(ii) of this section, payments to an attorney that are described in paragraph (a)(1)(i) of this section but which otherwise would be reportable under section 6045(f) are reported under section 6041 and this section and not section 6045(f). This exception applies only if the payments are reportable with respect to the same payee under both sections. Thus, a person who, in the course of a trade or business, pays $600 of taxable damages to a claimant by paying that amount to the claimant's attorney is required to file an information return under section 6041 with respect to the claimant, as well as another information return under section 6045(f) with respect to the claimant's attorney. For provisions relating to information reporting for payments to attorneys, see § 1.6045–5.

* * * * *

§ 1.6045–5 [Corrected]

■ **Par. 4.** Section 1.6045–5 is amended by revising *Example 4* and *Example 5* of paragraph (f) to read as follows:

§ 1.6045–5 Information reporting on payments to attorneys.

* * * * *

(f) * * *

Example 4. Check made payable to claimant, but delivered to nonpayee attorney. Corporation P is a defendant in a suit for damages in which C, the plaintiff, has been represented by attorney A throughout the proceeding. P settles the suit for $300,000. Pursuant to a request by A, P writes the $300,000 settlement check payable solely to C and delivers it to A at A's office. P is not required to file an information return under paragraph (a)(1) of this section with respect to A, because there is no payment to an attorney within the meaning of paragraph (d)(4) of this section.

Example 5. Multiple attorneys listed as payees. Corporation P, a defendant, settles a lost profits suit brought by C for $300,000 by issuing a check naming C's attorneys, Y, A, and Z, as payees in that order. Y, A, and Z do not belong to the same law firm. P delivers the payment to A's office. A deposits the check proceeds into a trust account and makes payments by separate checks to Y of $30,000 and to Z of $15,000, as compensation for legal services, pursuant to authorization from C to pay these amounts. A also makes a payment by check of $155,000 to C. A retains $100,000 as compensation for legal services. P must file an information return for $300,000 with respect to A under paragraphs (a)(1) and (b)(1)(i) of this section. A, in turn, must file information returns with respect to Y of $30,000 and to Z of $15,000 under paragraphs (a)(1) and (b)(2) of this section because A is not required to file information returns under section 6041 with respect to A's payments to Y and Z because A's role in making the payments to Y and Z is merely ministerial. See § 1.6041–1(e)(1), (e)(2) and (e)(5) *Example 7* for information reporting requirements with respect to A's payments to Y and Z. As described in *Example 3*, P must also file an information return with respect to C, pursuant to § 1.6041–1(a) and (f).

* * * * *

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13423 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

RIN 1218-AC24

New York State Plan for Public Employees Only; Approval of Plan Supplements and Certification of Completion of Developmental Steps

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; New York State Plan; Approval of Plan Supplements; State Plan Certification.

SUMMARY: The New York Department of Labor submitted timely documentation attesting to the completion of all structural and developmental aspects of its public employee (State and local government) only State plan as approved by the Occupational Safety and Health Administration (OSHA). After extensive review of the submissions and opportunity for correction, plan supplements constituting an updated and revised State plan were submitted. OSHA is approving the revised State plan, which documents the satisfactory completion of all structural and developmental aspects of New York's approved State plan, and certifying this completion. This certification attests to the fact that New York now has in place those structural components necessary for an effective public employee only program. (Enforcement of occupational safety and health standards with regard to private sector employers and employees in the State of New York remains the responsibility of the U.S. Department of Labor, Occupational Safety and Health Administration.)

DATES: *Effective Date:* August 16, 2006.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Kevin Ropp, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–3700, Washington, DC 20210; telephone (202) 693–2244. Electronic copies of this **Federal Register** notice, as well as all OSHA **Federal Register** notices mentioned in this document, are available on OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the ''OSH Act''; 29 U.S.C. 667) provides that a State which desires to assume responsibility for the development and enforcement of occupational safety and health standards may submit for OSHA review and approval a State plan for such development and enforcement. Regulations at 29 CFR part 1956 provide that a State may voluntarily submit a State plan for the development and enforcement of occupational safety and health standards applicable only to employers and employees of the State and its political subdivisions (hereinafter referred to as ''public employers'' and ''public employees''). State and local government employers are excluded from Federal OSHA coverage under section 3(5) of the OSH Act.

Under these regulations, the Assistant Secretary of Labor for Occupational Safety and Health (''Assistant Secretary'') may approve a State plan for public employees only, if the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced by Federal OSHA under section 6 of the OSH Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR part 1956, subpart B. Following initial approval, the State may begin enforcement of its safety and health standards in the public sector and receive up to 50 percent Federal funding for the cost of plan operations.

A State plan for public employees only may receive initial approval even though at the time of submission not all essential components of the plan are in place. Pursuant to 29 CFR 1956.2(b), the Assistant Secretary may initially approve the submission as a ''developmental plan,'' and a schedule within which the State must complete all ''developmental steps'' within a three year period is issued as part of the initial approval decision. 29 CFR part 1953 provides procedures for the review and approval of changes and progress in the development and implementation of the State plan.

When the Assistant Secretary has reviewed and approved all developmental submissions and finds that the State has satisfactorily completed all developmental steps specified in the initial approval decision, a notice certifying such completion is published in the **Federal Register** (see 29 CFR 1956.23 and 1902.34). Certification attests to the structural completeness of the plan but does not render judgment as to the adequacy or effectiveness of State performance.

II. State Plan History

The New York State plan for public employees only (''New York'' or ''the State'') is operated by the New York Department of Labor, Public Employee Safety and Health (PESH) Program. This limited scope State plan was initially approved as a developmental plan under section 18(b) of the OSH Act, and 29 CFR part 1956, on June 1, 1984 (49 FR 22994). After the initial approval of the State plan for public employees only in 1984, New York successfully submitted all of its developmental plan change supplements within three years of the initial approval decision.

Previously, in May 1973, the New York Department of Labor had received approval from the Assistant Secretary, under 29 CFR part 1902, for a comprehensive State plan for the enforcement of occupational safety and health standards in both the private and public sectors (38 FR 13482–13485). That plan was voluntarily withdrawn when the necessary State enabling legislation failed to be enacted (40 FR 27655).

In November 2004, PESH submitted a completely revised State plan which provided updated documentation on all its developmental steps, including those previously approved, for OSHA review and consideration. After extensive review of those documents and opportunity for State correction, New York submitted further revisions in August 2005, October 2005, and April 2006.

III. Description of the Revised State Plan

New York submitted plan supplements constituting a revised State plan document on November 4, 2004, with subsequent revisions dated August 19, 2005, October 17, 2005, and April 28, 2006. The revised State plan updates and documents all structural components of the New York program. This includes a revised narrative description of the current program, legislation, administrative rules, standards, a compliance manual, and

current copies of all key documents relating to New York's occupational safety and health program for public employees. These documents are described below and are being approved in this notice.

A. The Plan Narrative and Appendices

The plan designates the Commissioner of the New York Department of Labor, through the Division of Safety and Health, Public Employee Safety and Health (PESH) program, as the State agency responsible for administering the plan throughout the State. The plan narrative provides a general overview of PESH's legal authority, standards and variances, regulations, enforcement policies and procedures (the ''Field Operations Manual''), voluntary compliance activities (including consultative services and training and outreach programs), an occupational safety and health laboratory, personnel policies and procedures, recordkeeping and reporting requirements, budget, staffing and funding, all of which, together with the supporting documents contained in various appendices, have been determined to provide authority which is ''at least as effective as'' that of the OSH Act and to meet the criteria and indices for plan approval contained in 29 CFR part 1956.

The State plan appendices contain a variety of State statutes related to the PESH program and its authority, contest procedures, and personnel policies, including: New York Public Employee Safety and Health Act at Article 2, Section 27–a of the New York State Labor Law (''Labor Law''); Article 1, Sections 100–104, and Article 2, Sections 201–207, State Administrative Procedure Act; Article 78, Civil Practice Law; Article 2, Section 31, Labor Law, Duty to Furnish Information and Facilitate Inspections; Article 7, Section 200, Labor Law, General Duty to Protect the Health and Safety of Employees, Enforcement; Article 3, Section 101, Labor Law, Review by Industrial Board of Appeals; Article 2, Section 38, Labor Law, Oaths and Affidavits; Article 2, Section 39, Labor Law, Hearings and Subpoenas; Section 75, Civil Service Law, Removal and other Disciplinary Actions; Article 175, Section 30, Penal Law, Offering a False Instrument for Filing; Civil Service Law related to Merit and Hiring System; Executive Law, Article 5, Section 63.3, General Duties—Attorney General; and Article 28, Labor Law, Toxic Substances Act.

The appendices also contain the following regulations: 12 NYCRR Part 800, PESH Safety and Health Standards; 12 NYCRR Part 801, Recordkeeping; 12 NYCRR Part 802, Inspections of Places of Public Employment; 12 NYCRR Part 803, Variance Regulations; 12 NYCRR Part 804, Petition for Modification of Abatement Date; 12 NYCRR Part 805, Petition for Employee Contest of Abatement Period; 12 NYCRR Part 820, Toxic Substances Information, Training and Education; and 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, Industrial Board of Appeals, ''Rules of Procedure and Practice.''

B. Legislation

The plan includes legislation, the New York Public Employee Safety and Health Act (the ''PESH Act'') Article 2, Section 27–a of the New York State Labor Law, as enacted in 1980 and amended on April 17, 1984; August 2, 1985; May 25 and July 22, 1990; April 10, 1992; June 28, 1993; and April 1, 1997. Pursuant to this law, the State plan provides coverage for all public employment in New York. The PESH Act defines covered employers as ''the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof;'' and covered employees as ''persons permitted to work by an employer.'' No employees of any political subdivision of the State or local government, including public school employees, are excluded from the State plan. The PESH Act contains authority for standards adoption, right of entry, inspections, citations, proposed penalties for failure-to-abate violations, employee rights, variances, non-discrimination, recordkeeping and voluntary compliance programs, etc. The PESH Act contains three provisions which differ substantially from the Federal OSH Act.

1. *Penalties.* Section 6 of the PESH Act establishes a penalty structure which provides for failure-to-abate penalties of up to $200 per day for serious violations and $50 per day for other-than-serious violations. This authority, together with mandatory follow-up inspections and judicial enforcement, is the primary means of compelling the abatement of hazards by public employers under the New York program.

2. *Hazard Abatement Board.* Sections 15 and 16 of the PESH Act establish a ''Hazard Abatement Board'' (the HAB) with three primary functions: to recommend alternate occupational safety and health standards to the Commissioner of Labor after holding public hearings; to receive, review and act upon applications for funding of capital projects designed to abate occupational safety and health hazards which have been found by the Commissioner of Labor to violate the PESH Act, or which have been identified in a report of the public employee consultation program (only *local* government employers are eligible for such funding); and to provide grants for programs designed to provide occupational safety and health training and education for employees. (The Hazard Abatement Board is independently funded by the State.)

3. *Removal of Personal Property Prior to Inspections.* Section 5(e) of the PESH Act requires PESH to adopt regulations specific to the conduct of inspections in locker rooms and other areas involving employee personal property and privacy rights. Accordingly, PESH has adopted a regulation on this topic, as described in paragraph F., Inspections and Enforcement, below.

C. Standards

The PESH Act, section 27–a(4)(a), mandates the adoption of all Federal OSHA standards as State standards. The New York plan assures the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards is provided in the New York State Administrative Procedures Act, which requires publication of the Commissioner of Labor's intent to adopt a standard in the New York *State Register* at least 45 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action is published in the *State Register.* The plan assures that permanent standards adopted by OSHA will be adopted by the Commissioner within 180 days of Federal promulgation.

Under the plan, the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not addressed by Federal OSHA standards in a manner that is appropriate for the protection of public employees. The New York Hazard Abatement Board (HAB) is authorized, after public hearings, to recommend such standards to the Commissioner under the PESH Act, sections 27–a.16(D)(a)–(c). The State plan provides for the development and consideration of expert technical information in the formulation of standards and allows interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing for the

development, modification or establishment of standards. In addition, the State Administrative Procedures Act requires public notice and comment for all proposed rules, and provides opportunity for public participation in related hearings.

The plan includes 12 NYCRR Part 800.3, the State safety and health standards regulation, which codifies PESH's adoption by reference of all Federal OSHA safety and health standards applicable to public employees. New York standards are identical to the Federal standards with the following exceptions and additions. The State promulgated and retained the 1989 Permissible Exposure Limits in the Air Contaminants Standard, which were initially promulgated at 29 CFR 1910.1000 by Federal OSHA but subsequently withdrawn. In addition, the requirements of the PESH Hazard Communication (''HazCom'') Standard, which are identical to the Federal Hazard Communication Standard (29 CFR 1910.1200), are supplemented with additional requirements, as applicable to public sector employers only, in the New York Toxic Substances Act (NYTSA) and its implementing regulations at 12 NYCRR Part 820. The NYTSA defines ''toxic substances'' more broadly than the HazCom standard and does not contain the same exemptions, such as those for articles or consumer products, as the HazCom standard. PESH monitors for compliance with the NYTSA in three areas: The posting of a sign; the provision of annual employee training at no-cost, during work hours, and in a convenient location; and the maintenance of employee training records. NYTSA violations are noted by PESH compliance officers during inspections and referred to the Attorney General for enforcement if not resolved. On June 7, 2006, New York enacted a new workplace violence prevention law applicable to public employees, which amends the State Labor Law and requires the Commissioner to issue implementing regulations. The law requires public employers to assess workplace violence risks and, in workplaces with 20 or more employees, develop and implement a written workplace violence prevention program. These different or additional State requirements have been reviewed and determined to be ''at least as effective'' as the comparable Federal standards.

D. Variances

Section 8 of the PESH Act and 12 NYCRR Part 803 establish proceedings for the granting of permanent and temporary variances from State standards, which are equivalent to the Federal requirements at 29 CFR part 1905. These provisions require employee notification of variance applications and provide for employee participation in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. Under the plan, all variances granted have only future effect and temporary variances are available only prior to the effective date of a standard. The procedures allow for the modification or revocation of permanent variances at any time after six months from issuance upon application by an employer, employee, employee representative, or by the Commissioner on his/her own motion. Temporary variances may not be renewed more than twice. Procedures for variance actions can be found in the PESH Field Operations Manual, Chapter VI.

E. Employee Notice and Discrimination Protection

The plan provides for notification to employees of their protections and obligations under the plan by such means as the State ''Public Employees Job Safety and Health Protection'' poster (which is included in the plan documents and also available electronically on the PESH Web site) and required posting of notices of violations. Section 10 of the PESH Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms parallel to section 11(c) of the Federal Act. Complaints must be filed within thirty days after the alleged violation, and the complainant must be notified of the Commissioner of Labor's determination within ninety days of the receipt of the complaint. If the Commissioner determines that the provisions of Section 10 have been violated, the Commissioner is required to make a request to the New York Attorney General to bring an action in the New York Supreme Court. The New York Supreme Court has jurisdiction to restrain violations and to order all appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay.

F. Inspections and Enforcement

Inspection and enforcement policies and procedures provided in the plan are established by the PESH Act, 12 NYCRR Part 802, ''Inspections of Places of Public Employment,'' and the PESH Field Operations Manual. Complaints must be filed in writing and signed. The plan provides for the inspection of covered workplaces, including inspections in response to employee complaints, right of entry for inspections, a prohibition of advance notice of inspections, a mechanism for employees of the employer and their representatives to accompany the inspector during the physical inspections, and opening, informal, and closing conferences. A copy of the ''PESH Closing Conference'' guide, which fully describes the employer's rights and responsibilities at the time of the closing conference, is also included in the plan.

Significant differences between Federal OSHA and PESH inspection and enforcement procedures include the following.

1. *Penalties.* The PESH Act, section 6(a), provides for the assessment of civil monetary penalties for public sector employers for failure-to-abate violations only. If the Commissioner determines that an employer has violated the PESH Act, a ''Notice of Violation and Order to Comply'' (also called a citation) is issued which establishes a reasonable time for compliance and the penalty to be assessed for failure to correct the violation by the time fixed for compliance. An employer who fails to correct a violation by the time fixed for compliance may be assessed a penalty of up to fifty dollars per day for a non-serious violation, and up to two hundred dollars per day for a serious violation, until the violation is corrected.

2. *No Informal Complaint Procedures.* The PESH Act, section 5(a), provides for the investigation of formal employee complaints which must be in writing and signed. If a determination is made that an employee complaint does not warrant an inspection, the complainant must be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. New York requires all employee complaints to be formalized and does not have a program for responding to informal complaints.

3. *Citation Clearinghouse.* In addition to sending citations to employers, copies of all citations are mailed to a ''clearinghouse'' which provides a copy of the citation to the headquarters of any union authorized to represent employees at the affected public sector workplace.

4. *Follow-Up Inspections.* The plan provides 100% follow-up on all initial inspections with violations. Follow-up inspections are normally conducted 30 to 60 days after the latest abatement date. If a cited violation is found not to have been abated at the time of a follow-up inspection, daily failure-to-abate

penalties are proposed and a failure-to-abate notice is issued with a final inspection date (or a second follow-up inspection). If a cited violation is found not to have been abated at the time of the second follow-up inspection, the case will be referred to New York Department of Labor Counsel. If Department of Labor Counsel is not able to negotiate a compliance agreement, the case would be referred for enforcement to the Attorney General who would seek a judicial mandamus action to compel abatement. (See paragraph I., Judicial Review, below). Once an employer corrects a failure-to-abate violation a final penalty bill is sent. New York penalty data is reflected in OSHA's Integrated Management Information System at the final penalty stage. The State maintains an internal data system, to which OSHA has full access, to calculate daily penalties on an ongoing basis.

5. *Definition of ''Catastrophe.''* PESH defines a ''catastrophe'' as the hospitalization of two or more employees (rather than three, as Federal OSHA does).

6. *Alternative Compliance Agreements.* New York procedures provide public employers with the opportunity to request alternative means of compliance starting at the time of the inspection closing conference. This procedure is similar to OSHA's informal settlement agreement process. Alternative Compliance Agreement (ACA) requests are made through an application process with the Division of Safety and Health's Engineering Services Unit (ESU). If the request for an ACA agreement is filed *prior* to the abatement date, uncorrected violations are not assessed a penalty until the Department issues a decision on the alternative compliance request, and follow-up inspections are held in abeyance until the alternative compliance agreement is approved or denied. If such a request is granted, no penalty is imposed unless a reinspection reveals that the employer is not in compliance with the terms of the ACA. Requests filed after the abatement date are normally not accepted and must be accompanied by an explanation of extenuating circumstances for the delay in filing.

7. *Removal of Personal Property Prior to Inspection.* In accordance with section 5(e) of the PESH Act, State regulations at 12 NYCRR 802.7 permit employees to remove their personal property from the workplace prior to safety and health inspections and prohibit compliance officers from examining an employee's personal property without his or her permission. The State plan narrative includes an assurance that this provision does not provide advance notice and has not affected PESH's ability to conduct full and complete inspections, but that if it ever were to become an issue, PESH will seek to amend or remove the statutory and regulatory provisions.

8. *Contest Period.* The period fixed in the plan for contesting notices of violation is 60 calendar days. (See paragraph H, ''Review Procedures,'' below.)

9. *Universal Orders.* A universal order is defined in the PESH FOM, Chapter IV, D, as a citation issued to an employer citing a violation that exists in more than one work location under the control of that employer. Due to the structure and organization of the public sector, it is appropriate, and an effective means of gaining compliance, under certain circumstances to issue notices of violations requiring the correction of hazardous conditions at all locations under the control of that employer.

G. Compliance Manual

The PESH Field Operations Manual (the PESH FOM) was last revised in April 2006, and is available to the public on the New York Department of Labor's Web site. The New York compliance manual parallels Federal OSHA's revised Field Operations Manual, CPL 02–00–045 [CPL 2.45B], and incorporates other policies parallel to Federal compliance directives and unique State requirements. The PESH FOM provides guidance to PESH compliance staff concerning general staff responsibilities, pre-inspection procedures (including inspection scheduling and priorities, complaints and other unprogrammed inspections, and inspection preparation), inspection procedures (including conduct of the inspection, opening conference, closing conference, physical examination of the workplace, follow-up inspections, fatality/catastrophe investigations, imminent danger investigations, and construction inspections), inspection documentation (including types of violations, violations of the general duty clause, writing citations, and grouping/combining violations), post-inspection procedures (including abatement, citations, penalties, and post-citation processes), discrimination investigation procedures, disclosure of information under the New York State Freedom of Information Law (including policy and procedures and specific guidelines), and outreach and training programs. Although not a statutory requirement, the PESH FOM establishes New York's policy that notices of violation will normally be issued to the employer within six months following the occurrence of the violation. New York also uses and has adopted the OSHA Technical Manual (TED 01–00–015 [TED 1–0.15A]), which replaced the former Industrial Hygiene Manual, as guidance for its staff.

H. Review Procedures

Under the plan, both public employers and employees may seek formal administrative review of New York Department of Labor citations and penalties, as well as the reasonableness of the abatement period, before the Industrial Board of Appeals (IBA). Prior to contest, employers and employees and their authorized representatives may seek informal review of citations, penalties and abatement dates issued by the Department of Labor, by requesting an informal conference in writing within 20 working days from the receipt of the Notice of Violation and Order to Comply. If the informal conference does not produce agreement, the affected party may then seek formal administrative review with the IBA within the 60 day contest period.

The IBA is the independent, quasi-judicial, State agency authorized by section 27–a.6(c) of the PESH Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations pursuant to the PESH Act. Pursuant to section 27–a.6(c) of the PESH Act, Section 101 of the Labor Law, and the IBA's ''Rules of Procedure and Practice,'' 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, any employer, employee or other person affected by a Notice of Violation and Order to Comply issued by the Commissioner of Labor may petition the IBA for review no later than 60 calendar days after issuance. A contest does not automatically stay a citation, penalty or abatement date; a stay must be requested and granted by the IBA. If the contest stems from a follow-up inspection and issuance of a failure-to-abate violation, the penalty continues to accumulate on a daily basis, but is deferred until the IBA decision, which would also address the final penalty amount. Subsequent to the Board's proceeding, any affected party may, within 60 days after the IBA's decision is issued, request judicial review of the Board's decision pursuant to section 6(c) of the PESH Act and Article 78 of the New York Civil Practice Law.

Pursuant to 12 NYCRR Part 805, public employees or their authorized representatives have the additional right to contest the abatement period prescribed in the Notice of Violation and Order to Comply by filing a petition with the Commissioner within 15

working days of the posting of the employer's citation, or later if good cause for late filing is shown. The Commissioner may grant, modify or deny the petition. If the Commissioner denies the petition, in whole or in part, the petition is automatically forwarded to the IBA for review. If the Commissioner modifies the abatement period, the employer may petition for review by the IBA under Section 101 of the Labor Law.

Employees or employee representatives who wish to participate in employer-initiated proceedings before the IBA must request intervenor party-status, and the plan includes an assurance that should an employee or employee representative request such status, the State will appropriately inform the IBA of its support for the request. Should the IBA deny an employee's or employee representative's request for intervenor status, New York has pledged to seek immediate corrective action to guarantee employees' rights to party status in employer-initiated cases.

I. Judicial Review

Under section 6(d) of the PESH Act, if the time for compliance with an order of the Commissioner has elapsed without compliance, the Commissioner of Labor may seek judicial enforcement by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. The Commissioner would seek such judicial enforcement, via the New York Attorney General, if there was a continuing failure-to-abate violation at the time of the second follow-up inspection and New York Department of Labor Counsel has been unable to obtain compliance. If the only noncompliance is the failure to pay a penalty, the Commissioner may file a duly enforceable collection action with the appropriate County Clerk.

Further, in light of the fact that the length of the contest period (60 calendar days) is significantly longer than the 15 working day period allowed under the Federal program, the plan includes a March 3, 1984, Counsel's opinion and assurance that New York has the authority under Article 78 of the New York Civil Practice Law to obtain judicial enforcement of an uncontested order to comply upon expiration of the abatement period, regardless of whether the 60 day contest period has expired. New York has also assured that should the State Labor Department's interpretation be successfully challenged, appropriate legislative correction would be sought.

The State plan's authority for response to imminent danger includes ''red tag'' authority which is contained in Article 7, Section 200.2 of the New York State Labor Law. The Commissioner has the authority to prohibit the use of any machinery, equipment or device in a dangerous condition, and to prohibit work in, or occupancy of, areas found in a dangerous condition, until the condition is corrected and the notice is removed by the Commissioner. These orders are subject to review by the IBA. Section 200.3 authorizes the New York Attorney General to institute a proceeding to enjoin the use of dangerous machinery, equipment, devices, or areas that have been ''tagged'' under Section 200.2. The filing of a petition for review with the IBA does not stay the Attorney General's proceedings.

J. Budget and Personnel

The plan includes the FY 2006 grant application under section 23(g) of the OSH Act, which includes a current organizational chart and detailed information on staffing and funding. The State has given satisfactory assurances of adequate funding to support the plan. In FY 2006, the State plan was funded at $3,100,000 in Federal section 23(g) funds, $3,100,000 in matching State funds, and $992,000 in 100% State funds, for a total Federal and State contribution of $7,192,000. The program's total staffing level is 101, including 29 safety and 21 health compliance officers, and 11 safety and 9 health public sector consultants funded under the State plan grant. OSHA considers PESH's current staffing and funding levels to be adequate and appropriate. PESH personnel are employed under a merit system in compliance with New York law and personnel rules. The plan includes the Civil Service Law Related to Merit and Hiring System, and job descriptions and minimum qualifications, by position.

K. Records and Reports

The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to and ''at least as effective as'' that required for private sector employers under Federal OSHA. New York participates and has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require and that New York will continue to participate in OSHA's Integrated Management Information System.

In response to OSHA's 2001 revision of its recordkeeping rules (29 CFR part 1904; 66 FR 5916–6135), on December 21, 2001, New York revised its recordkeeping regulation, 12 NYCRR Part 801, and issued supplemental instructions, SH 901, which provide clarification and interpretation of the basic rule requirements. In response to OSHA's review, the State has modified its regulations and instructions, and provided several clarifications and supplemental assurances in order to make its requirements ''at least as effective as'' those of Federal OSHA. The State assures that recordkeeping activity by employees constitutes protected activity under the PESH Act's anti-discrimination provisions (February 21, 2003, letter from New York Department of Labor Counsel); that any administrative changes made to the SH 901 Instructions will be published in the New York *State Register* for public comment and simultaneously shared with OSHA for review and comment (May 27, 2003, letter from PESH); and that the employer is required to provide a copy of the Annual Summary to any employee or authorized employee representative requesting it in accordance with 801.35 and applicable OSHA interpretations (August 30, 2004, letter from PESH). Revisions to the State's recordkeeping requirements were adopted on May 17, 2006 and provide for the reporting of fatalities and multiple hospitalization incidents after working hours and on weekends to a designated after-hours PESH contact person and for the required reporting of delayed multiple hospitalizations.

L. Voluntary Compliance Programs

The public employee consultation program makes available both safety consultants and industrial hygienists to public employers who request such service for the purpose of apprising them of existing hazards and the best means of abatement. The PESH public sector consultation manual parallels OSHA's Consultation Policies and Procedures Manual, TED 3.5B. The consultation program also provides outreach and training in support of PESH's activities. Under the plan, training is provided to public employers and employees, and seminars are conducted to familiarize affected individuals with applicable safety and health standards and requirements and safe work practices. PESH has a variety of public information programs to disseminate information and publications on important safety and health concerns. Policies and

procedures for Area Office outreach programs, including training, educational and informational services, as well as voluntary compliance programs, are described in the PESH Field Operations Manual.

Through contractual agreements, the Governor's Office of Employee Relations requires joint management and labor health and safety committees in all State agencies. This requirement is independent of the State plan.

IV. Completion of Developmental Steps

With the approval of the revised State plan in today's action, all developmental steps specified in the June 1, 1984, notice of initial approval of the New York public employee only State plan, and other relevant steps, have been successfully completed and approved as follows:

A. In accordance with 29 CFR 1956.51(a), the State of New York promulgated standards identical to all Federal OSHA standards as of July 1, 1983. A supplement to the State plan documenting this accomplishment was initially approved by the Assistant Secretary on August 26, 1986 (51 FR 30449). Subsequently all OSHA standards promulgated through April 28, 2006, have been adopted as New York State standards applicable to public employees. These identical standards; the State's different Air Contaminants Standard (1910.1000); the additional hazard communication requirements in the New York Toxic Substances Act, as applicable to public sector employers only; and the State's independent *Workplace Violence Prevention* law are approved by the Assistant Secretary in today's notice.

B. In accordance with 29 CFR 1956.51(b), New York has promulgated regulations for inspections, citations and abatement equivalent to 29 CFR part 1903 at 12 NYCRR Part 802, as supplemented by the State Field Operations Manual, both of which are approved by the Assistant Secretary in today's notice.

C. In accordance with 29 CFR 1956.51(c), the New York safety and health poster for public employees only, which was originally approved by the Assistant Secretary on May 16, 1985 (50 FR 21046), is approved, as revised, in today's notice.

D. In accordance with 29 CFR 1956.51(d), the State extended its participation in the Bureau of Labor Statistics (BLS) Survey of Injuries and Illnesses to the public sector. This supplement was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204), and the State's continued participation is documented in the April 28, 2006, revised State plan, which is approved in today's notice.

E. In accordance with 29 CFR 1956.51(e), the State promulgated regulations for granting variances equivalent to 29 CFR part 1905, at 12 NYCRR Part 803, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). These regulations are contained in the April 28, 2006, revised State plan and are supplemented by the State's Field Operations Manual. These regulations and implementing procedures for variances are approved in today's notice.

F. In accordance with 29 CFR 1956.51(f), the State initially promulgated regulations for injury/illness recordkeeping equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). In response to revisions to the Federal recordkeeping rule, the State's revised recordkeeping regulations at 12 NYCRR Part 801; supplemental instructions at SH 901; and supplemental assurances concerning amendments to the SH 901 Instructions, after-hours reporting of fatalities and catastrophes, required reporting of delayed hospitalizations, protected activity, and employee rights to receive a copy of the Annual Summary of workplace injuries and illnesses, are approved in today's notice.

G. In accordance with 29 CFR 1956.51(g), the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR Part 1977, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Updated procedures, as contained in the April 28, 2006, revised plan, are approved in today's notice.

H. In accordance with 29 CFR 1956.51(h), the State adopted procedures for the review of contested cases equivalent to 29 CFR Part 2200, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's updated contested case procedures as found at Article 3, Section 101 of the Labor Law, and the ''Rules of Procedure and Practice'' of the Industrial Board of Appeals, 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, are approved in today's notice.

I. In accordance with 29 CFR 1956.51(i), the State revised its plan to reflect procedures for the development and adoption of alternative standards. At the time of initial approval, the State Plan provided for the adoption of identical OSHA safety and health standards, which procedures were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's current procedures for adoption of alternative standards provide that the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, under the State Administrative Procedures Act, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not properly addressed by Federal OSHA standards and is necessary for the protection of public employees. The procedures for adoption of alternative standards provide for consideration of expert technical information and allow interested persons to request the development of a standard and to participate in any hearings for the development or modification of standards. These procedures are approved in today's notice.

J. In accordance with 29 CFR 1956.51(j), the State has developed a Field Operations Manual which parallels the OSHA revised Field Operations Manual, CPL 02–00–045 [CPL 2.45B], and incorporates other Federal compliance policy directives and unique State requirements. The State's Field Operations Manual is approved in today's notice.

K. In accordance with 29 CFR 1956.51(k), the State adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, a developmental step that was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State subsequently replaced this manual with the OSHA Technical Manual. This action is approved in today's notice.

L. In accordance with 29 CFR 1956.51(l), the State issued a directive implementing an on-site consultation program in the public sector which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's current Consultation Policy and Procedures Manual and its description of New York's public sector on-site consultation program and other compliance assistance efforts as contained in the April 28, 2006, revised State plan are approved in today's notice.

M. In accordance with 29 CFR 1956.51(m), the State has developed and implemented a public employer and employee training and education program with procedures described in the Field Operations Manual which are approved in today's notice.

V. Decision

A. Approval of Plan Supplements

After careful review, opportunity for State correction, and subsequent revision, the plan supplements constituting a New York revised State plan for public employees only and its components described above are found to be in substantial conformance with comparable Federal provisions and the requirements of 29 CFR part 1956 and are hereby approved under 29 CFR part 1953 as providing a revised State plan for the development and enforcement of standards which is ''at least as effective as'' the Federal program, as required by section 18 of the OSH Act and 29 CFR part 1956. Subpart F of 29 CFR part 1956 is amended to reflect the approval of the revised plan supplements and the satisfactory completion of all developmental steps. The right to reconsider this approval of the revised State plan supplements is reserved should substantial objections or other information become available to the Assistant Secretary regarding any components of the plan changes.

B. Certification

With the approval of a revised State plan as noted above, all developmental steps have now been successfully completed, documented and approved. In accordance with 29 CFR 1956.23, the New York public employee only State plan is certified as having successfully completed all developmental steps. Subpart F of 29 CFR part 1956 is amended to reflect this certification. This certification attests to the structural completeness of the State plan and that it has all the necessary authorities and procedures to provide ''at least as effective'' standards, enforcement, and compliance assistance to the employees of New York State and its political subdivisions. This action renders no judgment as to the effectiveness of the State plan in actual operations.

VI. Location of Basic State Plan Documentation

Copies of the revised New York State plan for public employees are maintained at the following locations; specific documents are available on the State's website or upon request. Contact the Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N–3700, Washington, DC 20210; the Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; or the New York Public Employee Safety and Health Program, State Office Campus Building 12, Room 158, Albany, New York 12240.

Components of the New York State plan, including the Field Operation Manual, recordkeeping regulations and instructions, complaint forms, and other program information are posted on the New York Department of Labor, Public Employee Safety and Health Web site at: *http://www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_PESH.shtm.*

The PESH Act and other New York statutes can be found on the New York State Legislature's Web site at: *http://public.leginfo.state.ny.us.* The New York Industrial Board of Appeals, Rules of Procedure and Practice, can be found on the New York Department of Labor Web site at: *http://www.labor.state.ny.us/iba/toc.htm.* The State Administrative Procedures Act can be found on the Governor's Web site at: *http://www.gorr.state.ny.us/SAPA-Text.htm.*

Electronic copies of this **Federal Register** notice and the related press release are available on OSHA's Web site, *http://www.osha.gov.*

VII. Public Participation

Under 29 CFR 1953.6(c), OSHA generally ''will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information in order to determine its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program. * * *'' Based on OSHA's review of the State laws, regulations and procedures that comprise the revised State plan and written assurances provided by the State, the Assistant Secretary finds that the New York revised State plan for public employees described above is at least as effective as Federal requirements and is consistent with commitments contained in the plan. Public participation for the purpose of providing additional information about the effectiveness of the structural components of the New York public employee only State plan is therefore unnecessary. Moreover, all legislative and regulatory components of the revised plan were adopted under procedural requirements of State law, which included appropriate opportunity for public participation. Good cause is therefore found for approval of these supplements (which constitute the revised State plan); further public participation would be repetitious and unnecessary.

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1956; Secretary of Labor's Order No. 5–2002 (67 FR 65008, October 22, 2002).

List of Subjects in 29 CFR Part 1956

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

Signed in Washington, DC, this 9th day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

■ Part 1956 of 29 CFR is hereby amended as follows:

PART 1956—[AMENDED]

■ 1. Revise the authority citation of part 1956 to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1956, and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

■ 2. Revise § 1956.50 to read as follows:

§ 1956.50 Description of the plan as certified.

(a) *Authority and scope.* The New York State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on June 1, 1984, and was certified as having successfully completed its developmental steps on August 16, 2006. The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the New York Act (Public Employee Safety and Health Act, Chapter 729 of the Laws of 1980/Article 2, Section 27–a of the New York State Labor Law), enacted in 1980, and amended on April 17, 1984; August 2, 1985; May 25 and July 22, 1990; April 10, 1992; June 28, 1993; and April 1, 1997. Under this legislation, the Commissioner of Labor has full authority to enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions. In response to OSHA's concern that language in section 27–a.2 of the New York Act, regarding the Commissioner of Education's authority with respect to school buildings, raised questions about the coverage under the plan of public school employees, in 1984 New York submitted amendments to its plan consisting of Counsel's opinion and an

assurance that public school employees are fully covered under the terms of the PESH Act.

(b) *Standards.* The New York plan, as of revisions dated April 28, 2006, provides for the adoption of all Federal OSHA standards promulgated as of that date, and for the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards calls for publication of the Commissioner of Labor's intent to adopt a standard in the New York State Register 45 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action will be published as soon as is practicable in the *State Register.* The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the Commissioner of Labor will develop an alternative standard to protect the safety and health of public employees in consultation with the Hazard Abatement Board, or on his/her own initiative. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards.

(c) *Variances.* The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal program. The State provisions require employee notification of variance applications and provide for employee participation in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance, and variances may have only future effect.

(d) *Employee notice and discrimination protection.* The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster and required posting of notices of violations. The plan also provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms essentially identical to section 11(c) of the OSH Act.

(e) *Inspections and enforcement.* The plan provides for inspection of covered workplaces, including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. The plan provides the opportunity for employer and employee representatives to accompany the inspector during an inspection for the purpose of aiding in the inspection. The plan also provides for right of entry for inspection and a prohibition of advance notice of inspection. In lieu of first-instance monetary sanctions for violations, the plan establishes a system for compelling compliance under which public employers are issued notices of violation and orders to comply. Such notices fix a reasonable period of time for compliance. If compliance is not achieved by the time of a follow-up inspection, daily failure-to-abate penalties of up to $50 for non-serious violations and up to $200 for serious violations, will be proposed. The Commissioner of Labor may seek judicial enforcement of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. In addition, the plan provides for expedited judicial enforcement when non-compliance is limited to non-payment of penalties.

(f) *Review procedures.* Under the plan, public employers and employees may seek formal administrative review of New York Department of Labor citations, including penalties and the reasonableness of the abatement periods, by petitioning the New York Industrial Board of Appeals (IBA) no later than 60 days after the issuance of the citation. The IBA is the independent State agency authorized by section 27–a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations. A contest does not automatically stay a notice of violation, penalty or abatement date; a stay must be granted from the IBA. Judicial review of any decision of the IBA may be sought pursuant to Article 78 of the New York Civil Practice Law. Prior to contest, employers, employees and other affected parties may seek informal review of citations, penalties and abatement dates by the Department of Labor by requesting an informal conference in writing within 20 working days from the receipt of citation. If the informal conference does not produce agreement, the affected party may seek formal administrative review with the IBA. Public employees or their authorized representatives have the additional right under 12 NYCRR Part 805 to contest the abatement period by filing a petition with the Commissioner within 15 working days of the posting of the citation by filing a petition with the Department of Labor, or later if good cause for late filing is shown. If the Commissioner denies the employee contest of abatement period under Part 805 in whole or in part, the complaint will automatically be forwarded to the IBA for review. Under the IBA rules, public employees or their representatives may request permission to participate in an employer-initiated review process as ''intervenors.'' The plan includes an April 28, 2006, assurance that should an employee or employee representative request intervenor status in an employer-initiated case, the State will appropriately inform the IBA of its support for the request. Should an employee's or employee representative's request for participation be denied, the State will seek immediate corrective action to guarantee the right to employee party status in employer-initiated cases. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 3, 1984, that it has the authority under Article 78 of the New York Civil Practice Law to obtain judicial enforcement of an uncontested order to comply upon expiration of the abatement period, regardless of whether the 60 day contest period has expired. New York has also assured that should the State Labor Department's interpretation be successfully challenged, appropriate legislative correction would be sought.

(g) *Staffing and resources.* The plan as revised April 28, 2006, provides assurances of a fully trained, adequate staff, including 29 safety and 21 health compliance officers for enforcement inspections and 11 safety and 9 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of continued adequate funding to support the plan.

(h) *Records and reports.* The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. New York has

assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that New York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides for training for public employers and employees; seminars to familiarize affected public employers and employees with applicable standards, requirements and safe work practices; and an on-site consultation program in the public sector to provide services to public employers upon request.

■ 3. Revise § 1956.52 to read as follows:

§ 1956.52 Completed developmental steps and certification.

(a) In accordance with 29 CFR 1956.51(a), the State of New York promulgated standards identical to all Federal OSHA standards as of July 1, 1983. A supplement to the State plan documenting this accomplishment was initially approved by the Assistant Secretary on August 26, 1986 (51 FR 30449). Subsequently, all OSHA standards promulgated through April 28, 2006, have been adopted as New York State standards applicable to public employees. These identical standards; the State's different Air Contaminants Standard (1910.1000); the additional hazard communication requirements, as applicable to public sector employers only, in the New York Toxic Substances Act; and the State's independent *Workplace Violence Prevention* law, were approved by the Assistant Secretary on August 16, 2006.

(b) In accordance with 29 CFR 1956.51(b), New York has promulgated regulations for inspections, citations and abatement equivalent to 29 CFR part 1903 at 12 NYCRR Part 802 and implementing procedures in the State compliance manual, as contained in the State's April 28, 2006, revised plan, which were approved by the Assistant Secretary on August 16, 2006.

(c) In accordance with 29 CFR 1956.51(c), the New York safety and health poster for public employees only, which was originally approved by the Assistant Secretary on May 16, 1985 (50 FR 21046), was approved, as contained in the State's April 28, 2006, revised plan, by the Assistant Secretary on August 16, 2006.

(d) In accordance with 29 CFR 1956.51(d), the State extended its participation in the Bureau of Labor Statistics (BLS) Survey of Injuries and Illnesses to the public sector. A supplement documenting this action was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204) and is contained in the State's April 28, 2006, revised plan, which was approved by the Assistant Secretary on August 16, 2006.

(e) In accordance with 29 CFR 1956.51(e), the State promulgated regulations for granting variances equivalent to 29 CFR part 1905 at 12 NYCRR Part 803, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). These regulations, as revised and supplemented by implementing procedures in the State's Field Operations Manual, are contained in the April 28, 2006, revised State plan, and were approved by the Assistant Secretary on August 16, 2006.

(f) In accordance with 29 CFR 1956.51(f), the State initially promulgated regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's revised recordkeeping regulation, 12 NYCRR Part 801; corresponding instructions (SH 901); and supplemental assurances concerning amendments to the SH 901 Instructions, after-hours reporting of fatalities and catastrophes, required reporting of delayed hospitalizations, protected activity, and employee rights to receive a copy of the Annual Summary of workplace injuries and illnesses, are contained in the April 28, 2006, revised plan, and were approved by the Assistant Secretary on August 16, 2006.

(g) In accordance with 29 CFR 1956.51(g), the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR part 1977, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Updated procedures, as contained in the April 28, 2006, revised plan, were approved by the Assistant Secretary on August 16, 2006.

(h) In accordance with 29 CFR 1956.51(h), the State adopted procedures for the review of contested cases equivalent to 29 CFR part 2200, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's contested case procedures at Section 101 of the Labor Law; the ''Rules of Procedure and Practice'' of the Industrial Board of Appeals, 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66; and 12 NYCRR 805, as contained in the April 28, 2006, revised plan, were approved by the Assistant Secretary on August 16, 2006.

(i) In accordance with 29 CFR 1956.51(i), the State revised its plan to reflect its procedures for the adoption of State standards identical to OSHA safety and health standards, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Subsequently, the State's procedures were revised to provide that the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not properly addressed by Federal OSHA standards and is necessary for the protection of public employees. The procedures for adoption of alternative standards contain criteria for development and consideration of expert technical knowledge in the field to be addressed by the standard and allow interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing for the development, modification or establishment of standards. These procedures are contained in the April 28, 2006, revised plan, and were approved by the Assistant Secretary on August 16, 2006.

(j) In accordance with 29 CFR 1956.51(j), the State has developed a Field Operations Manual which parallels Federal OSHA's Field Operations Manual, CPL 02–00–045 [CPL 2.45B], incorporates other Federal compliance policy directives, and contains procedures for unique State requirements. This manual is contained in the April 28, 2006, revised plan, and was approved by the Assistant Secretary on August 16, 2006.

(k) In accordance with 29 CFR 1956.51(k), the State adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's subsequent adoption of the OSHA Technical Manual is documented in the April 28, 2006, revised State plan and was approved by the Assistant Secretary on August 16, 2006.

(l) In accordance with 29 CFR 1956.51(l), the State issued a directive implementing an on-site consultation program in the public sector, which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's current Consultation Policy and Procedures Manual and its description of New York's on-site consultation program and other compliance

assistance efforts, as contained in the April 28, 2006, revised plan, were approved by the Assistant Secretary on August 16, 2006.

(m) In accordance with 29 CFR 1956.51(m), the State has developed and implemented a public employer and employee training and education program with procedures described in the Field Operations Manual, which, as contained in the April 28, 2006, revised plan, was approved by the Assistant Secretary on August 16, 2006.

(n) A revised State plan as submitted on April 28, 2006, was approved and in accordance with 29 CFR 1956.23 of this chapter, the New York occupational safety and health State plan for public employees only was certified on August 16, 2006 as having successfully completed all developmental steps specified in the plan as initially approved on June 1, 1984. This certification attests to the structural completeness of the plan, but does not render judgment as to adequacy of performance.

§ 1956.53 [Removed and reserved]

■ 4. Remove the section heading and reserve § 1956.53.

■ 5. Revise § 1956.54 to read as follows:

§ 1956.54 Location of basic State plan documentation.

Copies of basic State plan documentation are maintained at the following locations. Specific documents are available upon request, and will also be provided in electronic format, to the extent possible. Contact the Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N–3700, Washington, DC 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; and the New York Department of Labor, Public Employee Safety and Health Program, State Office Campus Building 12, Room 158, Albany, New York 12240. Current contact information for these offices (including telephone numbers and mailing addresses) is available on OSHA's Web site, *http://www.osha.gov.*

§ 1956.55 [Removed and reserved]

■ 6. Remove and reserve § 1956.55.

[FR Doc. E6–13504 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–26–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2006. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manger, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2006, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2006, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.20 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2006) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at *http://www.pbgc.gov/docs/05-23554.pdf*. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for August 2006) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2006, the PBGC finds that good cause exists for making the assumptions set forth in

this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 155, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
155	9–1–06	10–1–06	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 155, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
155	9–1–06	10–1–06	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for September 2006, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
September 2006	.0620	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of August 2006.

Vincent K. Snowbarger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–6958 Filed 8–15–06; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: This rule is published to correct a previously published definition of ''Homebound'' by restoring language that had been inadvertently deleted in the Final Rule published at 70 FR 61368 and to revise certain references published at 69 FR 51559.

DATES: This rule is effective August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Kottyan, 303–676–3520.

SUPPLEMENTARY INFORMATION: On Friday, August 20, 2004, the Department revised the definition of ''Homebound'' by adding a sentence at the end. See 69 FR 51559. On Monday, October 24, 2005, the Department again revised the

definition of ''Homebound'' by deleting the above revision and adding two sentences at the end. See 70 FR 61368. This rule is published to revise the definition of ''Homebound'' by restoring the deleted sentence and to correct references in 32 CFR 199.5.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2(b) is corrected by adding a sentence at the end of the definition for Homebound to read as follows:

§199.2 Definitions.

* * * * *

(b) * * *

Homebound. * * * In addition to the above, absences, whether regular or infrequent, from the beneficiary's primary residence for the purpose of attending an educational program in a public or private school that is licensed and/or certified by a state, shall not negate the beneficiary's homebound status.

* * * * *

§199.5 [Corrected]

■ 3. Section 199.5(h)(5) is corrected by revising ''(i)(4)(v)'' to read ''(h)(3)(v)(A)'' and by revising ''Individual'' to read ''Individualized.''

Dated: August 9, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6935 Filed 8–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–037]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ, Change of Time

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; amendment.

SUMMARY: On July 7, 2006, the Coast Guard published a temporary final rule in the **Federal Register** establishing temporary special local regulations for the ''Thunder Over the Boardwalk Airshow'', an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. On July 14, 2006, the Coast Guard was notified that this marine event was proposed to be conducted at a different time period. This rule changes the times of enforcement for the temporary regulated area. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule changes the effective period of the temporary final rule published at 71 FR 38523 (July 7, 2006) to be 9 a.m. to 5 p.m. on August 23, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–037) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. The new time period of when the airshow was proposed to be conducted was not known in sufficient time to allow for the publication of an NPRM followed by publication of an effective rule before the event. Delaying this rule would be contrary to the public interest of ensuring the safety of life at sea during this event. The event will take place on August 23, 2006. Because of the danger posed by high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the regulated area. However, advance notifications will be made to affected users of the Atlantic Ocean coastal area via marine information broadcasts and area newspapers.

Background and Purpose

On August 23, 2006, the Atlantic City Chamber of Commerce will sponsor the ''Thunder Over the Boardwalk Airshow''. The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of the Amendment to the Temporary Final Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a section of the Atlantic Ocean approximately 2.5 miles long, running from Pennsylvania Avenue to Columbia Avenue, and extending approximately 900 yards out from the shoreline. This amendment to the rule changes the time period previously announced in the **Federal Register** notice published on July 7, 2006. The temporary special local regulations will be enforced from 9 a.m. until 5 p.m. on August 23, 2006. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between event activities, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this area of the Atlantic Ocean during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period. The Patrol Commander will allow non-participating vessels to transit the event area between event activities. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments 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 (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. The Coast Guard amends the temporary final rule published July 7, 2006 (71 FR 38522) entitled, ''Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ.

§ 100.35-T05–037 [Amended]

In rule FR Doc. E6–10589 published on July 7, 2006 (71 FR 38522) make the following amendments to § 100.35–T05–037. On page 38523, in the third column, revise paragraph (d) to read as follows:

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 5 p.m. on August 23, 2006.

Dated: July 28, 2006.

L.L. Hereth,

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

[FR Doc. E6–13495 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–057]

RIN 1625–AA08

Special Local Regulation for Marine Event, Bogue Sound, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''Crystal Coast Super Boat Grand Prix'', a power boat race to be held on the waters of Bogue Banks adjacent to Morehead City, NC. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Morehead City Turning Basin including sections of the Intra-Coastal Waterways and Morehead City Channel during the power boat race.

DATES: This rule is effective from 9 a.m. to 4 p.m. on September 24, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–057) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247–4525 or via e-mail to *Christopher.D.Humphrey@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 20, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulation for Marine Event; Bogue Sound, Morehead City, NC'' in the **Federal Register** (71 FR 35404). We received no letters commenting on the proposed rule. On June 28, 2006, a public meeting was held at U.S. Coast Guard Sector North Carolina base, Atlantic Beach, NC.

Background and Purpose

On September 24, 2006, the Super Boat International Productions Inc. will sponsor the ''Crystal Coast Super Boat Grand Prix, on the waters of Bogue Sound including the Morehead City Turning Basin, sections of the Intra-Coastal Waterway, and Morehead City Channel at Morehead City, North Carolina. The event will consist of approximately 35 powerboats participating in two high-speed competitive races, traveling counter-clockwise around a race course. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Additionally, the Coast Guard did not receive substantive comments at the public meeting held on June 28, 2006, at Atlantic Beach, NC. Accordingly, the Coast Guard is establishing temporary special local regulations on waters of Bogue Sound specified in our proposed rule including the Morehead City Turning Basin, sections of the Intracoastal Waterway, and Morehead City Channel at Morehead City, North Carolina.

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 under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. Although this regulation would prevent traffic from transiting a portion of Bogue Sound including the Morehead City Turning Basin, sections of the Intracoastal Waterway, and Morehead City Channel during the event, the effect of this regulation would not be significant due to the limited duration that the regulated area would be in effect and the extensive advance notification that

would be made to the maritime community via marine information broadcast, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic would be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

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 would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of Bogue Sound including the Morehead City Turning Basin, Atlantic Intra-Coastal waterway and Morehead City Channel from 9 a.m. to 4 p.m. on September 24, 2006. This rule would not have a significant economic impact on substantial number of small entities for the following reasons: Although the regulated area would apply to the Morehead City Channel, Morehead City Turning Basin and a 2 mile segment of the Atlantic Intra-coastal Waterway, south and west of the Highway 70 Bridge, from approximately mile 204 of the Atlantic Intra-coastal Waterway to mile 206, traffic would be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels would be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. The Patrol Commander would allow non-participating vessels to transit the event area between races. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact U.S. Coast Guard Sector North Carolina, listed at the beginning of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 9 a.m. to 4 p.m. on September 24, 2006, add a temporary § 100.35T–05–057 to read as follows:

§ 100.35T–05–057 Bogue Sound, Morehead City, North Carolina.

(a) *Regulated area.* The regulated area is established for the waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N longitude 076°42′48″ W, thence westerly to Morehead City Channel Daybeacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Daybeacon 2 (LLNR 38720), thence southeasterly to Money Island Daybeacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Daybeacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section; (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Crystal Coast Super Boat Grand Prix'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 4 p.m. on September 24, 2006.

Dated: August 4, 2006.

Larry L. Hereth,

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

[FR Doc. E6–13511 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–019]

RIN 1625–AA09

Drawbridge Operation Regulations; Townsend Gut, Boothbay and Southport, ME

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations that govern the operation of the Southport (SR27) Bridge, across Townsend Gut, at mile 0.7, between Boothbay Harbor and Southport, Maine. This final rule changes the regulation to require the Southport (SR27) Bridge to operate on a fixed opening schedule between April 29 and September 30, each year. This final rule is expected to help relieve vehicular traffic delays during the summertime tourism season while continuing to meet both the current and anticipated needs of navigation.

DATES: This rule is effective September 15, 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 CGD01–06–019 and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Townsend Gut, Booth Bay and Southport, ME, in the **Federal**

Register (71 FR 20376). We received twelve comment letters in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Southport (SR27) Bridge, across Townsend Gut, at mile 0.7, has a vertical clearance of 10 feet at mean high water, and 19 feet at mean low water in the closed position. The existing drawbridge operation regulations, listed at 33 CFR 117.5, require the bridge to open on signal at all times.

The owner of the bridge, Maine Department of Transportation (MDOT), requested a change to the drawbridge operation regulations governing the operation of the Southport (SR27) Bridge to require it to open on signal, on the hour, between 6 a.m. and 6 p.m., from April 29 through September 30, each year. The rule change was proposed to help reduce vehicular traffic delays during the summer tourism season when vehicular traffic is greatly increased.

Frequent bridge openings during the summer months result in vehicular traffic delays during the daytime hours in Boothbay Harbor and Southport. The Southport (SR27) Bridge opened 4,136 times in 2004. Specifically, 3,493 (84%) of the 2004 bridge openings were between May and September.

The Town of Southport Board of Selectmen conducted a public meeting in the fall of 2005, to survey public opinion regarding the proposed regulation change originally reflected in the notice of proposed rulemaking published on April 20, 2006.

The local residents, mariners, and commercial vessel operators who attended the meeting were in favor of permanently changing the regulation governing the operation of the Southport (SR27) Bridge to require the bridge to open on signal, once an hour, on the hour, between 6 a.m. and 6 p.m., from April 29 through September 30, each year. All other provisions of the existing regulation would remain unchanged.

Discussion of Comments and Changes

The Coast Guard received twelve comment letters in response to the notice of proposed rulemaking published on April 20, 2006.

Six were in favor of the proposed rule change requiring the bridge to open once an hour, on the hour, and six were opposed to the hourly openings.

The six comment letters in opposition to the hourly bridge openings varied in reasons, ranging from a concern for boating safety, greater delays of vessel traffic, longer bridge openings to accommodate the volume of vessel traffic waiting to transit the bridge, and a concern for the safety of motorists that will be more likely to rush across the bridge before the hourly bridge opening.

Three comment letters suggested that the bridge open two times an hour, on the hour and half hour, as a compromise remedy.

The Coast Guard has considered the inconvenience to local lobstermen, local commercial passenger vessels, and recreational boaters. Specifically, the Coast Guard considered the added cost to lobster boat operators bypassing the bridge and navigating around the island and the delays to recreational boaters. We believe these complaints are legitimate as are the concerns of motorists being delayed for frequent unscheduled bridge openings.

After reviewing the comments received, and re-visiting the various competing interests, the Coast Guard believes that having two bridge openings an hour, on the hour and half hour, from 6 a.m. to 6 p.m. would accommodate the maritime community including local lobstermen, local commercial passenger vessels, recreational boaters, and motorists who seek to cross the bridge.

As a result, we have modified this final rule to allow the Southport (SR27) Bridge to open twice an hour, on the hour and half hour, between 6 a.m. and 6 p.m., from April 29 through September 30. For the remainder of the year, the bridge will open on signal.

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.

This conclusion is based on the fact that vessel traffic, which is not able to pass under the Southport (SR27) Bridge in the closed position, will still be provided bridge openings twice every hour, on the hour and half hour. Moreover, mariners can safely utilize the alternate route to open water through Sheepscot Bay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: local lobstermen, local commercial passenger vessels, and recreational boaters. This rule will not have a significant economic impact on these entities for the reasons described under the Regulatory Evaluation section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 guide 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; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Add § 117.537 to read as follows:

§ 117.537 Townsend Gut.

The draw of the Southport (SR27) Bridge, at mile 0.7, across Townsend Gut between Boothbay Harbor and Southport, Maine shall open on signal; except that, from April 29 through September 30, between 6 a.m. and 6 p.m., the draw shall open on signal on the hour and half hour only, after an opening request is given.

Dated: July 31, 2006.

Timothy S. Sullivan,

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

[FR Doc. E6–13384 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 06–031]

RIN 1625–AA00

Safety Zone; Old Mormon Slough Sediment Contamination—McCormick and Baxter Superfund Site; Stockton, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Stockton Deep Water Channel, in the vicinity of the Old Mormon Slough. This safety zone is necessary to protect persons and vessels, which might otherwise transit near the work site, from the hazards associated with the work. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from July 24, 2006 through October 31, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP 06–031 and are available for inspection or copying at the Waterways Safety Branch of Sector San Francisco, Yerba Buena Island, Bldg. 278, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Erin Bastick, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 or Sector San Francisco 24 hour Command Center at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The dates for the site remediation of the Old Mormon Slough were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the capping of the Slough would commence before the rulemaking process could be completed. Any delay in implementing this rule is contrary to the public interest since immediate action is necessary in order to protect the maritime public from the hazards associated with the remediation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The dates for the site remediation of the Old Mormon Slough were not finalized and presented to the Coast Guard in time to publish this rule 30 days prior to its effective date. As such, the capping of the Slough would commence before the rulemaking process could be completed. Delay in the effective date of this rule would expose the mariners and waterways users to undue hazards associated with the remediation and would therefore be contrary to the public interest.

Background and Purpose

This safety zone is necessary to cap a superfund site, located in the Stockton Deep Water Channel, within the Old Mormon Slough. The Army Corps of Engineers has contracted Montgomery Watson, with J.E. McAmis Inc. being the subcontractor, to implement Phase II of the selected remedy for contaminated sediment in the Old Mormon Slough. Phase II consists of placing a cap of clean sand on the contaminated portion of the Slough. During this process it is imperative that unauthorized persons or vessels remain out of the safety zone for safety reasons in addition to ensuring proper completion of the project. This will enable the EPA to proceed with plans of this Superfund site and contain the contaminated sediment.

Discussion of Rule

This safety zone will encompass the navigable waters from the surface to the sea floor, located in the Stockton Deep Water Channel, within the Old Mormon Slough, encompassing all waters East of 37°57′01.25″ N. Latitude by 121°18′48.03″ W. Longitude. Within the waters of this safety zone, J.E. McAmis, Inc. will be covering the contaminated bottom of the Old Mormon Slough with two feet of sand. To control turbidity, a primary and a local silt curtain will be installed. The primary silt curtain will be installed at 37°57′01.25″ N. Latitude by 121°18′48.03″ W. Longitude, creating the safety zones outer boundary. JEM intends to place one loaded barge of sand (approximately 750/c.y.) each day. The silt curtains will be opened and closed each day when a loaded barge is switched with an empty barge. After completion of sand placement, the primary silt curtain will be removed. A permanent log boom will be installed in the same location along with Type 2, Type 3A and Type 3B warning signs. This safety zone is necessary to protect persons and property from the hazards associated with the work.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users have been contacted to ensure the closure will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, or anchor in the waters affected by this safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities because vessels engaged in recreational activities, sightseeing and fishing have ample space outside of the safety zone to engage in these activities.

Small entities and the maritime public will also be advised of this safety zone via public broadcast notice to mariners. The economic impact of this waterway closure is not expected to be significant.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Erin Bastick, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (415) 556–2950 extension 142, or the 24 hour Command Center at (415) 399–3547.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Paragraph (34)(g) is applicable because this rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–127, to read as follows:

§ 165.T11–127 Safety Zone; Old Mormon Slough Sediment Contamination—McCormick and Baxter Superfund Site; Stockton, California.

(a) *Location*. This safety zone will encompass the navigable waters from the surface to the sea floor, located in the Stockton Deep Water Channel, within the Old Mormon Slough, encompassing all waters East of 37°57′01.25″N Latitude by 121°18′48.03″W Longitude. Within the waters of this safety zone, the contaminated bottom of the Old Mormon Slough will be covered with two feet of sand. To control turbidity, a primary and a local silt curtain will be installed. The primary silt curtain will be installed at 37°57′01.25″N Latitude by 121°18′48.03″W Longitude, creating the safety zones outer boundary.

(b) *Effective Dates*. This rule is effective from July 24, 2006 through October 31, 2006.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated on-scene patrol personnel.

(d) *Enforcement*. (1) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(2) The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

(3) If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone.

Dated: July 21, 2006.

David Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port, San Francisco, California.

[FR Doc. E6–13392 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0018; FRL–8080–7]

Endothall; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of endothall and its monomethyl ester in or on fish. Cerexagri, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 16, 2006. Objections and requests for hearings must be received on or before October 16, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0018. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0018 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 16, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0018, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 11, 2005 (70 FR 7260) (FRL–7696–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F6015) by Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. The petition requested that 40 CFR 180.293 be amended by establishing a tolerance for residues of the herbicide endothall, 7-oxabicyclo[2,2,1] heptane-2,3-dicarboxylic acid, in or on fish/shellfish at 0.25 parts per million (ppm). That notice included a summary of the petition prepared by Cerexagri, Inc., the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. On June 8, 2006, Cerexagri, Inc. submitted a revised petition to the Agency. The petition was requested establishing a tolerance for endothall in or on fish at 0.1 ppm.

The endothall tolerance under 40 CFR 180.293 is being revised per the Endothall RED, to be expressed in terms of endothall *per se* and its monomethyl ester. Tolerances that are currently established for residues in/on undelinted cotton seed, hops, potato, and rice grain and straw will not change in value.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of endothall and its monomethyl ester on fish at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by endothall and its monomethyl ester as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/oppsrrd1/REDs/endothall_red.pd.*

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm.*

A summary of the toxicological endpoints for endothall and its monomethyl ester used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ENDOTHALL AND ITS MONOMETHYL ESTER FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA Safety Factor (SF) and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)			An appropriate endpoint attributable to a single dose was not available from any study, including the prenatal developmental toxicity study in rats. An acute reference dose (RfD) was not established.
Chronic Dietary (All populations)	LOAEL= 2 milligrams/kilogram (mg/kg)/day UF = 300 Chronic RfD = 0.007 mg/kg/day	FQPA SF = 1 Chronic population adjusted dose (cPAD) = chronic RfD ÷ FQPA SF = 0.007 mg/kg/day	Rat 2–generation reproduction study LOAEL 2 mg/kg/day based on proliferative lesions of the gastric epithelium (both sexes)
Short-Term Incidental Oral (1 to 30 days) (Residential)	Offspring NOAEL = 9.4 mg/kg/day	Residential LOC for Margin of Exposure (MOE) = 100 Occupational = Not Applicable (N.A.)	Rat 2–generation reproduction study LOAEL 60 mg/kg/day based on decreased pup body weight (both sexes) on Day 0 F_1 and F_2 generations
Intermediate-Term Incidental Oral (1 to 6 months) (Residential)	LOAEL= 2 mg/kg/day	Residential LOC for MOE = 300 Occupational = N.A.	Rat 2–generation reproduction study LOAEL 2 mg/kg/day based on proliferative lesions of the gastric epithelium (both sexes)

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ENDOTHALL AND ITS MONOMETHYL ESTER FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA Safety Factor (SF) and LOC for Risk Assessment	Study and Toxicological Effects
Short-Term Dermal (1 to 30 days) (Residential)			No dermal assessments were conducted, since endothall is a severe dermal irritant and repeated dermal exposure is highly unlikely to occur.
Intermediate-Term Dermal (1 to 6 months) (Residential)			No dermal assessments were conducted, since endothall is a severe dermal irritant and repeated dermal exposure is highly unlikely to occur.
Long-Term Dermal (>6 months)	N.A. No exposure under use pattern	Residential N.A. Occupational N.A.	N.A.
Short-Term Inhalation (1 to 30 days)	Offspring NOAEL = 9.4 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rat 2–generation reproduction study LOAEL 60 mg/kg/day based on decreased pup body weight (both sexes) on Day 0 F_1 and F_2 generations
Intermediate-Term Inhalation (1 to 6 months) and Long-Term Inhalation (>6 months)	LOAEL= 2 mg/kg/day	Residential LOC for MOE = 300 Occupational LOC for MOE = 300	Rat 2–generation reproduction study LOAEL 2 mg/kg/day based on proliferative lesions of the gastric epithelium (both sexes)
Cancer (oral, dermal, inhalation)	N.A.	N.A.	Chronic/Onco Rat Negative for carcinogenicity Carcinogenicity Mice Negative for carcinogenicity Not likely carcinogenic to humans

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.293) for the residues of endothall, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from endothall and its monomethyl ester in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one–day or single exposure.

No such effects were identified in the toxicological studies for endothall and its monomethyl ester; therefore, a quantitative acute dietary exposure assessment is unnecessary. In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agricultural (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: No toxicological endpoint was identified for acute oral exposure. Therefore no acute dietary exposure assessment was performed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed endothall tolerances, and it was assumed that all the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the chronic risk assessment.

iii. *Cancer.* Endothall is considered not likely to be carcinogenic to humans.

2. *Dietary exposure from drinking water.* This assessment assumes an endothall concentration of 100 parts per billion (ppb) as the average concentration in drinking water. This concentration is the Maximum Contaminant Level (MCL) for endothall. Actual monitoring data for endothall suggest the average concentration of endothall in drinking water are well below the MCL. Monitoring data for finished water are available from the National Contaminant Occurrence Database (NCOD) for both surface water and ground water. Detectable residues of endothall were found in only 7 of 27,494 or 0.025% of ground water samples and 8 of 5,112 or 0.15% of surface water samples. Although these few values are above the established Maximum Contaminant Level (MCL) for endothall of 100 ppb, greater than 99% of ground water and surface water samples contained concentration below the limit of detections (10 ppb). Using this data the mean concentration of endothall would be expected to be 10 ppb in both ground water and surface water. Although the MCL is likely to overestimate average (i.e., chronic) residues of endothall in drinking water,

EPA believes it provides a reasonable high-end estimate of potential drinking water concentrations from the aquatic uses of endothall. Consequently, the MCL of 100 ppb was used in the dietary risk assessment.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of endothall and its monomethyl ester for acute exposures are estimated to be 7.1 ppb for surface water and 0.086 ppb for ground water. The EECs for chronic exposures are estimated to be 2.5 ppb for surface water and 0.086 ppb for ground water. The EECs for chronic exposures (cancer) are estimated to be 2.4 ppb for surface water and 0.086 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Endothall and its monomethyl ester is currently registered for use on the following residential non-dietary sites: Ponds and garden pools. The risk assessment was conducted using the following residential exposure assumptions: Homeowners may potentially be exposed to endothall by applying home-use formulations. There is potential for exposure to adults and children from incidental oral and dermal exposure during recreational activities in public waters treated with endothall.

As a result, risk assessments were completed for both residential handlers and post-application scenarios. Residential applications are only expected to occur over short-periods of time. For residential post-application exposures, exposures on the day of application after an application to a public water body are of the greatest concern. The Agency identified incidental oral exposure (from swallowing water while swimming) and the potential for dermal irritation while swimming as possible post-application exposure scenarios. The Agency conducted an assessment, using the SWIM modeling program, to assess incidental exposures. Risks were calculated using MOEs, where and MOE greater than or equal to 100 is below EPA's LOC.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to endothall and its monomethyl ester and any other substances and endothall and its monomethyl ester does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that endothall and its monomethyl ester has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is not a concern for prenatal and/or postnatal toxicity resulting from exposure to endothall in rats (rabbit- not yet determined). There was no quantitative or qualitative evidence of increased susceptibility following prenatal exposure to rats in the developmental toxicity study and prenatal/postnatal exposure to rats in the 2–generation reproduction study. Due to the lack of a prenatal developmental study in rabbits, susceptibility could not be ascertained in a second (non-rodent) species.

There are no concerns for residual uncertainty for prenatal toxicity in the available developmental study, or the 2–generation rat toxicity study. In evaluating the toxicological database for endothall, the primary effects are the point of entry effects (i.e., dermal). In addition, the weight of evidence suggests that endothall will be of no developmental concern. The rabbit developmental study is being required as a confirmatory study.

3. *Conclusion*. Based on the above data base (which is considered adequate), no special FQPA safety factor (i.e. 1X) is required since there are no residual uncertainties for prenatal toxicity. In deriving uncertainty for use in the risk assessment, the conventional 10x factor for interspecies extrapolation and 10x for intraspecies extrapolation were used for all scenarios. The data base was complete enough and there was no evidence of prenatal or postnatal susceptibility in the studies submitted and evaluated to date. Therefore, the FQPA 10X factor was reduced to 1X. The exposure scenarios in which the hazard value was based on a LOAEL (intermediate term inhalation for both occupational and residential settings) an additional UF of 3X was used to approximate a NOAEL.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Due to the lack of an acute Rfd and acute dietary exposure/risk, an acute aggregate risk assessment was not performed.

2. *Chronic risk*. There are no long term residential uses of endothall. Aggregated chronic exposures to endothall through food plus drinking water were calculated in DEEM™. The results for directly treated crops, irrigated crops and drinking water from aquatic uses of endothall were 33% of the cPAD (0.002297 mg/kg/day) for the general population. The most highly exposed population subgroup was infants at 103% cPAD (0.007234 mg/kg/day). This risk estimate is the result of conservative assumptions (using the MCL of 100 ppb, likely to overestimate chronic residues of endothall in drinking waters).

3. *Short-term risk*. A risk assessment for aggregate exposures (food + drinking water + residential) was conducted for the short term exposure scenario because residential uses of endothall are expected to be only episodic. Food

exposures are based on treated crops and irrigated crops. Drinking water exposures are based on aquatic uses of endothall. Although endothall has terrestrial uses, as well as aquatic uses, the aquatic uses result in the highest estimates of potential drinking water exposures. Residential handler exposures for adults are based on granular applications of endothall with a belly grinder to lakes or ponds. Residential post-application exposures for adults and children are based on swimming.

For adults, estimated dietary exposures via food and drinking water were combined with inhalation exposures during application to a pond or lake and potential post-application exposures during swimming. The Agency notes the handler scenario aggregated for adults is the exposure scenario resulting in the lowest MOE (highest risk estimate) for residential handlers. For children, estimated dietary exposures via food and drinking water were combined with potential post-application exposures during swimming. The short term aggregate risk estimate (MOE) for adults is 310, for children, it is 250. The MOEs are not a risk concern. Therefore, there are no short term aggregate (food + drinking water + residential) risk concerns for endothall.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO ENDOTHALL AND ITS MONOMETHYL ESTER

Population	Short Term Scenario					
	Target Aggregate MOE[1]	MOE food + water[2]	Residential			Aggregate MOE (food + water and residential)[5]
			MOE oral[3]	MOE dermal	MOE inhalation[4]	
Child (3–5 years old)	100	2,770	280	N.A.	N.A.	250
Adults (50+ years old)	100	4,250	900	N.A.	470	310

[1] Target MOE of 100 based on using UF of 10X for interspecies extrapolation and 10X for intraspecies variability.
[2] MOE food + water, which incorporated the dietary exposures for treated crops, irrigated crops and aquatic uses, = (short-term oral NOAEL)/(chronic dietary exposure). Short-term NOAEL = 9.4 mg/kg/day from the 2–generation reproduction rat study, chronic dietary (food+ water) exposure = 0.003395, Children 3–5 years old, and 0.002211, Adults 50+ years old.
[3] MOE oral = (short-term oral NOAEL)/(Oral postapplication exposure of Swimmers) Short-term NOAEL = 9.4 mg/kg/day from the 2–generation reproduction rat study, Oral daily postapplication exposure of swimmers = 0.0341 mg/kg/day, Children 6–10 years old; 0.0107 mg/kg/day, Adults (see Table 6.3.2.2).
[4] MOE inhalation = [(inhalation NOAEL)/(high-end inhalation residential handler exposure)] Short-term inhalation NOAEL = 9.4 mg/kg/day from the 2–generation reproduction rat study.
[5] Aggregate MOE (food + water and residential) = 1÷[[(1÷MOE food+ water) + (1÷MOE oral) + (1÷MOE dermal) + (1÷MOE inhalation)]]

4. *Intermediate-term risk*. Due to the episodic residential use of Endothall, no intermediate term aggregate (dietary + residential) risk assessment was performed.

5. *Aggregate cancer risk for U.S. population*. Endothall is considered not likely to be carcinogenic to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to endothall and its monomethyl ester residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An improved high performance liquid chromotography-mass spectrometry detection (HPLC-MSD) method has been submitted as a confirmatory enforcement method for plants and fish. A gas chromatography method with microcoulometric nitrogen detection is listed as Method I in the Pesticide Analytical Manual (PAM, Volume II) for the determination of endothall residues in/on crop commodities.

Adequate enforcement methodology (specify method; example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No International tolerances have been set for endothall.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to endothall, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions.

V. Conclusion

Therefore, the tolerance is established for combined residues of endothall, 7-oxabicyclo[2,2,1] heptane-2,3-dicarboxylic acid and its monomethyl ester, in or on fish at 0.1 ppm, and the endothall tolerance in 40 CFR 180.293 is revised to be expressed in terms of endothall *per se* and its monomethyl ester.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any

special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.293, paragraph (a)(1) is amended by revising the introductory text and alphabetically adding the commodity ''fish'' to the table to read as follows:

§ 180.293 Endothall; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of Endothall, 7-oxabicyclo [2, 2, 1] heptane-2, 3-dicarboxylic acid and its monomethyl ester in or on the following raw agricultural commodities:

Commodity	Parts per million
* * *	* *
Fish	0.1
* * *	* *

* * * * *

[FR Doc. E6–13293 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[EPA–HQ–SFUND–2002–0010; EPA–HQ–SFUND–2002–0011; FRL–8210–5]

RIN 2050–AE12

Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Process Waste (K178)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule promulgates adjustments to the reportable quantities under the Comprehensive Environmental Response, Compensation and Liability Act for 28 individual carbamates and five carbamate-related hazardous waste streams and for the inorganic chemical manufacturing process waste K178 from their statutory one-pound reportable quantities. All of the substances are listed as hazardous wastes under the Resource Conservation and Recovery Act, and as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act.

DATES: This final rule is effective on September 15, 2006.

ADDRESSES: EPA has established two dockets for this action under Docket ID No. EPA–HQ–SFUND–2002–0010 and EPA–HQ–SFUND–2002–0011. All documents in the dockets are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Superfund 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 Superfund Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management, Office of Solid Waste and Emergency Response (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *beasley.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

Type of entity	Examples of affected entities
Industry	Manufacturers, handlers, transporters, and other users of carbamates. These substances are often used as insecticides, fungicides, herbicides, accelerators in the vulcanization of rubber, or as chemical intermediates in the manufacture of drugs, pesticides, or resins. In addition, entities that may release K178 waste streams will also be affected.
State, Local, or Tribal Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may release these carbamates and waste streams.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the changes to 40 CFR parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Outline of This Preamble

The contents of this preamble are listed in the following outline:

I. Introduction
- A. What is the Statutory Authority for This Rulemaking?
- B. What Types of Releases Are Exempt From These Reporting Requirements?

II. Background

III. Summary of This Action
- A. What Is the Scope of This Rule?
- B. What Methodology Did EPA Use To Adjust the RQs of the Individual Carbamates?
  - 1. RQ Adjustment Methodology
  - 2. Final RQ Adjustments
- C. What Are the Final Adjusted RQs for the Individual Carbamates?
- D. What Methodology Did EPA Use To Assign RQs for the Carbamate-Related Waste Streams?
  - 1. RQ Assignment Methodology for F- and K-Hazardous Waste Streams
  - 2. RQ Assignments for the Carbamate-Related Waste Streams
    - a. Comment Received on the Proposed RQ Adjustment for K156 and K157
    - b. Response To Comment—Application of Mixture Rule to Listed Wastes
- E. What Conforming Changes Are Made to 40 CFR Table 302.4 and its Appendix A?
- F. What Conforming Changes Are Made to 40 CFR Part 355?
- G. What Final RQ Is Assigned to the K178 Waste?
  - 1. Comment Received on the Proposed RQ Adjustment for K178
  - 2. Response To Comment—Application of Mixture Rule to Listed Wastes

IV. Statutory and Regulatory Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Energy Effects
- I. National Technology Transfer and Advancement Act
- J. The Congressional Review Act (5 U.S.C. 801 *et seq.* as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

I. Introduction

A. What Is the Statutory Authority for This Rulemaking?

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term ''hazardous substance'' is defined in section 101(14) of CERCLA by referencing various Federal environmental statutes. For example, the term includes ''any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *,'' also known as the Resource Conservation and Recovery Act (RCRA).

Section 102(b) of CERCLA establishes reportable quantities (RQs) of one pound (''statutory RQs'') for releases of most CERCLA hazardous substances. Under section 102(a) of CERCLA, the Administrator of EPA has the authority to adjust these RQs by regulation (''adjusted RQs'').

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance is released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center (NRC) of that release. A release is reportable if an RQ or more of the hazardous substance is released within a 24-hour period. (*See* 40 CFR 302.6.) This reporting requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

In addition to the reporting requirements under CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires owners or operators of certain facilities to report releases of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local authorities. (*See* 40 CFR 355.40.) Thus, after the release of an EHS or a hazardous substance in a quantity equal to or greater than its RQ, facility owners or operators must immediately notify the community emergency coordinator for each local emergency planning

committee for any area likely to be affected by the release, and the State emergency response commission of any State likely to be affected by the release.

B. What Types of Releases Are Exempt From These Reporting Requirements?

To determine whether you must report the release of a carbamate that equals or exceeds its RQ, you should note that section 103(e) of CERCLA exempts from the notification provisions of CERCLA section 103(a): ''* * * the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or * * * the handling and storage of such a pesticide product by an agricultural producer.'' The legislative history of CERCLA suggests that Congress intended this exemption to apply to the application of a pesticide generally in accordance with the pesticide's purpose.

If a release of a CERCLA hazardous substance meets the criteria under CERCLA section 103(e) for an exemption from reporting to the NRC, the same release is also exempt from the notification requirements to State and local authorities under EPCRA section 304. For this final rule, therefore, the use of carbamates as pesticides in accordance with its use and purpose is not subject to the reporting requirements under CERCLA section 103(e) and EPCRA section 304.

As stipulated by EPA in an earlier final rule (50 FR 13464, Apr. 4, 1985), we do not consider the spill of a pesticide to be an application of the pesticide, nor do we consider a pesticide spill to be in accordance with the pesticide's purpose. Consequently, spills of a carbamate pesticide that equal or exceed an RQ must be reported to the NRC under CERCLA section 103 and to the appropriate State and local authorities under EPCRA section 304.

II. Background

In this final rule, EPA adjusts the statutory one-pound RQs for 28 individual carbamates and five carbamate-related waste streams. The adjustments to these statutory one-pound RQs were proposed in December 2003. (*See* 68 FR 67916, Dec. 4, 2003.) This final rule includes RQ adjustments not only for individual carbamates, but also for thiocarbamates, dithiocarbamates, carbamoyl oximes, and several other individual substances that are closely related to carbamate production and/or waste generation. The preamble to this final rule refers to all 28 individual substances for which the RQ adjustments are made as ''carbamates,'' and to the five waste streams as ''carbamate-related'' waste streams. In addition, EPA is adjusting the statutory one-pound RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule (see Section III.G of this preamble for information regarding K178). A summary of the developments leading up to this final rule as it relates to the carbamate-related substances is provided below.

On November 8, 1984, Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.* In one provision of HSWA—a newly added RCRA section 3001(e)(2)—Congress directed EPA to determine whether several wastes, including wastes generated from the production of carbamates, should be listed as RCRA hazardous wastes. Carbamates are widely used as active ingredients in pesticides, herbicides, insecticides, and fungicides, and in the production of synthetic rubber. Before Congress enacted HSWA in 1984, EPA already had regulated several carbamate substances under RCRA, CERCLA, and other statutes.

Based on our evaluation of the carbamate production wastes, we published a proposal to list 80 carbamate-related substances as RCRA hazardous wastes and as CERCLA hazardous substances. (*See* 59 FR 9808, Mar. 1, 1994.) The 80 substances included: (1) 70 individual carbamates; (2) six carbamate-related waste streams; and (3) four generic groups of carbamate products or captive intermediates with limited toxicity data.[1] On February 9, 1995, we finalized the listing of 64 of the 80 substances as RCRA hazardous wastes and CERCLA hazardous substances, deferring action on 12 individual substances and the four generic groups of carbamate products or captive intermediates with limited toxicity data included in the March 1994 proposed rule. (*See* 60 FR 7824, Feb. 9, 1995.) EPA listed a total of 58 individual carbamates and six carbamate-related hazardous waste streams as RCRA hazardous wastes and CERCLA hazardous substances in the February 1995 final rule.[2] Corrections to minor errors in the February 1995 final rule were later published. (*See* 60 FR 19165, Apr. 17, 1995 and 60 FR 25619, May 12, 1995.) We also modified our interpretation of the rule as it affected listings for K156 and K157 hazardous wastes. (*See* 60 FR 41817, Aug. 14, 1995.)

On November 1, 1996, the Court of Appeals (D.C. Circuit) ruled that EPA failed to follow proper rulemaking procedures in making some of the carbamate listing determinations in the February 1995 rule. *Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394 (D.C. Cir. 1996). The court vacated the RCRA hazardous waste and CERCLA hazardous substance listings for 24[3] of the 58 individual carbamates and one of the six carbamate-related waste streams (K160) included in that rule. The court also vacated three other carbamate-related waste streams (K156, K157, and K158) to the extent that they applied to the chemical 3-iodo-2-propynyl n-butylcarbamate. Under the court decision, the vacated carbamate listings are to be treated as though they had never been in effect.

To clarify the status of the vacated listings for the regulated community and the public, EPA amended the lists of RCRA hazardous wastes (40 CFR part 261) and CERCLA hazardous substances (40 CFR part 302) to remove the entries

[1] These chemicals with limited toxicity data were divided into structure-toxicity groups (esterase (cholinesterase) inhibiting, other non-cancer toxicity, potentially carcinogenic, and toxic metal (metallocarbamates)). (*See* 59 FR 9840, Mar. 1, 1994.)

[2] Independent of the March 1994 proposed and February 1995 final rules, EPA added and adjusted the RQs for six individual carbamates to 40 CFR table 302.4—List of Hazardous Substances and Reportable Quantities, due to their listing under the Clean Air Act, Clean Water Act, or both. The six substances and their Chemical Abstracts Service Registry Numbers (CASRNs) are: carbaryl (CASRN 63–25–2); carbofuran (CASRN 1563–66–2); mercaptodimethur (CASRN 2032–65–7); mexacarbate (CASRN 315–18–4); triethylamine (CASRN 121–44–8); and propoxur (CASRN 114–26–1). We adjusted the RQ for the first five of these six substances in a final rule (50 FR 13456, Apr. 4, 1985) and later adjusted the RQ for the last substance, propoxur, in another final rule (60 FR 30926, Jun. 12, 1995).

[3] The 24 vacated listings and their Chemical Abstracts Service Registry Numbers (CASRNs) and Hazardous Waste No. (U###) were: Bis(pentamethylene)thiuram tetrasulfide (120–54–7), (U400); Copper, bis(dimethylcarbamodithioato-S,S')-(137–29–1), (U393); Dazomet (533–74–44), (U366); Disulfiram (97–77–8), (U403); Iron, tris(dimethylcarbamodithioato-S,S')-(14484–64–1), (U396); Metam Sodium (137–42–8), (U384); Selenium, tetrakis(dimethyldithiocarbamate) (144–34–3), (U376); Carbamodithioic acid, dimethyl, potassium salt (128–03–0), (U383); Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (51026–28–9), (U378); Carbamodithioic acid, methyl-, monopotassium salt (137–41–7), (U377); Carbamodithioic acid, dibutyl, sodium salt (136–30–1), (U379); Carbamodithioic acid, diethyl-, sodium salt (148–18–5), (U381); Carbamodithioic acid, dimethyl-, sodium salt (128–04–1), (U382); Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (95–06–7), (U277); Tetrabutylthiuram disulfide (1634–02–2), (U402); Bis(dimethylthiocarbamoyl) sulfide (97–74–5), (U401); Ethyl Ziram (14324–55–1), (U407); Butylate (2008–41–5), (U392); Cycloate (1134–23–2), (U386); EPTC (759–94–4), (U390); Molinate (2212–67–1), (U365); Pebulate (1114–71–2), (U391); Carbamothioic acid, dipropyl-, S-propyl ester (1929–77–7), (U385); and Carbamic acid, butyl-, 3-iodo-2-propynyl ester (55406–53–6), (U375).

for the 24 individual carbamates and one carbamate-related waste stream (K160) that were vacated by the court, and revised the entries for K156, K157, and K158 to indicate that they do not apply to 3-iodo-2-propynyl n-butylcarbamate (62 FR 32974, Jun. 17, 1997). The court's ruling did not change the February 1995 listing of the 34 remaining individual carbamates as RCRA hazardous wastes, which includes the six carbamates that were listed as hazardous substances due to their listing under the Clean Air Act, Clean Water Act, or both. Those listings remain in effect.

Upon the effective date of the February 1995, final rule, the 28 [4] remaining individual carbamates and the five carbamate-related hazardous waste streams became hazardous substances under CERCLA section 101(14)(C) and received one-pound statutory RQs. This final rule adjusts the RQs for these 28 individual substances and five waste streams (proposed for adjustment in December 2003) based on criteria that relate to the possibility of harm from the release of each hazardous substance into the environment. EPA is revising the 40 CFR table 302.4—*List of Hazardous Substances and Reportable Quantities* to reflect these changes and other conforming changes.

DIAGRAMS SHOWING EVOLUTION OF THIS FINAL RULE

Diagram 1.—Listing RCRA Hazardous Wastes and CERCLA Hazardous Substances

March 1, 1994 Proposed Rule
59 FR 9808
80 Carbamate-Related Substances
RCRA Hazardous Wastes and CERCLA Hazardous Substances

70 Individual Carbamates (Includes 6 individual carbamates with CERCLA RQs adjusted previously under 50 FR 13456 and 60 FR 30926).	6 Carbamate-Related Waste Streams	4 Generic Groups.

February 9, 1995 Final Rule
60 FR 7824
64 Carbamate-Related Substances
RCRA Hazardous Wastes and CERCLA Hazardous Substances
This completes the RCRA Hazardous Waste Listing for these substances

58 Individual Carbamates (Action deferred on 12 Individual Carbamates).	6 Carbamate-Related Waste Streams	0 Generic Groups (Action deferred on 4 generic groups).

Diagram 2.—November 1, 1996 Court of Appeals Decision

Dithiocarbamate Task Force v. *EPA* 98 F.3d 1394 (D.C.Cir. 1996)

58 Individual Carbamates (Court vacated 24 individual carbamates)	6 Carbamate Related Waste Streams (Court vacated 1 waste stream, partially vacated 3 others).

June 17, 1997 Final Rule
62 FR 32974
Amended February 9, 1995 Final Rule to Conform with Court of Appeals Decision

34 Individual Carbamates (Includes 6 individual carbamates with CERCLA RQs adjusted previously under 50 FR 13456 and 60 FR 30926).	5 Carbamate-Related Waste Streams.

Diagram 3.—RQ Adjustment for CERCLA Hazardous Substances

December 4, 2003 Proposed Rule
68 FR 67916

28 Individual Carbamates (34 individual carbamates less the 6 individual carbamates with RQ adjustments under 50 FR 13456 and 60 FR 30926).	5 Carbamate-Related Waste Streams.

FINAL RULE
FINAL CERCLA RQ Adjustments for 28 Individual Carbamates and 5 Carbamate-Related Waste Streams

Eleven of the individual substances with RQ adjustments in this final rule are also EPCRA section 302 EHSs. For the names of these 11 substances, see the revisions to Appendices A and B of 40 CFR part 355, included at the end of this final rule. In 1989, we proposed to adjust the RQs for all the EPCRA EHSs.[5] (*See* 54 FR 35988, Aug. 30, 1989.) Except for the 11 substances included in this rule, we finalized adjustments to the RQs for all the EHSs at 61 FR 20473, May 7, 1996. The adjusted RQs for these 11 substances are now finalized by this action.

III. Summary of This Action

A. What Is The Scope of This Rule?

In this final rule, we are adjusting the one-pound statutory RQs for 28

[4] **Note:** Six of the 34 individual carbamates already have their final adjusted RQs, see FN 2, above.

[5] We used the data from this August 30, 1989, proposed rulemaking, as well as more recent data, to support the RQ adjustments proposed for these 11 substances in this rule.

individual carbamates (one of which is adjusted to a final RQ of one-pound) and five carbamate-related waste streams. In addition, EPA is adjusting the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule (see Section III.G. of this preamble for information regarding K178). We based these adjustments on specific scientific and technical criteria that relate to the possibility of harm from the release of a CERCLA hazardous substance in certain amounts. RQs are based, in part, on a determination of possible or potential harm, but they are not a determination that releases of a particular amount of a hazardous substance necessarily will harm the public health, welfare, or the environment. The quantity released is just one factor that the Federal government considers when it assesses the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The RQ adjustments that EPA is finalizing in this final rule will enable us to focus our resources on those releases that are most likely to pose potential threats to public health, welfare, or the environment. These RQ adjustments will also help to relieve the regulated community and emergency response personnel from the burden of making and receiving reports of releases that are unlikely to pose such threats.

B. What Methodology Did EPA Use To Adjust the RQs of the Individual Carbamates?

EPA has wide discretion to adjust the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations.

1. RQ Adjustment Methodology

The methodology for adjusting the RQ of an individual hazardous substance begins with an evaluation of its intrinsic physical, chemical, and toxicological properties. These intrinsic properties—called ''primary criteria''—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.[6] When there are sufficient data in the scientific literature on the chronic toxicity and/or potential carcinogenicity (two of the six primary criteria) of a hazardous substance, we evaluate and summarize these data in a chemical-specific profile.

For each intrinsic property, EPA ranks the hazardous substance on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. Each hazardous substance may receive several tentative RQ values based on the primary criteria. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After assigning the primary criteria RQs, EPA evaluates the substances for their susceptibility to certain degradative processes. These natural degradative processes, which we use as ''secondary RQ adjustment criteria,'' are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, we generally increase its RQ (as determined by the primary RQ adjustment criteria) by one level.[7] Conversely, if a hazardous substance degrades to a more hazardous product after its release, we assign an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

2. Final RQ Adjustments

Following an extensive review of available scientific literature on the 28 individual carbamates adjusted in this final rule, we found that chronic toxicity profiles were warranted for nine of the 28 carbamates, and that potential carcinogenicity profiles were warranted for six of the 28 carbamates. EPA sought comment on those 15 draft chemical-specific profiles in its December 2003, proposed rule. The Agency received no comment on any of the 15 draft chemical-specific profiles. RQs for several of the substances included in this rule are based, at least in part, on the conclusions drawn in those profiles.

Three carbamates—bendiocarb, benomyl, and thiophanate-methyl—had BHP data that were a sufficient basis for adjusting the primary criteria RQs for these substances. Although several other carbamates (*e.g.*, propham) had BHP data that suggest rapid degradation, the evidence for most of these substances was not conclusive. Therefore, no adjustment to the RQs for the other 25 carbamates was proposed on the basis of BHP.[8] EPA sought additional degradation data (*e.g.*, data on BOD5 values and on half lives) for these 28 individual substances;[9] however, no additional data were submitted in response to this request for comment.

EPA could not locate acceptable data on any of the primary or secondary criteria for three of the 28 individual carbamates in this proposed rule (*see* Table 1). In the past, when the statutory RQs of such data-poor hazardous substances were adjusted, we used data from chemically similar, surrogate substances.[10] Keeping with that practice, we conducted an analysis of other carbamates to identify potential surrogate substances for the three data-poor hazardous substances.

Table 1 lists the chemically similar carbamates EPA used as surrogates, and

[6] For further information on assigning adjusted RQs to hazardous substances under the primary criteria, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (for chronic toxicity), Volume 3, July 1989 (for potential carcinogenicity), and Volume 1, March 1985 (for the four other primary criteria), available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. These documents are not available electronically; contact the Superfund Docket and reference, ''EPA–HQ–SFUND–2002–0010–0043,'' ''EPA–HQ–SFUND–2002–0010–0044,'' and ''EPA–HQ6–SFUND–2002–0010–0042,'' respectively.

[7] We do not raise an RQ level based on BHP if the primary criterion RQ is already at its highest possible level (100 pounds for potential carcinogens and 5,000 pounds for all other types of hazardous substances). The secondary adjustment criteria of BHP are not applied to radionuclides.

[8] To review a summary of the BHP data on the 28 carbamates included in this rule, see Exhibit 4–3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This document is not available electronically; contact the Superfund Docket and reference, ''EPA–HQ–SFUND–2002–0010–0048.''

[9] One or more of the following criteria should be met for a hazardous substance to qualify for further RQ adjustment based on BHP: (1) *Biodegradation:* the substance must have a five-day biochemical oxygen demand (BOD5) that equals or exceeds 50 percent of the theoretical oxygen demand as calculated based on stoichiometric oxidation; and (2) *Hydrolysis/Photolysis:* the half-life of the substance in the environment must be five days or less. For further information on the methodology for applying BHP, *see* the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This document is not available electronically; contact the Superfund Docket and reference, ''EPA–HQ–SFUND–2002–0010–0042.''

[10] We used surrogate substances for the carbamates with primary criteria data that are chemically similar, based primarily on structural analogy, to the data-poor substances. For further information and examples of EPA's use of surrogate data to adjust RQs of hazardous substances, see Section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This document is not available electronically; contact the Superfund Docket and reference, ''EPA–HQ–SFUND–2002–0010–0048.''

the RQs that we proposed and now assign to each data-poor substance based on its chemically similar surrogate.[11] We requested primary and secondary criteria data on these three data-poor substances and solicited comment in the December 2003 proposal, as well as the choice of surrogate substances used to adjust the RQs for these three carbamates; however, we received no data or comment on these three data-poor substances or choice of surrogate substances.

TABLE 1.—RQS FOR THE DATA-POOR CARBAMATES

Data-poor carbamate	Surrogate	RQ (pounds)
Bendiocarb phenol	Bendiocarb	1000
Carbofuran phenol	Carbofuran	10
Manganese dimethyldithiocarbamate	Ziram	10

Note that in Table 2 below, we proposed, and now assign as proposed, different RQs for the data-poor carbamate/surrogate pair of Bendiocarb phenol (data-poor carbamate) and Bendiocarb (its surrogate) as shown in Table 1, above. In Table 2, EPA applied the secondary criteria of BHP to adjust the RQ for bendiocarb to 100 pounds. Due to structural differences between the two substances, it was not appropriate to apply the BHP data for bendiocarb to bendiocarb phenol. Therefore, the final adjusted RQ for bendiocarb phenol is 1000 pounds. (see Tables 1 and 2).

C. What Are the Final Adjusted RQs for the Individual Carbamates?

Table 2 lists the chemical names, CASRNs, and final adjusted RQs for the 28 individual carbamates included in this final rule. The final adjusted RQs for 27 of the 28 individual carbamates were raised from their statutory one-pound levels; one of the 28 individual carbamates ''Dimetilan'' was adjusted to a final RQ of one-pound.

TABLE 2.—FINAL ADJUSTED RQS FOR 28 INDIVIDUAL CARBAMATES

Chemical name	CASRN	Final adjusted RQ (pounds)
A2213	30558–43–1	5000
Aldicarb sulfone	1646–88–4	100
Barban	101–27–9	10
Bendiocarb	22781–23–3	100
Bendiocarb phenol	22961–82–6	1000
Benomyl	17804–35–2	10
Carbendazim	10605–21–7	10
Carbofuran phenol	1563–38–8	10
Carbosulfan	55285–14–8	1000
m-Cumenyl methylcarbamate	64–00–6	10
Diethylene glycol, dicarbamate	5952–26–1	5000
Dimetilan	644–64–4	1
Formetanate hydrochloride	23422–53–9	100
Formparanate	17702–57–7	100
Isolan	119–38–0	100
Manganese dimethyldithiocarbamate	15339–36–3	10
Metolcarb	1129–41–5	1000
Oxamyl	23135–22–0	100
Physostigmine salicylate	57–64–7	100
Physostigmine	57–47–6	100
Promecarb	2631–37–0	1000
Propham	122–42–9	1000
Prosulfocarb	52888–80–9	5000
Thiodicarb	59669–26–0	100
Thiophanate-methyl	23564–05–8	10
Tirpate	26419–73–8	100
Triallate	2303–17–5	100
Ziram	137–30–4	10

[11] These three data-poor carbamates also are included in the list of 28 individual carbamates that appear in Table 2. For further information on the three data-poor carbamates and the chemically-similar, surrogate substances that EPA has identified, *see* Section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This document is not available electronically; contact the Superfund Docket and reference, ''EPA–HQ–SFUND–2002–0010–0048.''

D. What Methodology Did EPA Use To Assign RQs for the Carbamate-Related Waste Streams?

In addition to the 28 individual carbamate hazardous substances, we also proposed and now assign RQs for the five carbamate-related RCRA hazardous waste streams (K156, K157, K158, K159, and K161). As described below, the methodology used to assign RQs to the RCRA F- and K-hazardous waste streams differs from the standard methodology used to adjust individual hazardous substances described in Section III.B.1, above.

1. RQ Assignment Methodology for F- and K-Hazardous Waste Streams

The methodology to assign RQs to RCRA F- and K-hazardous waste streams is based on an analysis of the hazardous constituents of the waste streams. Specifically, EPA identifies the constituents of concern in each RCRA hazardous waste stream in 40 CFR part 261, Appendix VII. We then determine the RQ for each constituent within that waste stream and assign the lowest RQ value of the constituents as the RQ for the waste stream. We also used this same methodology to adjust the RQ for K178 (see Section III.G. for more information).

2. RQ Assignments for the Carbamate-Related Waste Streams

In the February 1995 final rule, five carbamate-related waste streams were assigned the statutory one-pound RQ required by CERCLA section 102(b). (See 60 FR 7824, Feb. 9, 1995.) In the December 2003 proposed rule, EPA used its standard methodology for assigning RQs for RCRA waste streams and assigned a one-pound final RQ for waste stream K161 and 10-pound final RQs for the remaining four carbamate-related waste streams (K156, K157, K158, and K159). The assigned RQs are based on the constituent(s) with the lowest RQ within each of the waste streams. This rule assigns the final RQs to each of the five carbamate-related hazardous waste streams as proposed. Table 3 lists the constituents and constituent RQs of each of the five carbamate-related hazardous waste streams.

TABLE 3.—CONSTITUENTS OF FIVE CARBAMATE-RELATED WASTE STREAMS

Carbamate waste stream constituents	RQ (pounds)
K156	10
benomyl	10
carbaryl	100
carbendazim	10
carbofuran	10
carbosulfan	1000
formaldehyde	100
methylene chloride	1000
triethylamine	5000
K157	10
carbon tetrachloride	10
formaldehyde	100
methyl chloride	100
methylene chloride	1000
pyridine	1000
triethylamine	5000
K158	10
benomyl	10
carbendazim	10
carbofuran	10
carbosulfan	1000
chloroform	10
methylene chloride	1000
K159	10
benzene	10
butylate	100
EPTC	1000
molinate	10
pebulate	100
vernolate	100
K161	1
antimony	5000
arsenic	1
metam sodium	10
ziram	10

a. Comment Received on the Proposed RQ Adjustment for K156 and K157

In response to the proposed rule, 68 FR 67916, Dec. 4, 2003, EPA received one comment [12] regarding the 10-pound RQ assigned to K156 and K157. The commenter represents a manufacturer of carbamate products and is familiar with EPA's 1994 RCRA carbamate rulemaking process. The commenter would like to see higher RQs assigned for the K156 and K157 process wastes, although he acknowledges the Agency's policies in assigning RQs for waste streams.

The commenter also requested that, ''EPA provide clear guidance and examples of how the CERCLA RQ mixture rule applies to reporting scenarios where the waste is K156 or K157, but contains none of the above constituents, or contains one or more of these constituents at known concentrations.''

b. Response To Comment—Application of Mixture Rule to Listed Wastes

Since the commenter did not provide any information to support a higher RQ for EPA Hazardous Waste Nos. K156 and K157, we are maintaining the 10 pound RQ for these two hazardous substances. With respect to the mixture rule, 40 CFR 302.6(b)(1) provides notification requirements where the quantity of all of the hazardous constituents of the mixture or solution is known and where the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown.

Note: The Agency has issued guidance on applying the mixture rule for reporting purposes (EPA publication, ''Questions and Answers on Release Notification Requirements and Reportable Quantity Adjustments,'' specifically questions 37–40 and Exhibit 1—Mixture Rule Scenarios.) [13]

Application of the mixture rule may be most useful when the concentration levels of all the hazardous constituents in a particular carbamate waste stream are known and when an RQ or more of any hazardous constituent is released. For the carbamate waste streams addressed in this rule, appropriate use of the mixture rule may help reduce the burden of notification requirements for the regulated community, while adequately protecting public health and welfare and the environment.

E. What Conforming Changes Are Made to 40 CFR Table 302.4 and Its Appendix A?

EPA is modifying the entries in 40 CFR table 302.4—*List of Hazardous Substances and Reportable Quantities*, for the carbamates added by the February 1995, final rule. Specifically, we are revising the entries for the chemical names of the carbamates in the ''Hazardous substance'' column of table 302.4 to reflect the chemical names for these substances as they appear in the RCRA tables of hazardous wastes at 40 CFR 261.33(e) and (f).

For example, the February 1995, final rule lists two names for each individual carbamate in table 302.4—a chemical name and a synonym in parenthesis. However, whereas that final rule alphabetically lists these two names as separate entries in the RCRA tables of hazardous wastes in 40 CFR 261.33, it only adds one entry for each carbamate to the list of hazardous substances.

Because each of the 28 individual carbamates included in this final rule

[12] You can view the full comment (e-mail) by going to: *www.regulations.gov*, clicking on ''Advanced Search'' in the bar at the top of the page, then ''Document Search.'' Search for the document, ''EPA–HQ–SFUND–2002–0010–0115.''

[13] You can view this publication by going to: *www.regulations.gov*, clicking on ''Advanced Search'' in the bar at the top of the page, then ''Document Search.'' Search for the document, ''EPA–HQ–SFUND–2002–0010–0115.''

has at least two separate entries in the RCRA tables of hazardous wastes, we are listing each of them as separate entries in table 302.4. To effectuate this change, this rule removes the previously listed names for these hazardous substances and adds the chemical names and synonyms as separate entries in table 302.4. We believe that these changes to table 302.4 will improve consistency between the chemical lists under RCRA and CERCLA and help to make carbamate synonyms easier to find in the tables.

We have also made these conforming changes to entries in Appendix A to table 302.4 for the 28 carbamates added to table 302.4, by the February 1995, final rule.

F. What Conforming Changes Are Made to 40 CFR part 355?

Appendices A and B of 40 CFR part 355 list EHSs and their threshold planning quantities (TPQs) under EPCRA and their CERCLA RQs, where applicable. Eleven of the individual carbamates with RQs adjusted by this final rule are also EHSs and CERCLA hazardous substances. In this final rule, EPA is revising Appendices A and B of 40 CFR part 355 to include those adjusted RQs. You can see the revisions to Appendices A and B at the end of this final rule for the names of the individual carbamates.

G. What Final RQ Is Assigned to the K178 Waste?

Section III.D.1 above describes the Agency's standard methodology for assigning RQs for RCRA F- and K-hazardous waste streams, a process that is based on an analysis of the hazardous constituents of each waste identified in 40 CFR part 261, Appendix VII. We determine an RQ for each constituent and establish the lowest RQ value of all of the constituents as the assigned RQ for the hazardous waste stream. When there are hazardous constituents identified in the waste stream that are not individual CERCLA hazardous substances, EPA develops an RQ for those constituents in order to assign an appropriate RQ to the waste stream. (*See* 48 FR 23552, May 25, 1983.) In other words, we derive the RQ for a RCRA hazardous waste stream based on the lowest RQ of all of the hazardous constituents identified for that waste in Appendix VII of 40 CFR Part 261, regardless of whether all of the constituents are CERCLA hazardous substances.

In September 2000, EPA published a proposed rule to list three waste streams from the inorganic chemical manufacturing industry as RCRA hazardous wastes in 40 CFR 261.32 and as CERCLA hazardous substances in 40 CFR 302.4. (*See* 65 FR 55684, Sept. 14, 2000.) In that rule, we proposed to adjust the statutory one-pound RQ for two of the three waste streams, K176 and K177. Waste stream K178 contained two hazardous constituents: thallium, which is a CERCLA hazardous substance with a 1,000-pound RQ, and manganese, which is not a CERCLA hazardous substance identified in 40 CFR 302.4 and does not have an RQ. Because EPA did not develop an RQ for manganese in time for the September 2000, proposed rule, we did not propose to adjust the statutory one-pound RQ for K178 in that rule.

Numerous commenters to the September 2000, proposed rule objected to using manganese as a basis for listing K178 as a hazardous waste, citing potential adverse impacts to many industries. Although EPA believed that manganese poses significant issues that ultimately should be resolved, the court-ordered schedule for the hazardous waste listings provided no flexibility to address those issues fully before finalizing the listings. For that reason, in the November 2001, final rule, EPA deferred final action on adding manganese to Appendix VII of 40 CFR part 261 as a basis for listing K178 as a hazardous waste. (See 66 FR 58258, Nov. 20, 2001.) The final hazardous waste listing for K178 was based solely on thallium.[14] As a result, we proposed an RQ of 1,000 pounds for the K178 waste stream, which is based on the constituent RQ for thallium. This rule assigns the final RQ for the K178 waste stream as proposed.

a. Comment Received on the Proposed RQ Adjustment for K178

In response to the proposed rule published in December 2003, EPA received one comment[15] regarding the 1,000-pound RQ assigned to K178. The commenter represents a production facility directly affected by the K178 listing. The commenter expresses support for the 1,000 pound RQ assigned to the K178 listed hazardous waste and believes that the basis for the adjustment (RQ for thallium) is sound for use in the establishment of the 1,000-pound RQ. Because the individual containers of K178 hazardous wastes used for accumulation and transportation to an off-site RCRA hazardous waste treatment facility will contain more than 1,000 pounds, the commenter also requests that EPA discuss, ''the proper application, with examples, of the CERCLA RQ mixture rule to listed wastes such as K178.''

b. Response to Comment—Application of Mixture Rule to Listed Wastes

As described above (see section III.D.2.b.), where the person in charge has knowledge of the specific constituent mix of the hazardous waste stream, it may be appropriate to use the mixture rule to determine whether there has been a release above an RQ for that waste stream consistent with the known constituent mixture of the hazardous waste stream. For example, for the inorganic chemical manufacturing process waste stream K178, the RQ is based on the constituent thallium; however, there are other constituents (nonhazardous) that make up the waste stream. If the person in charge knows the relative amounts of thallium to nonhazardous constituents in his waste stream, it may be appropriate to use the mixture rule for RQ purposes for that waste stream. It is important to note that attenuation of the waste stream for the purpose of diluting the relative amount of thallium is inconsistent with the intent of the mixture rule.

IV. Statutory and Regulatory Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to the review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule represents a reduction in the burden for both industry and the government because we are raising the RQs for all but two of the substances included in this final rule. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR 302 and 40 CFR 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0046, EPA ICR number 1049.10 and OMB control number 2050–0086, EPA ICR number 1445.06. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby,

[14] Note that EPA also modified the listing description in the November 2001 final rule to read, ''Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.''

[15] You can view the full comment (email) by going to: *www.regulations.gov*, clicking on ''Advanced Search'' in the bar at the top of the page, then ''Document Search.'' Search for the document, ''EPA–HQ–SFUND–2002–0011–0018.''

Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

The proposed rule estimated that the annual reporting and recordkeeping burdens associated with reports to the NRC will be reduced by approximately 720 hours (ICR No. 1049.09) and to SERCs and LEPCs by 880 hours (ICR No. 1395.04). That estimate was based on reports received for the period 1995 through 1999. Based on the period 2000 through 2002 (there was only one reported release) the estimated annual reporting and recordkeeping burdens associated with reports to the NRC will be reduced by 3 hours and to SERCs and LEPCs by 9 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

We have therefore concluded that this final rule will relieve regulatory burden for 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 one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Thus, this final rule is not subject to the requirements of Sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects manufacturers, handlers, transporters, and other users of carbamates that may release them into the environment; in addition, entities that may release K178 hazardous waste will also be affected. There are no State and local government bodies that incur direct compliance costs by this rulemaking. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to

promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 submitted a report containing this final rule, and other required information, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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 September 15, 2006.

List of Subjects

40 CFR Part 302

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

40 CFR Part 355

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

Dated: August 9, 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 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

■ 2. Table 302.4 in § 302.4 is amended by removing the following entries: ''1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)'', ''1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)'', ''7-Benzofuranol, 2,3-dihydro-2,2–dimethyl-(Carbofuran phenol)'', ''Benzoic acid, 2–hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate)'', ''Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)'', ''Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl)'', ''Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)'', ''Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7benzofuranyl ester (Carbosulfan)'', ''Carbamic acid, dimethyl-,1[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan)'', ''Carbamic acid, dimethyl-, 3-methyl-1-(1methylethyl)-1H-pyrazol-5-yl ester (Isolan)'', ''Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)'', ''Carbamic acid, [1,2phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)'', ''Carbamic acid, phenyl-, 1-methylethyl ester (Propham)'', ''Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate)'', ''Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)'', ''1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)'', ''Ethanimidothioci acid, 2-(dimethylamino-N-hydroxy-2-oxo-, methyl ester (A2213)'', ''Ethanimidothoic acid, 2-(dimethylamino)-N-

[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)'', ''Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester (Thiodicarb)'', ''Ethanol, 2,2'oxybis-, dicarbamate (Diethylene glycol, dicarbamate)'', ''Manganese, bis(dimethylcarbamodithioato-S,S')-(Manganese dimethyldithiocarbamate)'', ''Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride)'', ''Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate)'', ''Phenol, 3-(l-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)'', ''Phenol, 3-methyl-5-(l-methylethyl)-, methyl carbamate (Promecarb)'', ''Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)'', ''Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine)'', ''Zinc, bis(dimethylcarbamodithioato-S,S')-(Ziram)'', ''K156'', ''K157'', ''K158'', ''K159'', ''K161'', and K178''.

■ 3. Table 302.4 in § 302.4 is amended by adding the following new entries in alphabetical order, as set forth below (applicable footnotes have been republished without change):

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
A2213	30558431	4	U394	5000 (2270)
* * * *	*	*		*
Aldicarb sulfone	1646884	4	P203	100 (45.4)
* * * *	*	*		*
Barban	101279	4	U280	10 (4.54)
* * * *	*	*		*
Bendiocarb	22781233	4	U278	100 (45.4)
Bendiocarb phenol	22961826	4	U364	1000 (454)
Benomyl	17804352	4	U271	10 (4.54)
* * * *	*	*		*
1,3-Benzodioxol-4-ol, 2,2-dimethyl-	22961826	4	U364	1000 (454)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781233	4	U278	100 (45.4)
* * * *	*	*		*
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563388	4	U367	10 (4.54)
* * * *	*	*		*
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)	57647	4	P188	100 (45.4)
* * * *	*	*		*
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605217	4	U372	10 (4.54)
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-,methyl ester	17804352	4	U271	10 (4.54)
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester	101279	4	U280	10 (4.54)
Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	55285148	4	P189	1000 (454)
Carbamic acid, dimethyl-,1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester	644644	4	P191	1 (0.454)
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119380	4	P192	100 (45.4)
* * * *	*	*		*
Carbamic acid, methyl-, 3-methylphenyl ester	1129415	4	P190	1000 (454)
* * * *	*	*		*
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester	23564058	4	U409	10 (4.54)
Carbamic acid, phenyl-, 1-methylethyl ester	122429	4	U373	1000 (454)
* * * *	*	*		*
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303175	4	U389	100 (45.4)
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888809	4	U387	5000 (2270)
Carbendazim	10605217	4	U372	10 (4.54)
Carbofuran phenol	1563388	4	U367	10 (4.54)
* * * *	*	*		*
Carbosulfan	55285148	4	P189	1000 (454)
* * * *	*	*		*
m-Cumenyl methylcarbamate	64006	4	P202	10 (4.54)
* * * *	*	*		*
Diethylene glycol, dicarbamate	5952261	4	U395	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
* * * *	*	*		*
Dimetilan	644644	4	P191	1 (0.454)
* * * *	*	*		*
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime	26419738	4	P185	100 (45.4)
* * * *	*	*		*
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	30558431	4	U394	5000 (2270)
Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester	23135220	4	P194	100 (45.4)
* * * *	*	*		*
Ethanimidothioic acid, N,N'- [thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester	59669260	4	U410	100 (45.4)
* * * *	*	*		*
Ethanol, 2,2'-oxybis-, dicarbamate	5952261	4	U395	5000 (2270)
* * * *	*	*		*
Formetanate hydrochloride	23422539	4	P198	100 (45.4)
* * * *	*	*		*
Formparanate	17702577	4	P197	100 (45.4)
* * * *	*	*		*
Isolan	119380	4	P192	100 (45.4)
* * * *	*	*		*
3-Isopropylphenyl N-methylcarbamate	64006	4	P202	10 (4.54)
* * * *	*	*		*
Manganese, bis (dimethylcarbamodithioato-S,S')-	15339363	4	P196	10 (4.54)
* * * *	*	*		*
Manganese dimethyldithiocarbamate	15339363	4	P196	10 (4.54)
* * * *	*	*		*
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride	23422539	4	P198	100 (45.4)
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino) carbonyl]oxy]phenyl]-	17702577	4	P197	100 (45.4)
* * * *	*	*		*
Metolcarb	1129415	4	P190	1000 (454)
* * * *	*	*		*
Oxamyl	23135220	4	P194	100 (45.4)
* * * *	*	*		*
Phenol, 3-(1-methylethyl)-, methyl carbamate	64006	4	P202	10 (4.54)
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631370	4	P201	1000 (454)
* * * *	*	*		*
Physostigmine	57476	4	P204	100 (45.4)
Physostigmine salicylate	57647	4	P188	100 (45.4)
* * * *	*	*		*
Promecarb	2631370	4	P201	1000 (454)
* * * *	*	*		*
Propanal, 2-methyl-2-(methyl- sulfonyl)-, O-[(methylamino)carbonyl] oxime	1646884	4	P203	100 (45.4)
* * * *	*	*		*
Propham	122429	4	U373	1000 (454)
* * * *	*	*		*
Prosulfocarb	52888809	4	U387	5000 (2270)
* * * *	*	*		*
Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a- hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	57476	4	P204	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
* * * *	*	*		*
Thiodicarb	59669260	4	U410	100 (45.4)
* * * *	*	*		*
Thiophanate-methyl	23564058	4	U409	10 (4.54)
* * * *	*	*		*
Tirpate	26419738	4	P185	100 (45.4)
* * * *	*	*		*
Triallate	2303175	4	U389	100 (45.4)
* * * *	*	*		*
Zinc, bis(dimethylcarbamodithioato-S,S')-	137304	4	P205	10 (4.54)
* * * *	*	*		*
Ziram	137304	4	P205	10 (4.54)
* * * *	*	*		*
K156		4	K156	10 (4.54)
Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K157		4	K157	10 (4.54)
Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K158		4	K158	10 (4.54)
Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K159		4	K159	10 (4.54)
Organics from the treatment of thiocarbamate wastes.				
K161		4	K161	1 (0.454)
Purification solids (including filtration, evaporation, and centrifugation solids), bag-house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126).				
* * * *	*	*		*
K178		4	K178	1000 (454)
Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.				

† Indicates the statutory source as defined by 1, 2, 3, and 4, as described in the note preceding Table 302.4.

* * * * *

■ 4. Appendix A to § 302.4 is amended by revising the following entries, as set forth below:

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
* * * * * * * *	
57476	Physostigmine. Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
57647	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1). Physostigmine salicylate.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * *
64006	m-Cumenyl methylcarbamate. 3-Isopropylphenyl N-methylcarbamate. Phenol, 3-(1-methylethyl)-, methyl carbamate.
*	* * * * * *
101279	Barban. Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
*	* * * * * *
119380	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester. Isolan.
*	* * * * * *
122429	Carbamic acid, phenyl-, 1-methylethyl ester. Propham.
*	* * * * * *
137304	Zinc, bis(dimethylcarbamodithioato-S,S')-. Ziram.
*	* * * * * *
644644	Carbamic acid, dimethyl-,1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester. Dimetilan.
*	* * * * * *
1129415 ...	Carbamic acid, methyl-, 3-methylphenyl ester. Metolcarb.
*	* * * * * *
1563388 ...	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-. Carbofuran phenol.
*	* * * * * *
1646884 ...	Aldicarb sulfone. Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime.
*	* * * * * * *
2303175 ...	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester. Triallate.
*	* * * * * *
2631370 ...	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate. Promecarb.
*	* * * * * *
5952261 ...	Ethanol, 2,2'-oxybis-, dicarbamate. Diethylene glycol, dicarbamate.
*	* * * * * *
10605217	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester. Carbendazim.
*	* * * * * *
15339363	Manganese, bis(dimethylcarbamodithioato-S,S')-. Manganese dimethyldithiocarbamate.
*	* * * * * *
17702577	Formparanate. Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-.
17804352	Benomyl. Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.
*	* * * * * *
22781233	Bendiocarb. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.
22961826	Bendiocarb phenol. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-.
23135220	Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester. Oxamyl.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
23422539	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride. Formetanate hydrochloride.
23564058	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester. Thiophanate-methyl.
*	* * * * * *
26419738	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime. Tirpate.
*	* * * * * *
30558431	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester. A2213.
*	* * * * * *
52888809	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester. Prosulfocarb.
*	* * * * * *
55285148	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester. Carbosulfan.
*	* * * * * *
59669260	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester. Thiodicarb.
*	* * * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 5. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

■ 6. Appendix A in part 355 is amended by revising the following entries, to read as set forth below (footnotes ''*'' and ''h'' have been republished without change):

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * * *		*	*
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
*	* * * * *		*	*
644–64–4	Dimetilan		1	500/10,000
*	* * * * *		*	*
23422–53–9	Formetanate Hydrochloride	(h)	100	500/10,000
*	* * * * *		*	*
17702–57–7	Formparanate		100	100/10,000
*	* * * * *		*	*
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
*	* * * * *		*	*
1129–41–5	Metolcarb		1,000	100/10,000
*	* * * * *		*	*
23135–22–0	Oxamyl		100	100/10,000
*	* * * * *		*	*
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * *		*	*
57–47–6	Physostigmine		100	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
*	* * * *		*	*
2631–37–0	Promecarb	(h)	1,000	500/10,000
*	* * * *		*	*

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

Notes:

* * * * *

[h] Revised TPQ based on new or re-evaluated toxicity data.

* * * * *

■ 7. Appendix B in part 355 is amended by revising the following entries, to read as set forth below (footnotes ''*'' and ''h'' have been republished without change):

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * *		*	*
57–47–6	Physostigmine		100	100/10,000
*	* * * *		*	*
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
*	* * * *		*	*
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
*	* * * *		*	*
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
*	* * * *		*	*
644–64–4	Dimetilan		1	500/10,000
*	* * * *		*	*
1129–41–5	Metolcarb		1,000	100/10,000
*	* * * *		*	*
2631–37–0	Promecarb	(h)	1,000	500/10,000
*	* * * *		*	*
17702–57–7	Formparanate		100	100/10,000
*	* * * *		*	*
23135–22–0	Oxamyl		100	100/10,000
23422–53–9	Formetanate Hydrochloride	(h)	100	500/10,000
*	* * * *		*	*
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
*	* * * *		*	*

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

Notes:

* * * * *

[h] Revised TPQ based on new or re-evaluated toxicity data.

* * * * *

[FR Doc. E6–13491 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[EPA–HQ–OPPT–2005–0014; FRL–7764–9]

RIN 2070–AB08

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and Technical corrections.

SUMMARY: This final rule, issued pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), requires certain manufacturers (including importers) of certain High Production Volume (HPV) Challenge Program orphan (unsponsored) chemicals to submit a one-time report on general production/ importation volume, end use, and exposure-related information to EPA. The Interagency Testing Committee (ITC), established under section 4(e) of TSCA to recommend chemicals and chemical mixtures to EPA for priority testing consideration, amends the TSCA Section 4(e) *Priority Testing List* through periodic reports submitted to EPA. The ITC recently added certain HPV Challenge Program orphan (unsponsored) chemicals to the *Priority Testing List* in its 55th and 56th ITC Reports, as amended by deletions to this list made in its 56th and 58th ITC Reports. Two tungsten oxide compounds were added to the *Priority Testing List* by the ITC in its 55th ITC Report but were removed from the *Priority Testing List* in the 58th ITC Report. In addition, EPA is making technical corrections to update the EPA addresses to which submissions under the Preliminary Assessment Information Reporting (PAIR) rule must be mailed or delivered. This update reflects the completion of the Agency's move to the Federal Triangle complex in Washington, DC.

DATES: This final rule is effective September 15, 2006. However, § § 712.28 and 712.30(c), which contain technical corrections, are effective August 16, 2006.

For purposes of judicial review, this rule shall be promulgated at 1 p.m. eastern daylight/standard time on August 30, 2006. (See 40 CFR 23.5)

PAIR Forms must be submitted to EPA on or before November 14, 2006.

A request to withdraw a chemical from this PAIR rule, pursuant to 40 CFR 712.30(c), must be received on or before August 30, 2006. (See Unit IV. of the **SUPPLEMENTARY INFORMATION.**)

ADDRESSES: *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0014. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. 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 OPPT Docket is (202) 566–0280.

Submissions. For submission of PAIR Forms and withdrawal requests, each of which must be identified by docket ID number EPA–HQ–OPPT–2005–0014, see Unit III.D. and the regulatory text of this document.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8886; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in 40 CFR 712.30(e) of the regulatory text of this document. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS codes 325, 324110), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Do I Submit CBI Information?

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

II. Background

A. What Action is the Agency Taking?

EPA is issuing a PAIR rule under TSCA section 8(a) which requires certain manufacturers (including importers) of certain voluntary HPV Challenge Program orphan (unsponsored) chemicals (as defined by the ITC in its 55th, 56th, and 58th ITC Reports (Refs. 1, 2, and 3)) added to the ITC's TSCA section 4(e) *Priority Testing List* to submit production and exposure reports. The regulatory text of this document lists certain voluntary HPV Challenge Program orphan (unsponsored) chemicals that are being added to the PAIR rule. (For additional

information about EPA's voluntary HPV Challenge Program, visit the Challenge Program website at *http://www.epa.gov/chemrtk/volchall.htm*).

EPA is also making minor amendments to update the EPA addresses to which submissions under the PAIR rule must be sent or delivered (40 CFR 712.28 and 712.30).

B. What is the Agency's Authority for Taking this Action?

EPA promulgated the PAIR rule under TSCA section 8(a) (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. EPA uses this model TSCA section 8(a) rule to quickly gather current information on chemicals. This model TSCA section 8(a) rule establishes standard reporting requirements for certain manufacturers (including importers) of the chemicals listed in 40 CFR 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the PAIR Form entitled *Manufacturer's Report-Preliminary Assessment Information* (EPA Form No. 7710–35). (See 40 CFR 712.28.)

This model TSCA section 8(a) rule provides for the addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA amends, unless otherwise instructed by the ITC, the model TSCA section 8(a) information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective 30 days after the date of publication in the **Federal Register**.

C. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity for comment pursuant to the procedures set forth in 40 CFR 712.30(c). EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary. TSCA directs the ITC to add chemicals to the *Priority Testing List* for which EPA should give priority consideration. EPA also lacks the authority to remove a chemical from the *Priority Testing List* once it has been added by the ITC. As explained earlier in this PAIR rule, pursuant to 40 CFR 712.30(c), once the ITC adds a chemical to the *Priority Testing List*, EPA in turn is obliged to add that chemical to the list of chemicals subject to PAIR reporting requirements, unless requested not to do so by the ITC. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure. (See the **Federal Register** of August 28, 1985 (50 FR 34805)). Because that rulemaking established the procedure for adding ITC chemicals to the PAIR rule, it is unnecessary to request comment on the procedure in this action. EPA believes this action does not raise any relevant issues for comment. EPA is not changing the PAIR reporting requirements or the process set forth in 40 CFR 712.30(c). Finally, 40 CFR 712.30(c) does provide EPA with the discretion to withdraw a chemical from the PAIR rule if a chemical manufacturer submits to EPA information showing good cause that a chemical should be removed from the PAIR rule.

III. Final Rule

A. What Chemicals are to be Added ?

In this PAIR rule, EPA is adding certain voluntary HPV Challenge Program orphan (unsponsored) chemicals as requested by the ITC in its 55th, 56th, and 58th ITC Reports (Refs. 1, 2, and 3). These chemicals are listed in 40 CFR 712.30(e) of the regulatory text of this document.

B. Who Must Report Under this PAIR Rule?

Persons who manufactured (defined by statute to include import) the chemicals identified in 40 CFR 712.30(e) of the regulatory text of this document during their latest complete corporate fiscal year must submit a PAIR Form for each site at which they manufactured or imported a named substance. Exemptions from this reporting requirement are found at 40 CFR 712.25. A separate form must be completed for each substance and submitted to the Agency as specified in 40 CFR 712.28 no later than November 14, 2006. Persons who have previously and voluntarily submitted a PAIR Form to the ITC may be able to submit a copy of the original report to EPA along with an accompanying letter notifying EPA of the respondent's intent that the submission be used in lieu of a current data submission. Persons who have previously and voluntarily submitted a PAIR Form to EPA may be able to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. (See 40 CFR 712.30(a)(3)).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Specifically, 40 CFR 712.28(d) provides information on the availability of the PAIR Form. Copies of the PAIR Form are available from the general information contact person listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Branch Home Page at *http://www.epa.gov/opptintr/chemtest/pairform.pdf*.

C. Economic Analysis

The economic analysis for the addition of certain voluntary HPV Challenge Program orphan (unsponsored) chemicals to the PAIR rule is entitled *Economic Analysis of the Addition of Chemicals from the 55th, 56th, and 58th ITC Report to the TSCA 8(a) PAIR Rule* (Ref. 4). EPA identified 174 manufacturers of the 243 voluntary HPV Challenge Program orphan (unsponsored) chemicals in its 2002 Chemical Update System, which contains data reported under the Inventory Update Rule (IUR). The IUR required manufacturers (including importers) of certain chemical substances included in the TSCA Chemical Substances Inventory to report current data on the production volume, plant site, and site-limited status of these substances (as of the upcoming 2006 reporting cycle, information in addition to these data elements will also be reported). Since 1986, reporting under the IUR has taken place at 4–year intervals (reporting will occur in 5–year intervals after 2006). The threshold for reporting under the IUR (prior to the upcoming 2006 reporting cycle, for which the threshold will be 25,000 lbs) has been 10,000 lbs and the threshold for PAIR reporting is 1,100 lbs (500 kilograms (kg)). Because EPA's existing IUR data excludes any entities with production or importation volumes in the 1,100–10,000 lbs range, EPA's analysis may slightly underestimate the costs of the present PAIR rule. The PAIR rule exempts a firm from reporting if the total annual sales from all sites owned or controlled by the parent company are below $30 million for the reporting period and total production for the reporting period is below 45,400 kg (100,000 lbs) of the chemical at the plant.

EPA used the IUR data to estimate the potential number of companies and sites likely to submit PAIR reports and the number of estimated reports, and to develop appropriate assumptions needed to estimate overall costs. Much of the data reported under IUR is CBI, and as a result it is not detailed in the economic analysis (Ref. 3). EPA's review

of the 2002 IUR data for the 243 voluntary HPV Challenge Program orphan (unsponsored) chemicals identified 312 sites that filed 547 IUR reports. Two of the sites meet the PAIR rule's exemption criteria and therefore are not expected to have to submit PAIR reports. An additional three sites that manufacture (including import) two voluntary HPV Challenge Program orphan (unsponsored) chemicals are expected to have one of their two chemicals meet the exemption criteria which further reduces the number of PAIR reports expected. Therefore, the total number of sites expected to provide PAIR reports is 310, and an estimated total of 541 reports is expected. By researching corporate affiliations for these 310 sites, EPA estimates that 172 firms (i.e., ultimate corporate entities (UCEs)) manufacturing (including importing) the voluntary HPV Challenge Program orphan (unsponsored) chemicals will need to comply with the PAIR rule.

Therefore, EPA anticipates 541 reports from 310 sites for 172 firms to be covered by this PAIR rule. Given the assumptions in this unit, the costs and burden associated with this PAIR rule are estimated in the Economic Analysis (Ref. 3) to be the following:

Industry Costs (dollars)

The estimated total cost to industry under this PAIR reporting rule is $643,730. The total industry cost divided by sites yields an average per site cost of $2,077 (i.e., $643,730/310 sites). Costs are expected to occur within a time frame of a single year. Therefore, costs have not been annualized.

EPA Costs (dollars)

Personnel requirements are derived from the 1989 PAIR Information Collection Request (ICR) update, which estimated that industry and public assistance required 0.00072 full time employees (FTEs) per report and data processing/system support required 0.0018 FTEs per report. Data processing costs for the 1996 PAIR ICR update were estimated to be approximately $199.56 per report. Adjusting this number to 2003 dollars with the Gross Domestic Product (GDP) implicit price deflator (BEA 2005) yields an adjusted data processing cost of $224.80 per report (i.e., $199.56 x 1.1265). This analysis estimates that a total of 541 reports will be submitted. EPA estimates the Agency costs to be $247,800.

D. Additional Amendments to Update EPA Addresses

EPA is making minor amendments to update the EPA addresses to which submissions under the PAIR reporting rule must be sent or delivered (40 CFR 712.28 and 712.30). This update to the EPA addresses reflects the completion of the Agency's move to the Federal Triangle complex in Washington, DC. The addresses listed in the existing regulation are no longer the correct or complete Agency addresses to which this material must be submitted. The Agency finds that notice and comment on these amendments is unnecessary. The update is not substantive and does not affect the information manufacturers must report. The amendments merely reflect a change in the Agency's location. The Agency therefore finds the amendments to be minor in nature.

IV. Requesting a Chemical be Withdrawn from the Rule

As specified in 40 CFR 712.30(c), EPA may remove a chemical substance, mixture, or category of chemical substances from this PAIR rule for good cause prior to September 15, 2006. Any person who believes that the reporting required by this PAIR rule is not warranted for a chemical listed in this PAIR rule, must submit to EPA detailed reasons for that belief.

EPA has established a policy regarding acceptance of new commitments to sponsor chemicals under the voluntary HPV Challenge Program (Ref. 5). Under this policy, EPA will accept new commitments to sponsor chemicals under the voluntary HPV Challenge Program for any of the 243 voluntary HPV Challenge Program orphan (unsponsored) chemicals listed in the regulatory text of this document until August 30, 2006. In accordance with the procedures described in 40 CFR 712.30(c), withdrawal requests submitted by chemical manufacturers in conjunction with these new commitments must be received on or before August 30, 2006. Voluntary HPV Challenge Program orphan (unsponsored) chemicals for which new commitments are accepted based on EPA's policy will be removed from the PAIR rule, and a **Federal Register** document announcing these withdrawal decisions will be published before the effective date of this PAIR rule (i.e., September 15, 2006).

You must submit your request to EPA on or before August 30, 2006 and in accordance with the instructions provided in 40 CFR 712.30(c), which are briefly summarized here. In addition, to ensure proper receipt, EPA recommends that you identify docket ID number EPA–HQ–OPPT–2005–0014 in the subject line on the first page of your submission. If the Administrator withdraws a chemical substance, mixture, or category of chemical substances from the amendment, a **Federal Register** document announcing this decision will be published no later than September 15, 2006.

V. Materials in the Docket

The official docket for this PAIR rule has been established under docket ID number EPA–HQ–OPPT–2005–0014. The official public docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the official docket for this PAIR rule:

1. ITC. 2005. Fifty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments. **Federal Register** (70 FR 7364, February 11, 2005) (FRL–7692–1). Available on-line at: *http://www.epa.gov/fedrgstr*.
2. ITC. 2005. Fifty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments. **Federal Register** (69 FR 61520, October 24, 2005) (FRL–7739–9). Available on-line at: *http://www.epa.gov/fedrgstr*.
3. ITC. 2006. Fifty-Eigth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments. **Federal Register** (71 FR 39188, July ll, 2006) (FRL–8073–7). Available on-line at: *http://www.epa.gov/fedrgstr*.
4. EPA. 2006. Economic Analysis of the Addition of Chemicals from the 55th, 56th, and 58th ITC Report to the TSCA 8(a) PAIR Rule. July 10, 2006.
5. EPA. 2006. Policy Regarding Acceptance of New Commitments to the High Production Volume (HPV) Challenge Program. Available on-line at: *http://www.epa.gov/chemrtk/hpvpolcy.htm*. July 2006.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

The information collection requirements contained in TSCA section 8(a) PAIR rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and OMB control

number 2070–0054 (EPA ICR No. 0586). The collection activities in this final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

EPA estimates that the information collection activities related to PAIR reporting for all chemicals in this final rule will result in a total industry burden estimated to be 13,712 hours. An estimated 310 sites are expected to provide PAIR reports. Therefore, the estimated burden per respondent is 44 hours (13,712 hours/310 sites). As defined by the PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and included on the related collection instrument. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 4), and is briefly summarized here.

Section 601(3) of RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act (SBA), 15 U.S.C. 632, under which the SBA establishes small business size standards for each industry sector (13 CFR 121.201). For this final rule, EPA has analyzed the potential small business impacts using the size standards established under the default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation'' (13 CFR 121.102(b)). (See section 632(a)(1) of SBA.) The SBA size standards are generally based upon the number of employees or level of sales that an entity in a certain industrial sector may have. Entities are classified into industrial sectors based upon their NAICS code.

EPA determined that the 172 UCEs subject to this PAIR rule fall into 77 unique NAICS codes. EPA confirmed through its analysis that 26 of the 172 affected firms are small businesses. In addition, there are another four firms for which sales and/or employment data are not available to make this determination.

To determine whether compliance costs for the small business sector may differ, EPA analyzed the data specific to these UCEs. Based on reporting to the IUR, EPA estimates that 27 small businesses will submit 34 reports for 29 sites. The average number of reports per company is 1.3, although, at least one of the companies is expected to submit at least three PAIR reports. EPA estimates the total cost for a small business with three sites as $4,023. However, nearly 90 percent of the small businesses will have only one report to submit. For these companies, the cost is approximately $1,500 per company assuming they undertake CBI substantiation and trademark notification.

EPA compared the cost of compliance for a small business to its sales and found that no companies would experience an impact of greater than 1% of its sales. In the case of a small business that submits three reports, EPA estimates that the firm would have to generate less than $402,300 in annual sales to experience a 1% impact. For those small businesses where EPA has available data (25 of the 27), the average sales data for a small business is greater than $258 million and the minimum annual sales was over $3.7 million. Therefore, EPA concludes that the impact of the rule on these small businesses will be minimal.

For the six companies where sales data were not available, EPA determined that each has only one site, with all but one site producing a single reportable chemical. Therefore, the average cost for those companies is approximately $1,500. Given that the lowest sales revenue for small businesses where sales could be identified was $3.7 million, the average cost to those companies is expected to be well below 1% of the sales of the company. Therefore, EPA does not believe it is likely that the cost of the rule to these businesses will be significant.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132 and 13175

Based on EPA's experience with past TSCA section 8(a) rules, State, local, and tribal governments have not been impacted by these rules, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rule. As a result, these rules are not subject to the requirements in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) or Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23,1997), does not apply to this rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the one-time reporting on general production/importation volume, end use, and exposure-related information to EPA by certain manufacturers (including importers) of certain chemicals requested by the ITC to be added to the PAIR rule in its 55th, 56th, and 58th ITC Reports (Ref. 1, 2, and 3).

G. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

I. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VII. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: August 3, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. By revising paragraph (c) of § 712.28 to read as follows:

§ 712.28 Form and instructions.

* * * * *

(c) You must submit forms by one of the following methods:

(1) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: 8(a) PAIR Reporting.

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: 8(a) PAIR Reporting. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202)564–8930.

* * * * *

■ 3. By amending § 712.30 as follows:

■ a. Remove the last sentence in paragraph (c), designate the remaining text of paragraph (c) as paragraph (c)(1), and add a new paragraph (c)(2).

■ b. Amend the table in paragraph (e) by adding in alphabetical order the category ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals'' and its entries.

§ 712.30 Chemical lists and reporting periods.

* * * * *

(c) * * *

(2) You must submit information by one of the following methods:

(i) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: 8(a) Auto-ITC.

(ii) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: 8(a) Auto-ITC. Reporting. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202)564–8930.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * * *	* *	
	Voluntary HPV Challenge Program orphan (unsponsored) chemicals		
62–56–6	Thiourea	September 15, 2006	November 14, 2006
74–97–5	Methane, bromochloro-	September 15, 2006	November 14, 2006
75–46–7	Methane, trifluoro-	September 15, 2006	November 14, 2006
77–76–9	Propane, 2,2-dimethoxy-	September 15, 2006	November 14, 2006
77–86–1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-	September 15, 2006	November 14, 2006
81–07–2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	September 15, 2006	November 14, 2006
81–16–3	1-Naphthalenesulfonic acid, 2-amino-	September 15, 2006	November 14, 2006
81–84–5	1H,3H-Naphtho[1,8-cd]pyran-1,3-dione	September 15, 2006	November 14, 2006
83–41–0	Benzene, 1,2-dimethyl-3-nitro-	September 15, 2006	November 14, 2006
84–69–5	1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester	September 15, 2006	November 14, 2006
85–40–5	1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-	September 15, 2006	November 14, 2006
91–68–9	Phenol, 3-(diethylamino)-	September 15, 2006	November 14, 2006
94–96–2	1,3-Hexanediol, 2-ethyl-	September 15, 2006	November 14, 2006
96–22–0	3-Pentanone	September 15, 2006	November 14, 2006
97–00–7	Benzene, 1-chloro-2,4-dinitro-	September 15, 2006	November 14, 2006

CAS No.	Substance	Effective date	Reporting date
98–09–9	Benzenesulfonyl chloride	September 15, 2006	November 14, 2006
98–16–8	Benzenamine, 3-(trifluoromethyl)-	September 15, 2006	November 14, 2006
98–56–6	Benzene, 1-chloro-4-(trifluoromethyl)-	September 15, 2006	November 14, 2006
99–51–4	Benzene, 1,2-dimethyl-4-nitro-	September 15, 2006	November 14, 2006
100–64–1	Cyclohexanone, oxime	September 15, 2006	November 14, 2006
101–34–8	9-Octadecenoic acid, 12-(acetyloxy)-, 1,2,3-propanetriyl ester, (9Z,9'Z,9''Z,12R,12'R,12''R)-.	September 15, 2006	November 14, 2006
104–66–5	Benzene, 1,1'-[1,2-ethanediylbis(oxy)]bis-	September 15, 2006	November 14, 2006
104–93–8	Benzene, 1-methoxy-4-methyl-	September 15, 2006	November 14, 2006
107–39–1	1-Pentene, 2,4,4-trimethyl-	September 15, 2006	November 14, 2006
107–40–4	2-Pentene, 2,4,4-trimethyl-	September 15, 2006	November 14, 2006
107–45–9	2-Pentanamine, 2,4,4-trimethyl-	September 15, 2006	November 14, 2006
110–18–9	1,2-Ethanediamine, N,N,N',N'-tetramethyl-	September 15, 2006	November 14, 2006
110–33–8	Hexanedioic acid, dihexyl ester	September 15, 2006	November 14, 2006
111–44–4	Ethane, 1,1'-oxybis[2-chloro-	September 15, 2006	November 14, 2006
111–85–3	Octane, 1-chloro-	September 15, 2006	November 14, 2006
111–91–1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	September 15, 2006	November 14, 2006
118–90–1	Benzoic acid, 2-methyl-	September 15, 2006	November 14, 2006
119–33–5	Phenol, 4-methyl-2-nitro-	September 15, 2006	November 14, 2006
121–69–7	Benzenamine, N,N-dimethyl-	September 15, 2006	November 14, 2006
121–82–4	1,3,5-Triazine, hexahydro-1,3,5-trinitro-	September 15, 2006	November 14, 2006
124–63–0	Methanesulfonyl chloride	September 15, 2006	November 14, 2006
127–68–4	Benzenesulfonic acid, 3-nitro-, sodium salt	September 15, 2006	November 14, 2006
131–57–7	Methanone, (2-hydroxy-4-methoxyphenyl)phenyl-	September 15, 2006	November 14, 2006
137–20–2	Ethanesulfonic acid, 2-[methyl[(9Z)-1-oxo-9-octadecenyl]amino]-, sodium salt.	September 15, 2006	November 14, 2006
138–25–0	1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester	September 15, 2006	November 14, 2006
139–40–2	1,3,5-Triazine-2,4-diamine, 6-chloro-N,N'-bis(1-methylethyl)-	September 15, 2006	November 14, 2006
140–93–2	Carbonodithioic acid, O-(1-methylethyl) ester, sodium salt	September 15, 2006	November 14, 2006
142–73–4	Glycine, N-(carboxymethyl)-	September 15, 2006	November 14, 2006
150–50–5	Phosphorotrithious acid, tributyl ester	September 15, 2006	November 14, 2006
330–54–1	Urea, N'-(3,4-dichlorophenyl)-N,N-dimethyl-	September 15, 2006	November 14, 2006
460–00–4	Benzene, 1-bromo-4-fluoro-	September 15, 2006	November 14, 2006
506–51–4	1-Tetracosanol	September 15, 2006	November 14, 2006
506–52–5	1-Hexacosanol	September 15, 2006	November 14, 2006
513–74–6	Carbamodithioic acid, monoammonium salt	September 15, 2006	November 14, 2006
515–40–2	Benzene, (2-chloro-1,1-dimethylethyl)-	September 15, 2006	November 14, 2006
529–33–9	1-Naphthalenol, 1,2,3,4-tetrahydro-	September 15, 2006	November 14, 2006
529–34–0	1(2H)-Naphthalenone, 3,4-dihydro-	September 15, 2006	November 14, 2006
542–92–7	1,3-Cyclopentadiene	September 15, 2006	November 14, 2006
557–61–9	1-Octacosanol	September 15, 2006	November 14, 2006
563–72–4	Ethanedioic acid, calcium salt (1:1)	September 15, 2006	November 14, 2006
579–66–8	Benzenamine, 2,6-diethyl-	September 15, 2006	November 14, 2006
590–19–2	1,2-Butadiene	September 15, 2006	November 14, 2006
592–45–0	1,4-Hexadiene	September 15, 2006	November 14, 2006
598–72–1	Propanoic acid, 2-bromo-	September 15, 2006	November 14, 2006
617–94–7	Benzenemethanol, .alpha.,.alpha.-dimethyl-	September 15, 2006	November 14, 2006
628–13–7	Pyridine, hydrochloride	September 15, 2006	November 14, 2006
628–96–6	1,2-Ethanediol, dinitrate	September 15, 2006	November 14, 2006
645–62–5	2-Hexenal, 2-ethyl-	September 15, 2006	November 14, 2006
693–07–2	Ethane, 1-chloro-2-(ethylthio)-	September 15, 2006	November 14, 2006
693–95–8	Thiazole, 4-methyl-	September 15, 2006	November 14, 2006
756–80–9	Phosphorodithioic acid, O,O-dimethyl ester	September 15, 2006	November 14, 2006
870–72–4	Methanesulfonic acid, hydroxy-, monosodium salt	September 15, 2006	November 14, 2006
928–72–3	Glycine, N-(carboxymethyl)-, disodium salt	September 15, 2006	November 14, 2006
939–97–9	Benzaldehyde, 4-(1,1-dimethylethyl)-	September 15, 2006	November 14, 2006
1000–82–4	Urea, (hydroxymethyl)-	September 15, 2006	November 14, 2006
1002–69–3	Decane, 1-chloro-	September 15, 2006	November 14, 2006
1111–78–0	Carbamic acid, monoammonium salt	September 15, 2006	November 14, 2006
1115–20–4	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester.	September 15, 2006	November 14, 2006
1401–55–4	Tannins	September 15, 2006	November 14, 2006
1445–45–0	Ethane, 1,1,1-trimethoxy-	September 15, 2006	November 14, 2006
1459–93–4	1,3-Benzenedicarboxylic acid, dimethyl ester	September 15, 2006	November 14, 2006
1498–51–7	Phosphorodichloridic acid, ethyl ester	September 15, 2006	November 14, 2006
1558–33–4	Silane, dichloro(chloromethyl)methyl-	September 15, 2006	November 14, 2006
1738–25–6	Propanenitrile, 3-(dimethylamino)-	September 15, 2006	November 14, 2006
1912–24–9	1,3,5-Triazine-2,4-diamine, 6-chloro-N-ethyl-N'-(1-methylethyl)-	September 15, 2006	November 14, 2006
2152–64–9	Benzenamine, N-phenyl-4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]-, monohydrochloride.	September 15, 2006	November 14, 2006
2210–79–9	Oxirane, [(2-methylphenoxy)methyl]-	September 15, 2006	November 14, 2006
2372–45–4	1-Butanol, sodium salt	September 15, 2006	November 14, 2006
2409–55–4	Phenol, 2-(1,1-dimethylethyl)-4-methyl-	September 15, 2006	November 14, 2006
2425–54–9	Tetradecane, 1-chloro-	September 15, 2006	November 14, 2006

CAS No.	Substance	Effective date	Reporting date
2494–89–5	Ethanol, 2-[(4-aminophenyl)sulfonyl]-, hydrogen sulfate (ester)	September 15, 2006	November 14, 2006
2524–03–0	Phosphorochloridothioic acid, O,O-dimethyl ester	September 15, 2006	November 14, 2006
2611–00–9	3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester	September 15, 2006	November 14, 2006
2691–41–0	1,3,5,7-Tetrazocine, octahydro-1,3,5,7-tetranitro-	September 15, 2006	November 14, 2006
2814–20–2	4(1H)-Pyrimidinone, 6-methyl-2-(1-methylethyl)-	September 15, 2006	November 14, 2006
2905–62–6	Benzoyl chloride, 3,5-dichloro-	September 15, 2006	November 14, 2006
2915–53–9	2-Butenedioic acid (2Z)-, dioctyl ester	September 15, 2006	November 14, 2006
3039–83–6	Ethenesulfonic acid, sodium salt	September 15, 2006	November 14, 2006
3088–31–1	Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt	September 15, 2006	November 14, 2006
3132–99–8	Benzaldehyde, 3-bromo-	September 15, 2006	November 14, 2006
3338–24–7	Phosphorodithioic acid, O,O-diethyl ester, sodium salt	September 15, 2006	November 14, 2006
3386–33–2	Octadecane, 1-chloro-	September 15, 2006	November 14, 2006
3710–84–7	Ethanamine, N-ethyl-N-hydroxy-	September 15, 2006	November 14, 2006
3779–63–3	1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris(6-isocyanatohexyl)-	September 15, 2006	November 14, 2006
3965–55–7	1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt.	September 15, 2006	November 14, 2006
4035–89–6	Imidodicarbonic diamide, N,N',2-tris(6-isocyanatohexyl)-	September 15, 2006	November 14, 2006
4170–30–3	2-Butenal	September 15, 2006	November 14, 2006
4316–73–8	Glycine, N-methyl-, monosodium salt	September 15, 2006	November 14, 2006
4860–03–1	Hexadecane, 1-chloro-	September 15, 2006	November 14, 2006
5026–74–4	Oxiranemethanamine, N-[4-(oxiranylmethoxy)phenyl]-N-(oxiranylmethyl)-.	September 15, 2006	November 14, 2006
5216–25–1	Benzene, 1-chloro-4-(trichloromethyl)-	September 15, 2006	November 14, 2006
5460–09–3	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-, monosodium salt.	September 15, 2006	November 14, 2006
5915–41–3	1,3,5-Triazine-2,4-diamine, 6-chloro-N-(1,1-dimethylethyl)-N'-ethyl-	September 15, 2006	November 14, 2006
6473–13–8	2-Naphthalenesulfonic acid, 6-[(2,4-diaminophenyl)azo]-3-[[4-[[4-[[7-[(2,4-diaminophenyl)azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt.	September 15, 2006	November 14, 2006
6863–58–7	Butane, 2,2'-oxybis-	September 15, 2006	November 14, 2006
6865–35–6	Octadecanoic acid, barium salt	September 15, 2006	November 14, 2006
7320–37–8	Oxirane, tetradecyl-	September 15, 2006	November 14, 2006
7795–95–1	1-Octanesulfonyl chloride	September 15, 2006	November 14, 2006
8001–58–9	Creosote	September 15, 2006	November 14, 2006
10265–69–7	Glycine, N-phenyl-, monosodium salt	September 15, 2006	November 14, 2006
13749–94–5	Ethanimidothioic acid, N-hydroxy-, methyl ester	September 15, 2006	November 14, 2006
13826–35–2	Benzenemethanol, 3-phenoxy-	September 15, 2006	November 14, 2006
14666–94–5	9-Octadecenoic acid (9Z)-, cobalt salt	September 15, 2006	November 14, 2006
17103–31–0	Urea, sulfate (2:1)	September 15, 2006	November 14, 2006
17321–47–0	Phosphoramidothioic acid, O,O-dimethyl ester	September 15, 2006	November 14, 2006
17976–43–1	2,4,6,8,3,5,7-Benzotetraoxatriplumbacycloundecin-3,5,7-triylidene, 1,9-dihydro-1,9-dioxo-.	September 15, 2006	November 14, 2006
19438–61–0	1,3-Isobenzofurandione, 5-methyl-	September 15, 2006	November 14, 2006
19525–59–8	Glycine, N-phenyl-, monopotassium salt	September 15, 2006	November 14, 2006
20068–02–4	2-Butenenitrile, 2-methyl-, (2Z)-	September 15, 2006	November 14, 2006
20227–53–6	Phosphorous acid, 2-(1,1-dimethylethyl)-4-[1-[3-(1,1-dimethylethyl)-4-hydroxyphenyl]-1-methylethyl]phenyl bis(4-nonylphenyl) ester.	September 15, 2006	November 14, 2006
20469–71–0	Hydrazinecarbodithioic acid, compd. with hydrazine (1:1)	September 15, 2006	November 14, 2006
21351–39–3	Urea, sulfate (1:1)	September 15, 2006	November 14, 2006
22527–63–5	Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester	September 15, 2006	November 14, 2006
24615–84–7	2-Propenoic acid, 2-carboxyethyl ester	September 15, 2006	November 14, 2006
24794–58–9	Formic acid, compd. with 2,2',2''-nitrilotris[ethanol] (1:1)	September 15, 2006	November 14, 2006
25154–38–5	Piperazineethanol	September 15, 2006	November 14, 2006
25168–05–2	Benzene, chloromethyl-	September 15, 2006	November 14, 2006
25168–06–3	Phenol, (1-methylethyl)-	September 15, 2006	November 14, 2006
25321–41–9	Benzenesulfonic acid, dimethyl-	September 15, 2006	November 14, 2006
25383–99–7	Octadecanoic acid, 2-(1-carboxyethoxy)-1-methyl-2-oxoethyl ester, sodium salt.	September 15, 2006	November 14, 2006
25646–71–3	Methanesulfonamide, N-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3).	September 15, 2006	November 14, 2006
26377–29–7	Phosphorodithioic acid, O,O-dimethyl ester, sodium salt	September 15, 2006	November 14, 2006
26401–27–4	Phosphorous acid, isooctyl diphenyl ester	September 15, 2006	November 14, 2006
26680–54–6	2,5-Furandione, dihydro-3-(octenyl)-	September 15, 2006	November 14, 2006
27193–28–8	Phenol, (1,1,3,3-tetramethylbutyl)-	September 15, 2006	November 14, 2006
28106–30–1	Benzene, ethenylethyl-	September 15, 2006	November 14, 2006
28188–24–1	Octadecanoic acid, 2-(hydroxymethyl)-2-[[(1-oxooctadecyl)oxy]methyl]-1,3-propanediyl ester.	September 15, 2006	November 14, 2006
28777–98–2	2,5-Furandione, dihydro-3-(octadecenyl)-	September 15, 2006	November 14, 2006
28908–00–1	Benzothiazole, 2-[(chloromethyl)thio]-	September 15, 2006	November 14, 2006
30574–97–1	2-Butenenitrile, 2-methyl-, (2E)-	September 15, 2006	November 14, 2006
32072–96–1	2,5-Furandione, 3-(hexadecenyl)dihydro-	September 15, 2006	November 14, 2006
33509–43–2	1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-.	September 15, 2006	November 14, 2006

CAS No.	Substance	Effective date	Reporting date
34689–46–8	Phenol, methyl-, sodium salt	September 15, 2006	November 14, 2006
35203–06–6	Benzenamine, 2-ethyl-6-methyl-N-methylene-	September 15, 2006	November 14, 2006
35203–08–8	Benzenamine, 2,6-diethyl-N-methylene-	September 15, 2006	November 14, 2006
37734–45–5	Carbonochloridothioic acid, S-(phenylmethyl) ester	September 15, 2006	November 14, 2006
37764–25–3	Acetamide, 2,2-dichloro-N,N-di-2-propenyl-	September 15, 2006	November 14, 2006
38185–06–7	Benzenesulfonic acid, 4-chloro-3,5-dinitro-, potassium salt	September 15, 2006	November 14, 2006
38321–18–5	Ethanol, 2-(2-butoxyethoxy)-, sodium salt	September 15, 2006	November 14, 2006
39515–51–0	Benzaldehyde, 3-phenoxy-	September 15, 2006	November 14, 2006
40630–63–5	1-Octanesulfonyl fluoride	September 15, 2006	November 14, 2006
40876–98–0	Butanedioic acid, oxo-, diethyl ester, ion(1-), sodium	September 15, 2006	November 14, 2006
51632–16–7	Benzene, 1-(bromomethyl)-3-phenoxy-	September 15, 2006	November 14, 2006
52184–19–7	Phenol, 2,4-bis(1,1-dimethylpropyl)-6-[(2-nitrophenyl)azo]-	September 15, 2006	November 14, 2006
52556–42–0	1-Propanesulfonic acid, 2-hydroxy-3-(2-propenyloxy)-, monosodium salt.	September 15, 2006	November 14, 2006
52663–57–7	Ethanol, 2-butoxy-, sodium salt	September 15, 2006	November 14, 2006
56803–37–3	Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester	September 15, 2006	November 14, 2006
57693–14–8	Chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthalenesulfonato(3-)]-, trisodium.	September 15, 2006	November 14, 2006
61788–44–1	Phenol, styrenated	September 15, 2006	November 14, 2006
61788–76–9	Alkanes, chloro	September 15, 2006	November 14, 2006
61789–32–0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts	September 15, 2006	November 14, 2006
61789–85–3	Sulfonic acids, petroleum	September 15, 2006	November 14, 2006
63302–49–8	Phosphorochloridous acid, bis(4-nonylphenyl) ester	September 15, 2006	November 14, 2006
64743–02–8	Alkenes, C>10 .alpha.-	September 15, 2006	November 14, 2006
64743–03–9	Phenols (petroleum)	September 15, 2006	November 14, 2006
65996–79–4	Solvent naphtha (coal)	September 15, 2006	November 14, 2006
65996–80–7	Ammonia liquor (coal)	September 15, 2006	November 14, 2006
65996–81–8	Fuel gases, coke-oven	September 15, 2006	November 14, 2006
65996–82–9	Tar oils, coal	September 15, 2006	November 14, 2006
65996–83–0	Extracts, coal tar oil alk.	September 15, 2006	November 14, 2006
65996–86–3	Extract oils (coal), tar base	September 15, 2006	November 14, 2006
65996–87–4	Extract residues (coal), tar oil alk.	September 15, 2006	November 14, 2006
65996–89–6	Tar, coal, high-temp.	September 15, 2006	November 14, 2006
65996–91–0	Distillates (coal tar), upper	September 15, 2006	November 14, 2006
65996–92–1	Distillates (coal tar)	September 15, 2006	November 14, 2006
66071–94–1	Corn, steep liquor	September 15, 2006	November 14, 2006
68081–86–7	Phenol, nonyl derivs.	September 15, 2006	November 14, 2006
68082–78–0	Lard, oil, Me esters	September 15, 2006	November 14, 2006
68153–60–6	Fatty acids, tall-oil, reaction products with diethylenetriamine, acetates.	September 15, 2006	November 14, 2006
68187–41–7	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters	September 15, 2006	November 14, 2006
68187–57–5	Pitch, coal tar-petroleum	September 15, 2006	November 14, 2006
68187–59–7	Coal, anthracite, calcined	September 15, 2006	November 14, 2006
68188–18–1	Paraffin oils, chlorosulfonated, saponified	September 15, 2006	November 14, 2006
68308–74–7	Amides, tall-oil fatty, N,N-di-Me	September 15, 2006	November 14, 2006
68309–16–0	Fatty acids, tall-oil, 2-(2-hydroxyethoxy)ethyl esters	September 15, 2006	November 14, 2006
68309–27–3	Fatty acids, tall-oil, sulfonated, sodium salts	September 15, 2006	November 14, 2006
68334–01–0	Disulfides, alkylaryl dialkyl diaryl, petroleum refinery spent caustic oxidn. products.	September 15, 2006	November 14, 2006
68441–66–7	Decanoic acid, mixed esters with dipentaerythritol, octanoic acid and valeric acid.	September 15, 2006	November 14, 2006
68442–60–4	Acetaldehyde, reaction products with formaldehyde, by-products from.	September 15, 2006	November 14, 2006
68442–77–3	2-Butenediamide, (2E)-, N,N'-bis[2-(4,5-dihydro-2-nortall-oil alkyl-1H-imidazol-1-yl)ethyl] derivs..	September 15, 2006	November 14, 2006
68457–74–9	Phenol, isobutylenated methylstyrenated	September 15, 2006	November 14, 2006
68476–80–2	Fats and Glyceridic oils, vegetable, deodorizer distillates	September 15, 2006	November 14, 2006
68478–20–6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free.	September 15, 2006	November 14, 2006
68513–62–2	Disulfides, C5–12-alkyl	September 15, 2006	November 14, 2006
68514–41–0	Ketones, C12-branched	September 15, 2006	November 14, 2006
68515–89–9	Barium, carbonate nonylphenol complexes	September 15, 2006	November 14, 2006
68527–22–0	Naphtha (petroleum), clay-treated light straight-run	September 15, 2006	November 14, 2006
68584–25–8	Benzenesulfonic acid, C10–16-alkyl derivs., compds. with triethanolamine.	September 15, 2006	November 14, 2006
68602–81–3	Distillates, hydrocarbon resin prodn. higher boiling	September 15, 2006	November 14, 2006
68603–84–9	Carboxylic acids, C5–9	September 15, 2006	November 14, 2006
68608–59–3	Ethane, 1,2-dichloro-, manuf. of, by-products from, distn. lights	September 15, 2006	November 14, 2006
68609–05–2	Cyclohexane, oxidized, non-acidic by-products, distn. lights	September 15, 2006	November 14, 2006
68610–90–2	2-Butenedioic acid (2E)-, di-C8–18-alkyl esters	September 15, 2006	November 14, 2006
68649–42–3	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters, zinc salts	September 15, 2006	November 14, 2006
68650–36–2	Aromatic hydrocarbons, C8, o-xylene-lean	September 15, 2006	November 14, 2006
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil	September 15, 2006	November 14, 2006

CAS No.	Substance	Effective date	Reporting date
68815–50–9	Octadecanoic acid, reaction products with 2-[(2-aminoethyl)amino]ethanol.	September 15, 2006	November 14, 2006
68909–77–3	Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine derivs. residues.	September 15, 2006	November 14, 2006
68915–05–9	Fatty acids, tall-oil, low-boiling, reaction products with ammonia-ethanolamine reaction by-products.	September 15, 2006	November 14, 2006
68915–39–9	Cyclohexane, oxidized, aq. ext., sodium salt	September 15, 2006	November 14, 2006
68918–16–1	Tar, coal, dried and oxidized	September 15, 2006	November 14, 2006
68919–17–5	Hydrocarbons, C12–20, catalytic alkylation by-products	September 15, 2006	November 14, 2006
68937–29–1	1,6-Hexanediol, distn. residues	September 15, 2006	November 14, 2006
68937–69–9	Carboxylic acids, C6–18 and C5–15-di-	September 15, 2006	November 14, 2006
68937–70–2	Carboxylic acids, C6–18 and C8–15-di-	September 15, 2006	November 14, 2006
68937–72–4	Carboxylic acids, di-, C4–11	September 15, 2006	November 14, 2006
68953–80–0	Benzene, mixed with toluene, dealkylation product	September 15, 2006	November 14, 2006
68955–37–3	Acid chlorides, tallow, hydrogenated	September 15, 2006	November 14, 2006
68955–76–0	Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich	September 15, 2006	November 14, 2006
68987–41–7	Benzene, ethylenated	September 15, 2006	November 14, 2006
68987–66–6	Ethene, hydrated, by-products from	September 15, 2006	November 14, 2006
68988–22–7	1,4-Benzenedicarboxylic acid, dimethyl ester, manuf. of, by-products from.	September 15, 2006	November 14, 2006
68990–61–4	Tar, coal, high-temp., high-solids	September 15, 2006	November 14, 2006
68990–65–8	Fats and Glyceridic oils, vegetable, reclaimed	September 15, 2006	November 14, 2006
70084–98–9	Terpenes and Terpenoids, C10–30, distn. residues	September 15, 2006	November 14, 2006
70693–50–4	Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[(2-nitrophenyl)azo]-	September 15, 2006	November 14, 2006
70851–08–0	Amides, coco, N-[3-(dimethylamino)propyl], alkylation products with sodium 3-chloro-2-hydroxypropanesulfonate.	September 15, 2006	November 14, 2006
71077–05–9	Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine product tower residues.	September 15, 2006	November 14, 2006
72162–15–3	1-Decene, sulfurized	September 15, 2006	November 14, 2006
72162–28–8	2-Propanone, reaction products with phenol	September 15, 2006	November 14, 2006
72854–27–4	Tannins, reaction products with sodium bisulfite, sodium polysulfide and sodium sulfite.	September 15, 2006	November 14, 2006
73665–18–6	Extract residues (coal), tar oil alk., naphthalene distn. residues	September 15, 2006	November 14, 2006
83864–02–2	Nickel, bis[(cyano-C)triphenylborato(1-)-N]bis(hexanedinitrile-N,N')-	September 15, 2006	November 14, 2006
84501–86–0	Hexanedioic acid, esters with high-boiling C6–10-alkene hydroformylation products.	September 15, 2006	November 14, 2006
90640–80–5	Anthracene oil	September 15, 2006	November 14, 2006
90640–86–1	Distillates (coal tar), heavy oils	September 15, 2006	November 14, 2006
119345–02–7	Benzene, 1,1'-oxybis-, tetrapropylene derivs.	September 15, 2006	November 14, 2006
125997–20–8	Phosphoric acid, mixed 3-bromo-2,2-dimethylpropyl and 2-bromoethyl and 2-chloroethyl esters.	September 15, 2006	November 14, 2006

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA–HQ–OPPT–2005–0055; FRL–7764–7]

RIN 2070–AB11

Health and Safety Data Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and Technical corrections.

SUMMARY: This final rule, issued pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), requires manufacturers (including importers) of the chemicals listed in this document in the category of voluntary High Production Volume (HPV) Challenge Program orphan (unsponsored) chemicals to report certain unpublished health and safety data to EPA. The Interagency Testing Committee (ITC), established under section 4(e) of TSCA to recommend chemical substances and mixtures to EPA for priority testing consideration, amends the TSCA section 4(e) *Priority Testing List* through periodic reports submitted to EPA. The ITC recently added voluntary HPV Challenge Program orphan (unsponsored) chemicals to the *Priority Testing List* in its 55th and 56th ITC Reports, as amended by deletions to this list made in its 56th and 58th ITC Reports. In addition, EPA is making technical corrections to update the EPA addresses to which submissions under the health and safety data reporting rule must be mailed or delivered. This update reflects the completion of the Agency's move to the Federal Triangle complex in Washington, DC.

DATES: This final rule is effective September 15, 2006. However, § § 716.30, 716.35, 716.60, and 716.105, which contain technical corrections, are effective August 16, 2006.

For purposes of judicial review, this rule shall be promulgated at 1 p.m. eastern daylight/standard time on August 30, 2006. (See 40 CFR 23.5)

A request to withdraw a chemical from this rule pursuant to 40 CFR 716.105(c) must be received on or before August 30, 2006. (See Unit IV. of the **SUPPLEMENTARY INFORMATION**.)

For dates for reporting requirements, see Unit III.B. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0055. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. 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 OPPT Docket is (202) 566–0280.

Submissions. For submission of withdrawal requests, copies of studies and accompanying cover letters, lists of studies, and requests for extensions of time, each of which must be identified by docket ID number EPA–HQ–OPPT–2005–0055, see Unit III.D. and the regulatory text of this document.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8886; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in 40 CFR 716.120(d) of the regulatory text of this document. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS codes 325, 32411), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Do I Submit CBI Information?

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

II. Background

A. What Action is the Agency Taking?

EPA is issuing a Health and Safety Data Reporting rule under TSCA section 8(d) which requires manufacturers (including importers) of chemicals in the category (as defined by the ITC in its 55th, 56th, and 58th ITC Reports (Refs. 1, 2, and 3)) of voluntary HPV Challenge Program orphan (unsponsored) chemicals on the ITC's TSCA section 4(e) *Priority Testing List* to submit certain unpublished health and safety data to EPA. The regulatory text of this document lists the voluntary HPV Challenge Program orphan (unsponsored) chemicals that are being added to the Health and Safety Data Reporting rule. The regulatory text also lists the data reporting requirements imposed by this amendment to the rule. (For additional information about EPA's voluntary HPV Challenge Program, visit the Challenge Program website at *http://www.epa.gov/chemrtk/volchall.htm*).

EPA is also making minor amendments to update the EPA addresses to which submissions under the Health and Safety Data reporting rule must be sent or delivered (40 CFR 716.30, 40 CFR 716.35, 40 CFR 716.60, and 40 CFR 716.105).

B. What is the Agency's Authority for Taking this Action?

EPA promulgated the model Health and Safety Data Reporting rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. EPA uses this TSCA section 8(d) model rule to quickly gather current information on chemicals. The TSCA section 8(d) model rule requires certain past, current, and proposed manufacturers, importers, and (if specified by EPA in a particular notice or rule under TSCA section 8(d)) processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or (if specified by EPA in a particular notice or rule under TSCA section 8(d)) process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

This model TSCA section 8(d) rule provides for the addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA amends, unless otherwise instructed by the ITC, the model Health and Safety Data Reporting rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the Health and Safety Data Reporting rule is effective 30 days after the date of publication in the **Federal Register**. Explanations of the procedures to follow if a respondent to this rule wishes to assert a claim of confidentiality for a part of a study or certain information contained in a study are provided at 40 CFR 716.55.

C. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity for comment pursuant to the procedures set forth in 40 CFR 716.105(b) and (c). EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary. TSCA directs the ITC to add chemicals to the *Priority Testing List* for which EPA should give priority consideration. EPA also lacks the authority to remove a chemical from the *Priority Testing List* once it has been added by the ITC. As explained earlier in this rule, pursuant to 40 CFR 716.105(b) and (c), once the ITC adds a chemical to the *Priority Testing List*, EPA in turn is obliged to add that chemical to the list of chemicals subject to Health and Safety Data Reporting rule reporting requirements, unless requested not to do so by the ITC. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure. (See the **Federal Register** of August 28, 1985 (50 FR 34809)).

Because that rulemaking established the procedure for adding ITC chemicals to the Health and Safety Data Reporting rule, it is unnecessary to request comment on the procedure in this action. EPA believes this action does not raise any relevant issues for comment. EPA is not changing the Health and Safety Data Reporting rule reporting requirements or the process set forth in 40 CFR 716.105(b) and (c). Finally, 40 CFR 716.105(b) and (c) do provide EPA with the discretion to withdraw a chemical from the Health and Safety Data Reporting rule if a chemical manufacturer submits to EPA information showing good cause that a chemical should be removed from the Health and Safety Data Reporting rule.

III. Final Rule

A. What Chemicals are to be Added?

In this document, EPA is adding certain voluntary HPV Challenge Program orphan (unsponsored) chemicals to the TSCA section 8(d) Health and Safety Data Reporting rule as requested by the ITC in its 55th, 56th, and 58th ITC Reports (Refs. 1, 2, and 3).

B. What are the General Reporting Requirements and Deadlines?

The general provisions regarding the submission of copies and lists of studies under EPA's TSCA section 8(d) rule are located at 40 CFR 716.30 and 716.35, respectively, and additional reporting requirements and exemptions are described elsewhere in 40 CFR part 716. The reporting schedule and reporting period for persons subject to this rule (see 40 CFR 716.5) are described at 40 CFR 716.60 and 716.65.

C. What Types of Studies Must be Submitted?

Pursuant to 40 CFR 716.20(b)(5) and 716.50, the types of environmental fate, health, and/or environmental effects studies that must be reported and the chemical grade/purity requirements that must be met or exceeded in individual studies for the chemicals in the category of voluntary HPV Challenge Program orphan (unsponsored) chemicals added to the Health and Safety Data Reporting rule as a result of this document are as follows:

1. All unpublished environmental fate studies, meeting the criteria set forth in Unit III.C.4., on water solubility; adsorption/desorption on particulate surfaces, e.g., soil; vapor pressure; octanol/water partition coefficient; density/relative density (specific gravity); particle size distribution for insoluble solids; dissociation constant; degradation by photochemical mechanisms—aquatic and atmospheric; degradation by chemical mechanisms—hydrolytic, reductive, and oxidative; degradation by biological mechanisms—aerobic and anaerobic. Studies of physical and chemical properties, meeting the criteria set forth in Unit III.C.4., must be reported if performed for the purpose of determining the environmental or biological fate of a substance, and only if they investigated one or more of the properties listed in this paragraph. In addition, all unpublished studies, meeting the criteria set forth in Unit III.C.4., on melting point and boiling point must be submitted.

2. All unpublished health effects studies, meeting the criteria set forth in Unit III.C.4., including pharmacokinetics, genotoxicity, acute toxicity, subacute toxicity, subchronic toxicity, chronic toxicity, reproductive toxicity, developmental toxicity, immunotoxicity, neurotoxicity, and oncogenicity/carcinogenicity.

3. All unpublished environmental effects studies, meeting the criteria set forth in Unit III.C.4., including acute and chronic toxicity studies of aquatic and terrestrial vertebrates and invertebrates and aquatic plants.

4. Only studies where the voluntary HPV Challenge Program orphan (unsponsored) chemical is ≥ 90% of the test substance by weight should be submitted. In addition, only studies that were conducted using TSCA test guidelines (40 CFR parts 795, 796, 797, 798, and 799), FIFRA test guidelines (see the OPPTS Harmonized Test Guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*, the Pesticide Assessment Guidelines[1]), Organization for Economic Cooperation and Development (OECD) test guidelines at *http://www.oecd.org/document/13/0,2340,en_2649_201185_2740429_1_1_1_1,00.html*, or other internationally accepted test guidelines or voluntary consensus standards should be submitted. Studies performed where the recommended voluntary HPV Challenge Program orphan (unsponsored) chemical is < 90% of the test substance by weight are not requested at this time. All other studies are exempt at this time from reporting.

EPA requests that a robust summary of each submitted study or for all studies of a given endpoint be prepared and submitted with copies of each study. A robust summary contains the technical information necessary to adequately describe a study and includes the objectives, methods, results, and conclusions of the full study. A robust summary is intended to provide sufficient information to allow a technically qualified person to make an independent assessment of a given study without having to read the full study. A document entitled *Draft Guidance on Developing Robust Summaries* (Ref. 4), which is available on the website of the HPV Challenge Program at *http://www.epa.gov/chemrtk/robsumgd.htm*, and in the public docket for this final rule, can be used as a general framework for preparing robust summaries. Persons who intend to voluntarily respond to this request and who find it less burdensome to submit robust summary information via the High Production Volume Information System (HPVIS) rather than as hard copy documents are encouraged to submit robust summary information into HPVIS using the directions provided at *https://iaspub.epa.gov/oppthpv/metadata.html*. This link will direct you to the ''HPVIS Quick Start and User's Guide.''

D. Additional Amendments to Update EPA Addresses

EPA is making minor amendments to update the EPA addresses to which: Copies of health and safety studies and the accompanying cover letters must be submitted (40 CFR 716.30), lists of health and safety studies must be submitted (40 CFR 716.35), requests for extensions of time must be submitted (40 CFR 716.60), and comments providing information that shows why a chemical should be withdrawn must be submitted (40 CFR 716.105). This update to the EPA addresses reflects the completion of the Agency's move to the Federal Triangle complex in Washington, DC. The addresses listed in the existing regulations are no longer the correct or complete Agency addresses to which this material must be submitted. The Agency finds that notice and comment on these amendments is unnecessary. The update is not substantive and does not affect the information manufacturers must report. The amendments merely reflect a change in the Agency's location. The Agency therefore finds the amendments to be minor in nature.

E. Economic Analysis

The economic analysis for the addition of certain chemicals to the TSCA section 8(d) Health and Safety Data Reporting rule is entitled *Economic Analysis of the Addition of Chemicals from the 55th, 56th, and 58th ITC Reports*

[1] Pesticide Assessment Guidelines are available from the National Technical Information Service (NTIS). Address: 5285 Port Royal Rd., Springfield, VA 22161; telephone number: (703) 487–4650.

to the 8(d) Health and Safety Data Reporting Rule (Ref. 5).

To determine the number of affected manufacturers and sites, EPA reviewed data from the last three reporting periods (i.e., 1994, 1998, and 2002) for EPA's Inventory Update Rule (IUR) (see 40 CFR part 710, subpart B) to identify the firms that manufactured the 243 chemicals. Using manufacturer and site information, EPA used sources, such as Dun and Bradstreet, to identify relevant NAICS codes or Standard Industrial Classification (SIC) codes for each company and/or facility. Where SIC codes were reported, they were cross matched with NAICS codes to assign a NAICS code to the company. Only companies that were associated at any corporate level (e.g., site or company) with NAICS codes 325 and 32411 were included. A total of 191 ultimate parent companies (UCEs) or firms operating 462 sites that meet the criteria were identified.

To estimate the number of health and safety data reports that might be submitted, EPA used data on the number of reports received in 2004. Specifically, in 2004, EPA added 15 chemicals to the Health and Safety Data Reporting rule. Seven firms reported the manufacture of those chemicals to the IUR. Of the seven firms, three submitted reports. This represents an average of 0.43 reports per manufacturer. These reports included a total of 14 separate health and safety studies, or approximately five studies per firm. Assuming the response rate to the 243 chemicals is proportional to the results for 2004, then 43% of the manufacturers, or 82 firms (0.43 x 191 firms), will each submit reports, and a total of 410 studies are anticipated (82 firms x 5 studies per firm). Given the assumptions in this unit, the costs associated with this rule are estimated in the Economic Analysis (Ref. 5) to be the following:

Total reporting costs = $110,000
Total EPA costs = $79,000
Total Rule Costs = $189,000

IV. Requesting a Chemical be Withdrawn from the Rule

As specified in 40 CFR 716.105(c), EPA may remove a chemical substance, mixture, or category of chemical substances or mixtures from this rule for good cause prior to September 15, 2006. Any person who believes that the reporting required by this rule is not warranted for a chemical listed in this rule, must submit to EPA detailed reasons for that belief.

EPA has established a policy regarding acceptance of new commitments to sponsor chemicals under the voluntary HPV Challenge Program (Ref. 6). Under this policy, EPA will accept new commitments to sponsor chemicals under the voluntary HPV Challenge Program for any of the 243 voluntary HPV Challenge Program orphan (unsponsored) chemicals listed in the regulatory text of this document until August 30, 2006. In accordance with the procedures described in 40 CFR 716.105(c), withdrawal requests submitted by chemical manufacturers in conjunction with these new commitments must be received on or before August 30, 2006. Voluntary HPV Challenge Program orphan (unsponsored) chemicals for which new commitments are accepted based on EPA's policy will be removed from the TSCA 8(d) Health and Safety Data Reporting rule, and a **Federal Register** document announcing these withdrawal decisions will be published no later than the effective date of this rule (i.e., September 15, 2006).

You must submit your request to EPA on or before August 30, 2006 and in accordance with the instructions provided in 40 CFR 716.105(c), which are briefly summarized here. In addition, to ensure proper receipt, EPA recommends that you identify docket ID number EPA–HQ–OPPT– 2005–0055 in the subject line on the first page of your submission. If the Administrator withdraws a chemical substance, mixture, or category of chemical substances or mixtures from the amendment, a **Federal Register** document announcing this decision will be published no later than September 15, 2006.

V. Materials in the Docket

The official docket for this rule has been established under docket ID number EPA–HQ–OPPT–2005–0055. The official public docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the official docket for this rule:

1. ITC. 2005. Fifty-Fifth Report of the ITC. **Federal Register** (70 FR 7364, February 11, 2005) (FRL–7692–1). Available on-line at: *http://www.epa.gov/fedrgstr*.

2 ITC. 2005. Fifty-Sixth Report of the ITC. **Federal Register** (70 FR 61519, October 24, 2005) (FRL–7739–9). Available on-line at: *http://www.epa.gov/fedrgstr*.

3 ITC. 2006. Fifty-Eight Report of the ITC. **Federal Register** (71 FR 39188, July 11, 2006) (FRL–8073–7). Available on-line at: *http://www.epa.gov/fedrgstr*.

4. EPA. 1999. Draft Guidance on Developing Robust Summaries. Available on-line at: *http://www.epa.gov/chemrtk/robsumgd.htm*. October 22, 1999.

5. EPA. 2006. Economic Analysis of the Addition of Chemicals from the 55th, 56th, and 58th ITC Reports to the 8(d) Health and Safety Data Reporting Rule. July 10, 2006.

6. EPA. 2006. Policy Regarding Acceptance of New Commitments to the High Production Volume (HPV) Challenge Program. Available on-line at: *http://www.epa.gov/chemrtk/hpvpolcy.htm*. June 2006.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(d) related to the Health and Safety Data Reporting rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

The information collection requirements contained in TSCA section 8(d) Health and Safety Data Reporting rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and OMB control number 2070–0004 (EPA ICR No. 0575). The collection activities in this final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

EPA estimates the total industry burden to be 1,764 hours as a result of the rule. An estimated 82 firms are expected to provide studies in response to the rule. The estimated burden per respondent is approximately 22 hours (Ref. 4). As defined by the PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information;

and transmit or otherwise disclose the information.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, including its regulations implementing TSCA section 8(d) at 40 CFR part 716, are listed in the table in 40 CFR part 9 and included on the related collection instrument. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 5), and is briefly summarized here.

For this final rule, EPA has analyzed the potential small business impacts using the size standards established under the default definition of ''small business'' established under section 601(3) of RFA, which basically uses the definition used in section 3 of the Small Business Act (SBA), 15 U.S.C. 632, under which the SBA establishes small business size standards for each industry sector (13 CFR 121.201). The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of SBA. These standards vary according to the NAICS code of the business and are typically based upon number of employees or receipts. For most companies, EPA identified the NAICS code of a company's UCE and applied the relevant SBA size standard to determine if a business was small. Using this approach, EPA identified 37 small businesses that would potentially be affected by the rule. In addition, there are an additional five firms for which a determinations could not be made because sales and/or employment could not be found.

EPA's review of IUR data found that 32 of the 37 small businesses have only one site to review for studies, three firms have two sites, and two firms have three sites. Firms with three sites would potentially incur the highest costs of complying with the rule if all three sites were searched for studies. The estimated cost of the rule for firms with three sites is $1,348. For the small businesses where EPA had available data (36 of the 37 firms), the minimum sales level was $1 million with an average sales level of $128 million. Thus, the cost of the rule is expected to be well below 1% of sales ($1,348/ $1,000,000 = .1%) for 36 of the small businesses. Assuming that each of the companies for which sales data were unavailable had at least the minimum level of sales, there are no small businesses for which this rule is expected to have an impact in excess of 1% of sales. Additionally, EPA believes that small firms are unlikely to have unpublished health and safety data studies due to the cost of developing the information, and would therefore, only expend resources to review the rule at a cost of $108. Given these results, EPA concludes that there is not a significant adverse economic impact on these small entities as a result of this final rule.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132 and 13175

Based on EPA's experience with past TSCA section 8(d) rules, State, local, and tribal governments have not been impacted by these rules, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rule. As a result, these rules are not subject to the requirements in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) or Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23,1997), does not apply to this rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of health and safety data to EPA by manufacturers (including importers) of certain chemicals requested by the ITC to be added to the Health and Safety Data Reporting rule in its 55th, 56th, and 58th ITC Reports (Refs. 1, 2, and 3).

G. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

I. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VII. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: August 3, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 716—[AMENDED]

■ 1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

■ 2. By adding a new paragraph (a) (7) to § 716.21 to read as follows:

§ 716.21 Chemical specific reporting requirements.

(a) * * *

(7) For all voluntary HPV Challenge Program orphan (unsponsored) chemicals:

(i) All unpublished environmental fate studies, meeting the criteria set forth in paragraph (a)(7)(iv) of this section, on water solubility; adsorption/desorption on particulate surfaces, e.g., soil; vapor pressure; octanol/water partition coefficient; density/relative density (specific gravity); particle size distribution for insoluble solids; dissociation constant; degradation by photochemical mechanisms—aquatic and atmospheric; degradation by chemical mechanisms—hydrolytic, reductive, and oxidative; degradation by biological mechanisms—aerobic and anaerobic. Studies of physical and chemical properties meeting the criteria set forth in paragraph (a)(7)(iv) of this section must be reported if performed for the purpose of determining the environmental or biological fate of a substance, and only if they investigated one or more of the properties listed in this paragraph. In addition, all unpublished studies meeting the criteria set forth in paragraph (a)(7)(iv) of this section on melting point and boiling point must be submitted.

(ii) All unpublished health effects studies meeting the criteria set forth in paragraph (a)(7)(iv) of this section including pharmacokinetics, genotoxicity, acute toxicity, subacute toxicity, subchronic toxicity, chronic toxicity, reproductive toxicity, developmental toxicity, immunotoxicity, neurotoxicity, and oncogenicity/carcinogenicity.

(iii) All unpublished environmental effects studies meeting the criteria set forth in paragraph (a)(7)(iv) of this section including acute and chronic toxicity studies of aquatic and terrestrial vertebrates and invertebrates and aquatic plants.

(iv) Only studies where the voluntary HPV Challenge Program orphan (unsponsored) chemical is ≥ 90% of the test substance by weight should be submitted. In addition, only studies that were conducted using TSCA, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Organization for Economic Cooperation and Development (OECD) or other internationally accepted test guidelines or voluntary consensus standards should be submitted. Studies performed where the voluntary HPV Challenge Program orphan (unsponsored) chemical is < 90% of the test substance by weight are not requested at this time.

* * * * *

■ 3. By revising paragraph (c) of § 716.30 to read follows:

§ 716.30 Submission of copies of studies.

* * * * *

(c) You must submit copies of health and safety studies and the accompanying cover letters by one of the following methods:

(1) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting). The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

■ 4. By revising paragraph (c) of § 716.35 to read follows:

§ 716.35 Submission of lists of studies.

* * * * *

(c) You must submit lists of health and safety studies by one of the following methods:

(1) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting). The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

■ 5. In § 716.60, remove the second sentence of paragraph (c) and add a new paragraph (d) to read as follows:

§ 716.60 Reporting schedule.

* * * * *

(d) *Submission methods.* You must submit a request for an extension of time in writing by one of the following methods:

(1) Mail, preferably certified, to the Director, Office of Pollution Prevention and Toxics (OPPT) (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: Section 8(d) Extension.

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: Section 8(d) Extension. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

■ 6. In § 716.105, remove the last sentence of paragraph (c) and add a new paragraph (d) to read as follows:

§ 716.105 Additions of substances and mixtures to which this subpart applies.

* * * * *

(d) Persons who wish to submit information that shows why a chemical should be withdrawn must submit their comments in writing by one of the following methods:

(1) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001, ATTN: 8(d) Auto-ITC.

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, ATTN: 8(d) Auto-ITC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

■ 7. In § 716.120, the table in paragraph (d) is amended by adding in alphabetical order the category ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals'' and its entries to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
*	* *	* *	* *	
Voluntary HPV Challenge Program orphan (unsponsored) chemicals:				
Acetaldehyde, reaction products with formaldehyde, by-products from.	68442–60–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Acetamide, 2,2-dichloro-N,N-di-2-propenyl-	37764–25–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Acid chlorides, tallow, hydrogenated	68955–37–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Alkanes, chloro	61788–76–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Alkenes, C>10 .alpha.-	64743–02–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Amides, coco, N-[3-(dimethylamino)propyl], alkylation products with sodium 3-chloro-2-hydroxypropanesulfonate.	70851–08–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Amides, tall-oil fatty, N,N-di-Me	68308–74–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ammonia liquor (coal)	65996–80–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Anthracene oil	90640–80–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Aromatic hydrocarbons, C8, o-xylene-lean	68650–36–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich.	68955–76–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Barium, carbonate nonylphenol complexes	68515–89–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzaldehyde, 3-bromo-	3132–99–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzaldehyde, 3-phenoxy-	39515–51–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzaldehyde, 4-(1,1-dimethylethyl)-	939–97–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, 2,6-diethyl-	579–66–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, 2,6-diethyl-N-methylene-	35203–08–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, 2-ethyl-6-methyl-N-methylene-.	35203–06–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, 3-(trifluoromethyl)-	98–16–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, N,N-dimethyl-	121–69–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenamine, N-phenyl-4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]-, monohydrochloride.	2152–64–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, (2-chloro-1,1-dimethylethyl)-	515–40–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-(bromomethyl)-3-phenoxy-	51632–16–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1,1'-[1,2-ethanediylbis(oxy)]bis-	104–66–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1,1'-oxybis-, tetrapropylene derivs..	119345–02–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1,2-dimethyl-3-nitro-	83–41–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1,2-dimethyl-4-nitro-	99–51–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-bromo-4-fluoro-	460–00–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-chloro-2,4-dinitro-	97–00–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-chloro-4-(trichloromethyl)-	5216–25–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-chloro-4-(trifluoromethyl)-	98–56–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, 1-methoxy-4-methyl-	104–93–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, chloromethyl-	25168–05–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, ethenylethyl-	28106–30–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, ethylenated	68987–41–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzene, mixed with toluene, dealkylation product.	68953–80–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester.	138–25–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt.	3965–55–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester.	84–69–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Benzenedicarboxylic acid, dimethyl ester.	1459–93–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,4-Benzenedicarboxylic acid, dimethyl ester, manuf. of, by-products from.	68988–22–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenemethanol, .alpha.,.alpha.-dimethyl-	617–94–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenemethanol, 3-phenoxy-	13826–35–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenesulfonic acid, 3-nitro-, sodium salt	127–68–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenesulfonic acid, 4-chloro-3,5-dinitro-, potassium salt.	38185–06–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

Category	CAS No.	Special exemptions	Effective date	Sunset date
Benzenesulfonic acid, C10–16-alkyl derivs., compds. with triethanolamine.	68584–25–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenesulfonic acid, dimethyl-	25321–41–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzenesulfonyl chloride	98–09–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81–07–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzoic acid, 2-methyl-	118–90–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2,4,6,8,3,5,7-Benzotetraoxatriplumbacycloundecin-3,5,7-triylidene, 1,9-dihydro-1,9-dioxo-.	17976–43–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzothiazole, 2-[(chloromethyl)thio]-	28908–00–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Benzoyl chloride, 3,5-dichloro-	2905–62–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,2-Butadiene	590–19–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Butane, 2,2'-oxybis-	6863–58–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Butanedioic acid, oxo-, diethyl ester, ion(1-), sodium.	40876–98–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Butanol, sodium salt	2372–45–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenal	4170–30–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenediamide, (2E)-, N,N'-bis[2-(4,5-dihydro-2-nortall-oil alkyl-1H-imidazol-1-yl)ethyl] derivs..	68442–77–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenedioic acid (2E)-, di-C8–18-alkyl esters.	68610–90–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenedioic acid (2Z)-, dioctyl ester	2915–53–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenenitrile, 2-methyl-, (2E)-	30574–97–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Butenenitrile, 2-methyl-, (2Z)-	20068–02–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carbamic acid, monoammonium salt	1111–78–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carbamodithioic acid, monoammonium salt	513–74–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carbonochloridothioic acid, S-(phenylmethyl) ester.	37734–45–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carbonodithioic acid, O-(1-methylethyl) ester, sodium salt.	140–93–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carboxylic acids, C5–9	68603–84–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carboxylic acids, C6–18 and C5–15-di-	68937–69–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carboxylic acids, C6–18 and C8–15-di-	68937–70–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Carboxylic acids, di-, C4–11	68937–72–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthalenesulfonato(3-)]-, trisodium.	57693–14–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Coal, anthracite, calcined	68187–59–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Corn, steep liquor	66071–94–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Creosote	8001–58–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Cyclohexane, oxidized, aq. ext., sodium salt.	68915–39–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Cyclohexane, oxidized, non-acidic by-products, distn. lights.	68609–05–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Cyclohexanone, oxime	100–64–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester.	2611–00–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Cyclopentadiene	542–92–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Decane, 1-chloro-	1002–69–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Decanoic acid, mixed esters with dipentaerythritol, octanoic acid and valeric acid.	68441–66–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Decene, sulfurized	72162–15–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Distillates (coal tar)	65996–92–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Distillates (coal tar), heavy oils	90640–86–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Distillates (coal tar), upper	65996–91–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Distillates (petroleum), hydrofined lubricating-oil.	68782–97–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Distillates, hydrocarbon resin prodn. higher boiling.	68602–81–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Disulfides, alkylaryl dialkyl diaryl, petroleum refinery spent caustic oxidn. products.	68334–01–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Disulfides, C5–12-alkyl	68513–62–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanamine, N-ethyl-N-hydroxy-	3710–84–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethane, 1,1,1-trimethoxy-	1445–45–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-.	111–91–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethane, 1,1'-oxybis[2-chloro-	111–44–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethane, 1,2-dichloro-, manuf. of, by-products from, distn. lights.	68608–59–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethane, 1-chloro-2-(ethylthio)-	693–07–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

Category	CAS No.	Special exemptions	Effective date	Sunset date
1,2-Ethanediamine, N,N,N',N'-tetramethyl-	110–18–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanedioic acid, calcium salt (1:1)	563–72–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,2-Ethanediol, dinitrate	628–96–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanesulfonic acid, 2-[methyl[(9Z)-1-oxo-9-octadecenyl]amino]-, sodium salt.	137–20–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanimidothioic acid, N-hydroxy-, methyl ester.	13749–94–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2-(2-butoxyethoxy)-, sodium salt	38321–18–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine derivs. residues.	68909–77–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine product tower residues.	71077–05–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2-[(4-aminophenyl)sulfonyl]-, hydrogen sulfate (ester).	2494–89–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt.	3088–31–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethanol, 2-butoxy-, sodium salt	52663–57–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethene, hydrated, by-products from	68987–66–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ethenesulfonic acid, sodium salt	3039–83–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Extract oils (coal), tar base	65996–86–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Extract residues (coal), tar oil alk.	65996–87–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Extract residues (coal), tar oil alk., naphthalene distn. residues.	73665–18–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Extracts, coal tar oil alk.	65996–83–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fats and Glyceridic oils, vegetable, deodorizer distillates.	68476–80–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fats and Glyceridic oils, vegetable, reclaimed.	68990–65–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fatty acids, coco, 2-sulfoethyl esters, sodium salts.	61789–32–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fatty acids, tall-oil, 2-(2-hydroxyethoxy)ethyl esters.	68309–16–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fatty acids, tall-oil, low-boiling, reaction products with ammonia-ethanolamine reaction by-products.	68915–05–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fatty acids, tall-oil, reaction products with diethylenetriamine, acetates.	68153–60–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fatty acids, tall-oil, sulfonated, sodium salts.	68309–27–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Formic acid, compd. with 2,2',2''-nitrilotris[ethanol] (1:1).	24794–58–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Fuel gases, coke-oven	65996–81–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2,5-Furandione, 3-(hexadecenyl)dihydro-	32072–96–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2,5-Furandione, dihydro-3-(octadecenyl)-	28777–98–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2,5-Furandione, dihydro-3-(octenyl)-	26680–54–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Glycine, N-(carboxymethyl)-	142–73–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Glycine, N-(carboxymethyl)-, disodium salt	928–72–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Glycine, N-methyl-, monosodium salt	4316–73–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Glycine, N-phenyl-, monopotassium salt	19525–59–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Glycine, N-phenyl-, monosodium salt	10265–69–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Hexacosanol	506–52–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Hexadecane, 1-chloro-	4860–03–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,4-Hexadiene	592–45–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Hexanedioic acid, dihexyl ester	110–33–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Hexanedioic acid, esters with high-boiling C6–10-alkene hydroformylation products.	84501–86–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Hexanediol, 2-ethyl-	94–96–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,6-Hexanediol, distn. residues	68937–29–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Hexenal, 2-ethyl-	645–62–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-.	85–40–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Hydrazinecarbodithioic acid, compd. with hydrazine (1:1).	20469–71–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Hydrocarbons, C12–20, catalytic alkylation by-products.	68919–17–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Imidodicarbonic diamide, N,N',2-tris(6-isocyanatohexyl)-.	4035–89–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Isobenzofurandione, 5-methyl-	19438–61–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Ketones, C12–branched	68514–41–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Lard, oil, Me esters	68082–78–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Methane, bromochloro-	74–97–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Methane, trifluoro-	75–46–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

Category	CAS No.	Special exemptions	Effective date	Sunset date
Methanesulfonamide, N-[2-[(4-amino-3-methylphenyl)ethylamino]ethyl]-, sulfate (2:3).	25646–71–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Methanesulfonic acid, hydroxy-, monosodium salt.	870–72–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Methanesulfonyl chloride	124–63–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Methanone, (2-hydroxy-4-methoxyphenyl)phenyl-.	131–57–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Naphtha (petroleum), clay-treated light straight-run.	68527–22–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-, monosodium salt.	5460–09–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Naphthalenesulfonic acid, 2-amino-	81–16–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Naphthalenesulfonic acid, 6-[(2,4-diaminophenyl)azo]-3-[[4-[[4-[[7-[(2,4-diaminophenyl)azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt.	6473–13–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Naphthalenol, 1,2,3,4-tetrahydro-	529–33–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1(2H)-Naphthalenone, 3,4-dihydro-	529–34–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1H,3H-Naphtho[1,8-cd]pyran-1,3-dione	81–84–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Nickel, bis[(cyano-C)triphenylborato(1-)-N]bis(hexanedinitrile-N,N')-.	83864–02–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Octacosanol	557–61–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octadecane, 1-chloro-	3386–33–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octadecanoic acid, 2-(1-carboxyethoxy)-1-methyl-2-oxoethyl ester, sodium salt.	25383–99–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octadecanoic acid, 2-(hydroxymethyl)-2-[[(1-oxooctadecyl)oxy]methyl]-1,3-propanediyl ester.	28188–24–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octadecanoic acid, barium salt	6865–35–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octadecanoic acid, reaction products with 2-[(2-aminoethyl)amino]ethanol.	68815–50–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
9-Octadecenoic acid (9Z)-, cobalt salt	14666–94–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
9-Octadecenoic acid, 12-(acetyloxy)-, 1,2,3-propanetriyl ester, (9Z,9'Z,9''Z,12R,12'R,12''R)-.	101–34–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Octane, 1-chloro-	111–85–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Octanesulfonyl chloride	7795–95–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Octanesulfonyl fluoride	40630–63–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Oxirane, [(2-methylphenoxy)methyl]-	2210–79–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Oxirane, tetradecyl-	7320–37–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Oxiranemethanamine, N-[4-(oxiranylmethoxy)phenyl]-N-(oxiranylmethyl)-.	5026–74–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Paraffin oils, chlorosulfonated, saponified	68188–18–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Pentanamine, 2,4,4-trimethyl-	107–45–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
3-Pentanone	96–22–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Pentene, 2,4,4-trimethyl-	107–39–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Pentene, 2,4,4-trimethyl-	107–40–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, (1,1,3,3-tetramethylbutyl)-	27193–28–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, (1-methylethyl)-	25168–06–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, 2-(1,1-dimethylethyl)-4-methyl-	2409–55–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, 2,4-bis(1,1-dimethylpropyl)-6-[(2-nitrophenyl)azo]-.	52184–19–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, 2,4-bis(1-methyl-1-phenylethyl)-6-[(2-nitrophenyl)azo]-.	70693–50–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, 3-(diethylamino)-	91–68–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, 4-methyl-2-nitro-	119–33–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, isobutylenated methylstyrenated	68457–74–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, methyl-, sodium salt	34689–46–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, nonyl derivs.	68081–86–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenol, styrenated	61788–44–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phenols (petroleum)	64743–03–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphoramidothioic acid, O,O-dimethyl ester.	17321–47–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester.	56803–37–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphoric acid, mixed 3-bromo-2,2-dimethylpropyl and 2-bromoethyl and 2-chloroethyl esters.	125997–20–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorochloridothioic acid, O,O-dimethyl ester.	2524–03–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

Category	CAS No.	Special exemptions	Effective date	Sunset date
Phosphorochloridous acid, bis(4-nonylphenyl) ester.	63302–49–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodichloridic acid, ethyl ester	1498–51–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodithioic acid, O,O-di-C1–14-alkyl esters.	68187–41–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodithioic acid, O,O-di-C1–14-alkyl esters, zinc salts.	68649–42–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodithioic acid, O,O-diethyl ester, sodium salt.	3338–24–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodithioic acid, O,O-dimethyl ester	756–80–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorodithioic acid, O,O-dimethyl ester, sodium salt.	26377–29–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorotrithious acid, tributyl ester	150–50–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorous acid, 2-(1,1-dimethylethyl)-4-[1-[3-(1,1-dimethylethyl)-4-hydroxyphenyl]-1-methylethyl]phenyl bis(4-nonylphenyl) ester.	20227–53–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Phosphorous acid, isooctyl diphenyl ester	26401–27–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Piperazineethanol	25154–38–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Pitch, coal tar-petroleum	68187–57–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Propane, 2,2-dimethoxy-	77–76–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3-Propanediol, 2-amino-2-(hydroxymethyl)-.	77–86–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Propanenitrile, 3-(dimethylamino)-	1738–25–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Propanesulfonic acid, 2-hydroxy-3-(2-propenyloxy)-, monosodium salt.	52556–42–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Propanoic acid, 2-bromo-	598–72–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Propanoic acid, 2-methyl-, 3-(benzoyloxy)-2,2,4-trimethylpentyl ester.	22527–63–5	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester.	1115–20–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Propanone, reaction products with phenol.	72162–28–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
2-Propenoic acid, 2-carboxyethyl ester	24615–84–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Pyridine, hydrochloride	628–13–7	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
4(1H)-Pyrimidinone, 6-methyl-2-(1-methylethyl)-.	2814–20–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4–cyclopentadiene-free.	68478–20–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Silane, dichloro(chloromethyl)methyl-	1558–33–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Solvent naphtha (coal)	65996–79–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Sulfonic acids, petroleum	61789–85–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tannins	1401–55–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tannins, reaction products with sodium bisulfite, sodium polysulfide and sodium sulfite.	72854–27–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tar oils, coal	65996–82–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tar, coal, dried and oxidized	68918–16–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tar, coal, high-temp.	65996–89–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tar, coal, high-temp., high-solids	68990–61–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Terpenes and Terpenoids, C10–30, distn. residues.	70084–98–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1-Tetracosanol	506–51–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Tetradecane, 1-chloro-	2425–54–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5,7-Tetrazocine, octahydro-1,3,5,7-tetranitro-.	2691–41–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Thiazole, 4-methyl-	693–95–8	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Thiourea	62–56–6	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-.	33509–43–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5-Triazine, hexahydro-1,3,5-trinitro-	121–82–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris(6-isocyanatohexyl)-.	3779–63–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5-Triazine-2,4-diamine, 6-chloro-N-(1,1-dimethylethyl)-N'-ethyl-.	5915–41–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5-Triazine-2,4-diamine, 6-chloro-N,N'-bis(1-methylethyl)-.	139–40–2	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
1,3,5-Triazine-2,4-diamine, 6-chloro-N-ethyl-N'-(1-methylethyl)-.	1912–24–9	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Urea, (hydroxymethyl)-	1000–82–4	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Urea, N'-(3,4-dichlorophenyl)-N,N-dimethyl-	330–54–1	§ 716.21(a)(7)	September 15, 2006	November 14, 2006
Urea, sulfate (1:1)	21351–39–3	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

Category	CAS No.	Special exemptions	Effective date	Sunset date
Urea, sulfate (2:1)	17103–31–0	§ 716.21(a)(7)	September 15, 2006	November 14, 2006

[FR Doc. E6–13489 Filed 8–15–06; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–87]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission addresses issues raised in a petition for reconsideration which include: the adoption of the final 2003–2004 Video Relay Service (VRS) rate of $8.854; whether the VRS rate should be fully retroactive; the compensability of research and development expense incurred for telecommunications relay service (TRS) enhancements that go beyond the applicable TRS mandatory minimum standards from the Interstate TRS Fund (Fund); and the applicability of ''rate of return'' regulation to traditional TRS and speed of answer requirements to VRS.

DATES: Effective August 16, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506 (c)(4). This is a summary of the Commission's document FCC 06–87, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration, CG Docket No. 03–123, adopted June 20, 2006, released July 12, 2006 addressing issues raised in the Communications Services for the Deaf, Inc. (CSD) September 30, 2004 petition for reconsideration; National Video Relay Service Coalition (NVRSC) October 1, 2004 petition for reconsideration; Hands On Video Relay Service, Inc. (Hands On) October 1, 2004 petition for partial reconsideration; and Hamilton Relay, Inc. (Hamilton) October 1, 2004 petition for reconsideration, arising from the Report and Order Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, (2004 TRS Report and Order), CC Docket No. 98–67, FCC 04–137; published at 69 FR 53346 (September 1, 2004) and Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order, (2003 Bureau TRS Order), CC Docket No. 98–67, DA 03–2111, 18 FCC Rcd at 12835–12836, paragraphs 29–38 (June 30, 2003) (adopting TRS compensation rates for the 2003–2004 Fund Year). The full text of document FCC 06–87 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 06–87 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–87 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Background

Telecommunications Relay Service

Title IV of the Americans with Disabilities Act of 1990 (ADA) requires common carriers offering ''telephone voice transmission services'' to also provide TRS throughout the area in which they offer service, so that persons with hearing and speech disabilities can use the telephone system. 47 U.S.C. 225(c). The statute also mandates that eligible TRS providers be compensated for their costs of providing TRS. 47 U.S.C. 225(d)(3). As a general matter, states compensate providers for the costs of providing intrastate TRS, and the Interstate TRS Fund compensates providers for the costs of providing interstate TRS. *See generally 2004 TRS Report and Order,* 19 FCC Rcd at 12482–12483, paragraphs 7–8. The cost recovery framework—and the annual determination of the TRS compensation rates—is intended to cover the ''reasonable'' costs incurred in providing the TRS services mandated by Congress and Commission regulations. *2004 TRS Report and Order,* 19 FCC Rcd at 12543, paragraph 179; *see generally* 47 CFR 64.604(c)(5)(iii)(E) (providers shall be compensated for the ''reasonable costs'' of providing TRS). The intent of Title IV is to further the Communications Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have access to telephone services that are ''functionally equivalent'' to those available to individuals without such disabilities. *See* 47 U.S.C. 225(a)(3). TRS became available on a nationwide basis in 1993. *See generally Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990,* Report and Order and Request for Comments, CC Docket No. 90–571; published at 56 FR 36729 (August 1, 1991), (TRS I).

VRS. In 2000, the Commission recognized VRS as form of TRS eligible for compensation from the Interstate TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152–5154, paragraphs 21–27 (March 6, 2000) (*Improved TRS Order and FNPRM*) (recognizing VRS as a form

of TRS), published at 65 FR 38432 (June 21, 2000) and 65 FR 38490 (June 21, 2000); 47 CFR 64.601(17). Presently, all VRS calls are compensated from the Interstate TRS Fund. *See Improved TRS Order and FNPRM,* 15 FCC Rcd at 5154, paragraphs 26–27. As most frequently used, VRS allows a deaf person whose native language is American Sign Language (ASL) to communicate in ASL with the CA through a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. VRS calls reflect a degree of ''functional equivalency'' unimaginable in a solely text-based TRS world. As the following figures for approximate monthly minutes of use of VRS demonstrate, usage continues to rise: May 2003—189,422; July 2004—900,000; August 2005—2.7 million; April 2006—3.2 million.

Cost Recovery. Section 225 of the Communications Act provides that the costs of providing interstate TRS ''shall be recovered from all subscribers for every interstate service.'' 47 U.S.C. 225(d)(3)(B). This mandate requires both collecting contributions to establish a fund (the Interstate TRS Fund) from which TRS providers can be compensated, and paying money from the Fund to eligible providers for their provision of eligible TRS services. *See generally* 47 CFR 64.604(c)(5)(iii)(A) and (E) of the Commission's rules. These duties are performed by the Interstate TRS Fund administrator, selected by, and under the direction of, the Commission. See 47 CFR 64.604(c)(5)(iii) of the Commission's rules. The current Interstate TRS Fund administrator is the National Exchange Carrier Association (NECA).

The TRS Fund administrator presently makes payments to eligible providers based on per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech (STS), and VRS. In the *2005 TRS Rate Order,* the Commission concluded that it would adopt separate rates for traditional TRS and IP Relay. Accordingly, beginning with the 2005–2006 Fund year.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order, FCC 05–135, CC Docket No. 98–67, CG Docket No. 03–123; published at 70 FR 38134 (July 1, 2005) (*2005 TRS Rate Order*). The compensation rates are set on an annual basis. The TRS Fund administrator requests and collects projected cost and demand (*i.e.*, minutes of use) data from the providers. *See* 47 CFR 64.604(c)(5)(iii)(C) of the Commission's rules. After the Fund administrator reviews the submitted projected costs and minutes of use, it calculates proposed per-minute compensation rates based on data submitted (or modified, as necessary). As NECA has explained, NECA calculates a national average cost per minute of use. It does so by totaling projected costs and minutes of use for all providers for a two year period, and then dividing each sum (costs and minutes) by two. Then the average costs are divided by the average minutes to determine the average cost per minute. *See* NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate,* filed April 25, 2005, at 9 and Appendix 1E. The Fund administrator then files these proposed rates with the Commission, and they are placed on public notice. *See, e.g., National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 Through June 2006,* CC Docket No. 98–67, Public Notice, DA 05–1175 (April 28, 2005); published at 70 FR 24790 (May 11, 2005) (*2005 TRS Rate Notice*). The Commission reviews the proposed rates and, in adopting compensation rates for the ensuing Fund year, may approve or modify the proposed rates. *See generally Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* CC Docket No. 90–571, Third Report and Order, 8 FCC Rcd 5300, 5305, paragraph 30 (July 20, 1993); published at 58 FR 39671 (July 26, 1993) (the TRS rate calculated by the administrator ''shall be subject to Commission approval'').

If either the Fund administrator or the Commission disallows any of a provider's submitted costs, the provider has the opportunity to contest the disallowances before they are finalized. Because of confidentiality issues, this is generally done either in a telephone conversation or in an individual meeting with each provider. The precise process by which the providers' challenges to cost disallowances have been handled has varied, depending in part on whether the Fund administrator or the Bureau has made the disallowance. The providers may further challenge the adopted rates, including any cost disallowances, by seeking review of the rate order. Since 1993, the Commission has released orders at least annually setting forth the per-minute compensation rates for the various forms of TRS. The Commission released the first rate order on September 29, 1993. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990,* CC Docket No. 90–571, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd 1637 (September 29, 1993); published at 58 FR 53663 (October 18, 1993). Subsequent rate orders have been released at the bureau level, with the exception of the *2005 TRS Rate Order.*

Discussion

The Final 2003–2004 VRS Compensation Rate was Based on Reasoned Analysis

Background. The *2003 Bureau TRS Order* rejected NECA's proposed VRS rate of $14.023 per minute and adopted an ''interim'' rate of $7.751, subject to possible revision pending a more complete analysis of the providers' cost data. *2003 Bureau TRS Order,* 18 FCC Rcd at 12835–12836, paragraphs 29–38. Five parties filed petitions for reconsideration, challenging the adoption of the interim VRS rate of $7.751 and requesting that the Commission accept NECA's proposed rate of $14.023 retroactive to July 1, 2003 (the first day of the 2003–2004 Fund year). *See 2004 TRS Report and Order,* 19 FCC Rcd at 12538, paragraph 165 and note 474. These parties were Sprint, AT&T, Sorenson, Hands On, and CSD. The Commission concluded, based on its review of more complete cost data submitted by the providers, that it would adopt a final rate of $8.854. Hands On now contends that the Commission failed to adequately explain how it arrived at the $8.854 rate. Hands On Petition at 11–17. Hands On also asserts that the exclusion of ''proprietary'' software in the rate analysis was wrong. Hands On Petition at 20.

Discussion. The Commission denies Hands On's petition to reconsider the $8.854 final VRS rate. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12545–12547, paragraphs 183–187. After the release of the interim 2003–2004 TRS compensation rates, the Commission reviewed additional cost data submitted by the providers. As the Commission explained, ''because all of the providers filed for confidential treatment, the adjustments made [were] described in the aggregate.'' The Commission noted that it added back various costs that were excluded in calculating the $7.751 rate relating to salaries, engineering support, and return on capital investment, as well as the costs from one provider that had been excluded in their entirety. These

adjustments resulted in including an additional $9,503,801 in costs, and a corresponding increase of 213,415 in reimbursable minutes.

These adjustments resulted both from the Commission's analysis of the providers' supplemental cost data, and individual meetings with the providers after the release of the *2003 Bureau TRS Order.* In these meetings, Commission staff discussed any adjustments to an individual provider's cost support with the provider in detail. The Commission met with Hands On (July 11, 2003), Hamilton (July 10, 2003), Sorenson (July 17, 2003), and Sprint and CSD (July 18, 2003). The Commission provided no specific dollar amounts and discussed adjustments in the aggregate because providers claimed that their cost data were confidential. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12548–12549, paragraph 191. For these reasons, the Commission finds that the Commission adequately summarized the cost adjustments to the VRS rate.

The Commission also rejects Hands On's argument that the Commission has failed to set forth in sufficient detail what costs are ''reasonable'' in certain cost categories. *See, e.g.*, Hands On Petition at 14–16. Hands On takes issue with a lack of specific direction on certain standards for the provision of service, specifically the number of frames per second that should be used to ensure a clear picture and standards for compatibility between various computers, software, or video systems.

Providers are required to offer VRS in compliance with all applicable non-waived mandatory minimum standards, and entitled to be compensated for their reasonable costs of doing so. Each year the TRS Fund administrator, NECA, gives the providers instructions for the cost data request forms, which outline various cost categories and give examples of the types of costs that can be included. *See, e.g., NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, filed May 3, 2004, Appendix A. NECA provides these guidelines so that providers consistently report only costs incurred in providing compensable services. The providers follow these guidelines, and Commission staff review the submitted costs to determine whether they are ''reasonable'', *see* 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules, and consistent with the applicable TRS mandatory minimum standards. In some cases, a provider's submitted costs are compared to the costs of other providers of the same service, particularly if a provider's costs are substantially different from the other providers' submitted costs. Commission staff subsequently review any disallowances with the individual providers. This method for determining ''reasonable'' costs gives providers flexibility to determine how best to provide service in compliance with the rules.

The reasonableness standard satisfies Hands On's concerns over the lack of specific frames per second or quality standards for VRS. Hands On Petition at 15–16. If, for example, a provider's VRS service uses so few frames per second that the picture is not clear and the VRS user cannot understand what the interpreter is signing, the provider is not offering VRS at all and the service is not compensable.

Hands On further asserts that the Commission erred in concluding that ''proprietary'' software is not a compensable cost. Hands On Petition at 20; *see 2004 TRS Report and Order*, 19 FCC Rcd at 12547–12549, paragraphs 188–189, and 192. The Commission agrees that the categorical exclusion of such costs is not warranted, and clarifies that software developed and owned by a provider that is used for the provision of TRS may be a compensable cost: (1) to the extent it is used for the provision of TRS in compliance with non-waived mandatory minimum standards, and (2) if it is not sold or licensed to any other entity. Further, such costs should be capitalized, *see 2004 TRS Report and Order*, 19 FCC Rcd at 12548, paragraph 190, note 543 (addressing capitalization of costs), and are subject to review under the general reasonableness standard. This approach ensures that the Fund does not become a source of funding for software or other products that the provider develops and uses to provide non-TRS services, TRS services beyond those required by applicable non-waived mandatory minimum standards, or to generate other income from research paid for by the Fund.

The Final VRS Rate Should Be Fully Retroactive

Background. When the Commission adopted the final VRS rate on June 30, 2004, the Commission concluded that the rate would not be fully retroactive to the July 1, 2003, beginning of the Fund year because it was based on cost data submitted after the July 1, 2003, adoption of the $7.751 interim rate. *2004 TRS Report and Order*, 19 FCC Rcd at 12538–12539, 12549–12550, paragraphs 166, 193. The Commission concluded that the new compensation rate would apply to the provision of VRS services effective September 1, 2003. Hands On Petition at 21–23.

Hands On asserts that the modified rate should be fully retroactive because providers' costs were the same for July and August 2003 as they were after September 1, 2003. Hands On also asserts that the providers could not submit additional data until after July 1, 2003. CSD and Sprint filed comments supporting Hands On's petition on this issue. CSD Comments at 1–4; Sprint Comments at 1–3.

Discussion. The Commission agrees that it should have made the final 2003–2004 VRS rate of $8.854 fully retroactive to July 1, 2003, rather than September 1, 2003. In adopting the interim rate, the Bureau stated that it would remain in force until the Bureau completed its examination of the providers' cost data, ''after which time the Bureau will produce the final VRS cost recovery rate *for the July 1, 2003, through June 30, 2004, fund year.*'' *2003 Bureau TRS Order*, 18 FCC Rcd at 12836, paragraph 37 (emphasis added). Consistent with this statement, and in acceptance of Hands On's argument, the Commission now determines that the final 2003–2004 VRS rate of $8.854 adopted in the *2004 TRS Report and Order* should be made fully retroactive to July 1, 2003, the beginning of the 2003–2004 Fund year. Accordingly, effective August 16, 2006, the Commission directs NECA to make appropriate supplemental payments to those VRS providers compensated for providing VRS in July and August 2003 that reflect the difference between the interim rate of $7.751 per minute and the final rate of $8.854 per minute.

Costs Directed at Meeting Waived Mandatory Minimum Standards

Background. Petitioners seek reconsideration of the Commission's conclusion that research and development costs directed at meeting waived mandatory minimum standards are not compensable. Hands On Petition at 17–20; CSD Petition at 18–22; *see 2004 TRS Report and Order*, 19 FCC Rcd at 12523, 12547–12548, paragraphs 122, 188–190. For VRS, the following mandatory minimum standards are presently waived: providing STS; handling any type of call; emergency call handling; offering equal access to interexchange carriers; handling 900 calls; providing Voice Carry Over (VCO), Hearing Carry Over (HCO), VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, HCO-to-HCO; call release; 3-way calling; and speed dialing. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12594–12596, Appendix E (waiver chart). They argue that when a mandatory minimum standard has been waived due to technological infeasibility, a provider

should be compensated for the expenses related to developing the technology to meet the waived standard. Hands On Petition at 18; *see also* CSD Petition at 18–22 (asserting that it is not reasonable to expect a provider to meet a standard by a certain date (*i.e.*, the date the waiver expires) if the provider cannot be compensated for the expenses associated with developing a means to meet the standard). CSD more specifically asserts that the Commission should permit the recovery of costs for research and development to enable VRS to meet the requirement that all TRS emergency calls be automatically and immediately transferred to an appropriate public safety answering point (PSAP). *See 2004 TRS Report and Order*, 19 FCC Rcd at 12521, paragraph 116. Because VRS is an Internet-based service, the VRS provider does not receive the automatic number identification (ANI) of the calling party, cannot identify the calling party's location, and therefore cannot automatically pass that information to the PSAP. *2004 TRS Report and Order* at 12522, paragraph 117. The Commission concluded that emergency call handling for VRS was technologically infeasible, and waived the requirement for VRS until January 1, 2006. *See 2004 TRS Report and Order* at 12522, paragraph 118. On November 30, 2005, the Commission released an NPRM seeking comment on rules for access to emergency services for the Internet-based forms of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, FCC 05–196, CG Docket No. 03–123, Further Notice of Proposed Rulemaking, FCC 05–196; published at 71 FR 5221 (February 1, 2006) (*2005 TRS 911 NPRM*)

Discussion. The Commission reaffirms the general principle that engineering and other expenses for research and development to meet waived mandatory minimum standards, or provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Interstate TRS Fund. *2004 TRS Report and Order*, 19 FCC Rcd at 12523–12524, 12547–12548, paragraphs 122, 189. As the Commission explained, TRS providers are obligated to provide functionally equivalent service, and that functionality is defined by the applicable mandatory minimum standards. *2004 TRS Report and Order* at 12547–12548, paragraph 189. Title IV is intended to ensure that entities that offer telephone voice transmission services *also* offer TRS so that persons with certain disabilities have access to the *functionality* of a voice telephone call. *See* 47 U.S.C. 225(a)(3) and (c). When ''a provider offers eligible services that meet these standards it may recover its costs of doing so from the Interstate TRS Fund.'' *2004 TRS Report and Order*, 19 FCC Rcd at 12547–12548, paragraph 189 (emphasis in original). As the Commission explained, ''this conclusion best reconciles the Commission's interest in avoiding placing undue burdens on the Interstate TRS Fund with the statutory mandate that the Commission's regulations 'do not discourage or impair the development of improved technology.' '' *2004 TRS Report and Order*, 19 FCC Rcd 12548, paragraph 190 (quoting 47 U.S.C. 225(d)(2)).

The Commission recognized the ''apparent 'Catch-22' that, so long as a mandatory minimum standard is waived, providers cannot be compensated for the costs of meeting the requirement, but that without additional compensation they cannot cover the costs of meeting the requirement to therefore justify the end of the waiver. *2004 TRS Report and Order*, 19 FCC Rcd at 12523–12524, paragraph 122. Nevertheless, the Commission took this approach because of the open-ended nature of the research and development that might be directed at a particular feature. The Commission stated that it would rely on the filing of annual reports for information indicating when the termination of a waiver may be appropriate and what additional costs may be necessary. In other words, the Commission concluded that it would require the providers to identify the manner in which the waived standard might be met, and the projected associated costs involved, *before* a provider devoted potentially unbounded resources to trying to find a way to meet the standard for a particular form of TRS.

The Commission continues to believe that, as a general matter, this approach is reasonable. First, to the extent that some waivers are the result of technological limitations presently inherent in Internet-based services generally, the Interstate TRS Fund should not be a source of funding to resolve these limitations. In addition, the Commission does not believe it can meaningfully determine what costs are reasonable when they are incurred to resolve technological issues that no one can resolve in the near term. Further, it may be impossible for some waived standards ever to apply to certain forms of TRS. Therefore, the Commission again concludes that, absent more specific direction from the Commission resulting from the annual waiver reports or information otherwise brought to the Commission's attention, providers may not be compensated from the Interstate TRS Fund for research and development to meet waived mandatory minimum standards. This principle applies to the waived emergency call handling requirement for VRS. Only in this way can the Commission prevent the Fund from becoming an open source of funding for research and development efforts over which the Commission, and the Fund Administrator, would have no control.

Other Issues

MARS Plan. Hamilton's petition for reconsideration asserts that the Commission should not have applied ''rate of return regulation'' to traditional TRS, *i.e.*, regulation requiring that the providers are not entitled to compensation that constitutes profit (*e.g.*, a mark-up on expenses) but are limited to a rate of return on capital investment. Hamilton Petition at iii, 1; *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12542–12545, paragraphs 177–182. Hamilton asks the Commission to initiate a proceeding to adopt its proposed alternative cost recovery methodology (the Multi-state Average Rate Structure or MARS plan) for determining the compensation rate for traditional TRS. Hamilton Petition at 1–4. Under the MARS plan, the interstate traditional TRS rate would be calculated based on an average of the *intrastate* TRS rates paid by the states. According to Hamilton, this approach would be superior to the current cost recovery methodology because it is grounded in competition (because most states select an intrastate TRS provider through a competitive bidding process), it would be easier and less costly to administer, and would benefit consumers ''by lowering interstate TRS rates to the competitively based market value.'' Hamilton Petition at 2–3. In response to Hamilton's petition, comments were filed by USTA, MCI, and Hands On, which generally support Hamilton's request. USTA Comments at 1–4; MCI Comments at 2–4; Hands On Reply Comments at 3–4. Hamilton also filed reply comments, further urging the Commission to consider its MARS proposal. Hamilton Reply at 1–4. Because, however, the Commission construes Hamilton's petition for reconsideration as a request that it adopts a new cost recovery methodology for traditional TRS, the Commission denies the petition for reconsideration to the extent it challenges the present cost recovery methodology for traditional TRS. *See generally 2004 TRS*

Report and Order, 19 FCC Rcd at 12542–12545, paragraphs 177–182. The Commission will treat this as a petition for rulemaking and request public comment on the MARS plan in a future notice of proposed rulemaking.

VRS Speed of Answer. Finally, several parties seek reconsideration of the extension of the waiver of the speed of answer requirement for VRS providers until January 1, 2006, or at such time the Commission adopts a speed of answer rule for VRS, whichever is earlier. *See*, *e.g.*, CSD Petition at 13–18. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12522–12524, paragraphs 119–123. On July 19, 2005, the Commission released the *VRS Speed of Answer Order*, which adopted speed of answer requirements for VRS providers, effective January 1, 2006. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, FCC 05–140, CC Docket No. 98–67 and CG Docket No. 03–123, (July 14, 2005), paragraphs 4–25; published at 70 FR 51649 (August 31, 2005) (*VRS Speed of Answer Order*). In the *VRS Speed of Answer Order*, the Commission required that: (1) by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls with 120 seconds, measured on a monthly basis. Because the Commission has now adopted a speed of answer rule for VRS, this issue is moot.

Congressional Review Act

The Commission will not send a copy of the *Order on Reconsideration* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, the *Order on Reconsideration is hereby adopted*.

The petition for partial reconsideration filed by Hands On is *granted in part* and *denied in part*, as provided herein, and the petitions for reconsideration filed by CSD, NVRSC, and Hamilton *are denied*, as provided herein.

The final per-minute compensation rate for VRS for the 2003–2004 Fund year of $8.854 *shall apply* retroactively to all VRS minutes provided during that Fund year commencing July 1, 2003.

The *Order On Reconsideration* shall be effective August 16, 2006.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–13486 Filed 8–15–06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–88]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission denies the applications for review and affirms the per-minute compensation rate for Video Relay Service (VRS) adopted by the Consumer and Governmental Affairs Bureau for the 2004–2005 fund year. Three parties filed applications for review challenging the per minute compensation rate for VRS, a form of telecommunications relay service (TRS).

DATES: Effective August 16, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 106–198, *see* 44 U.S.C. 3506(c)(4). This is a summary of the Commission's document FCC 06–88, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Memorandum Opinion and Order, CG Docket No. 03–123, adopted June 20, 2006, released July 12, 2006 denying the applications for review filed by Communication Services for the Deaf, Inc. (CSD) on July 26, 2004, the National Video Relay Service Coalition (NVRSC) on July 20, 2004, and Hands On Video Relay Services, Inc. (Hands On) on July 20, 2004. The applications for review challenge the per-minute compensation rate for Video Relay Service adopted in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, (*2004 Bureau TRS Rate Order*), CC Docket No. 98–67, DA 04–1999, 19 FCC Rcd 12224, released June 30, 2004. This order was later modified in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, (*Modified 2004 Bureau TRS Rate Order*), CC Docket No. 98–67, DA 04–4063, 19 FCC Rcd 24981, released December 30, 2004.

The full text of document FCC 06–88 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 06–88 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–88 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Background

TRS Cost Recovery Framework

TRS. Title IV of the Americans with Disabilities Act of 1990 (ADA) requires common carriers offering ''telephone voice transmission services'' to also provide TRS throughout the area in which they offer service so that persons with hearing and speech disabilities will have access to the telephone system. 47 U.S.C. 225(c). The statute also mandates that eligible TRS providers be compensated for their costs

of doing so. 47 U.S.C. 225(d)(3). As the Commission has explained, however, the cost recovery framework—and the annual determination of the TRS compensation rates—''is not akin to a ratemaking process that determines the charges a regulated entity may charge its customers,'' but rather is intended to ''cover the reasonable costs incurred in providing the TRS services mandated by Congress and the Commission's regulations.'' *2004 TRS Report and Order,* 19 FCC Rcd 12543, paragraph 179; published at 69 FR 53346, September 1, 2004; *see generally* 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules (providers shall be compensated for the ''reasonable costs'' of providing TRS).

VRS. In 2000, the Commission recognized VRS as a form of TRS eligible for compensation from the Interstate TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152–5154, paragraphs 21–27 (March 6, 2000) (*Improved TRS Order and FNPRM*) (recognizing VRS as a form of TRS), published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000; 47 CFR 64.601(17). Presently, all VRS calls are compensated from the Interstate TRS Fund. *See Improved TRS Order and FNPRM,* 15 FCC Rcd 5154, paragraphs 26–27. As most frequently used, VRS allows a deaf person whose native language is American Sign Language (ASL) to communicate in ASL with the communications assistant (CA), a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. VRS calls reflect a degree of ''functional equivalency'' unimaginable in a solely text-based TRS world. As the following figures for approximate monthly minutes of use of VRS demonstrate, usage continues to rise: May 2003—189,422; July 2004—900,000; December 2005—3.1 million.

Cost Recovery. Section 225 of the Communications Act, provides that the costs of providing interstate TRS ''shall be recovered from all subscribers for every interstate service.'' 47 U.S.C. 225(d)(3)(B). This mandate requires both collecting contributions to establish a fund (the Interstate TRS Fund) from which TRS providers can be compensated, and paying money from the Fund to eligible providers for their provision of eligible TRS services. *See generally* 47 CFR 64.604(c)(5)(iii)(A) and (E) of the Commission's rules. These duties are performed by the Interstate TRS Fund administrator, selected by, and under the direction of, the Commission. *See* 47 CFR 64.604(c)(5)(iii) of the Commission's rules. The current Interstate TRS Fund administrator is the National Exchange Carrier Association (NECA).

The TRS fund administrator makes payments to eligible providers based on per-minute compensation rates for traditional TRS, IP Relay, Speech-to-Speech (STS), and VRS. The compensation rates are set on an annual basis through a two-stage process. First, the TRS fund administrator requests and collects projected cost and demand (*i.e.*, minutes of use) data from the providers. *See* 47 CFR 64.604(c)(5)(iii)(C) of the Commission's rules. The fund administrator then uses this data to propose compensation rates to the Commission for the particular fund year. The proposed rates are intended to compensate the providers for their ''reasonable'' costs of providing TRS. Second, the Commission reviews the proposed rates and, in adopting compensation rates for the ensuing fund year, may approve or modify the proposed rates. *See generally Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* CC Docket No. 90–571, Third Report and Order, 8 FCC Rcd 5300, 5305, paragraph 30 (July 20, 1993); published at 58 FR 39671, July 26, 1993 (the TRS rate calculated by the administrator ''shall be subject to Commission approval'').

The fund administrator may ''examine, verify, and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.'' 47 CFR 64.604(c)(5)(iii)(c) of the Commission's rules. The fund administrator therefore has the responsibility, in the first instance, to ensure the accuracy and reasonableness of the cost and demand data submitted by the providers so that its proposed rates will be based on permissible costs consistent with the TRS regulations and prior Commission orders.

Once the fund administrator reviews the submitted projected costs and minutes of use, it calculates per-minute compensation rates based on data submitted (or modified, as necessary). As NECA has explained, NECA calculates a national average cost per minute of use. It does so by totaling projected costs and minutes of use for all providers for a two year period, and then dividing each sum (costs and minutes) by two. Then the average costs are divided by the average minutes to determine the average cost per minute. *See* NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate,* filed April 25, 2005, at 9 and Appendix 1E. The fund administrator then files these proposed rates with the Commission, and they are placed on public notice. *See, e.g., National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 Through June 2006,* CC Docket No. 98–67, Public Notice, DA 05–1175 (April 28, 2005); published at 70 FR 24790, May 11, 2005 (*2005 TRS Rate Notice*). The Commission reviews the fund administrator's proposed rates, the basis for those rates, and any comments received, and by June 30 issues an order adopting the TRS compensation rates for the following July 1 to June 30 fund year.

If either the fund administrator or the Commission disallows any of a provider's submitted costs, the provider has the opportunity to contest the disallowances before they are finalized. Because of confidentiality issues, this is generally done either in a telephone conversation or in an individual meeting with each provider. The precise process by which the providers' challenges to cost disallowances have been handled has varied, depending in part on whether the fund administrator or the Bureau has made the disallowance. The providers may further challenge the adopted rates, including any cost disallowances, by seeking review of the rate order, as was done in this proceeding. A rate order may also be challenged by filing a petition for reconsideration, as was done with respect to the *2003 Bureau TRS Order. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CC Docket No. 98–67; DA 03–2111, 18 FCC Rcd 12823 (June 30, 2003) (*2003 Bureau TRS Order*). Those petitions were resolved in the *2004 TRS Report and Order,* 19 FCC Rcd at 12537–12552, paragraphs 163–200. Since 1993, the Commission has released orders at least annually setting forth the per-minute compensation rates for the various forms of TRS. The Commission released the first rate order on September 29, 1993. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990,* Second Order on Reconsideration and Fourth Report and Order, CC Docket No. 90–571; published

at 58 FR 53663, October 18, 1993. Subsequent rate orders have been released at the bureau level, with the exception of the *2005 TRS Rate Order. See 2004 Bureau TRS Order,* 19 FCC Rcd 12231, paragraph 17, note 56 (listing rate orders); *2005 TRS Rate Order.*

Applications for Review

On June 30, 2004, the Bureau released the *2004 Bureau TRS Order,* which adopted NECA's proposed TRS per-minute compensation rates for traditional TRS and IP Relay, STS, and VRS, for the 2004–2005 fund year. *2004 Bureau TRS Order,* 19 FCC Rcd 12224. These rates, however, were subject to revision based on review of: ''(1) any supplemental cost data relating to capital investment, and (2) any adjustments to cost disallowances challenged by a provider in response to this Order.'' *2004 Bureau TRS Order,* 19 FCC Rcd 12225, paragraph 2. The rates were $1.349 per-minute for interstate traditional TRS and interstate and intrastate IP Relay, $1.440 per-minute for interstate STS, and $7.293 per-minute for interstate and intrastate VRS. In calculating these rates, NECA disallowed certain costs submitted by some of the providers for each of the TRS services. *See 2004 Bureau TRS Order,* 19 FCC Rcd 12232–12234, paragraphs 18–19 (traditional TRS and IP Relay), 22 (STS), and 25 (VRS). These rates were modified on December 30, 2004, by the *Modified 2004 Bureau TRS Rate Order.* The Bureau also approved NECA's proposed Interstate TRS fund size and carrier contribution factor. *2004 Bureau TRS Order,* 19 FCC Rcd 12224–12225, paragraphs 1–2. NECA proposed a total fund size requirement of $289,352,701, and a carrier contribution factor of 0.00356.

In response to the *2004 Bureau TRS Order,* some, but not all, of the providers elected to submit capital investment data and/or to challenge the cost disallowances specific to their filings. These providers include Hands On, Sprint, and Hamilton. The Bureau reviewed the data submitted, and made appropriate adjustments to the TRS rates. The Bureau also reviewed every cost disallowance that was challenged by a provider, and added back some costs for some providers for the various TRS services. The Bureau offered to meet with any provider that desired to review and challenge its cost disallowances, and held several such meetings. Because of provider confidentiality issues, the Commission can only summarize the cost disallowances and the restoration of certain costs. Five providers had costs disallowed. Two of these providers elected not to challenge NECA's proposed disallowances; in those cases, the disallowed costs were almost entirely profit and tax allowances, which do not constitute reasonable costs. *See 2004 TRS Report and Order,* 19 FCC Rcd 12542–12545, paragraphs 177–182 (''reasonable costs'' do not include a profit or mark-up on expenses). With respect to the remaining three providers, one provider had approximately 18% of its submitted costs initially disallowed by NECA, and approximately 30% of those costs restored; another provider had approximately 9% of its submitted costs initially disallowed, and approximately 92% of those costs restored; and one provider had approximately 3% of its submitted costs initially disallowed, and approximately 78% of those costs restored. As a result of these two adjustments, the Bureau recalculated the compensation rate for each of the TRS services. The Bureau announced that the VRS compensation rate would be $7.596 per minute (an increase of $0.303 over NECA's proposed rate). *See Modified 2004 Bureau TRS Order* (effective for the July 1, 2004, to June 30, 2005, fund year). The other final TRS compensation rates were: for eligible traditional TRS and IP Relay, $1.398 per minute (an increase of $0.049); for eligible STS, $1.596 per minute (an increase of $0.156).

Three parties challenged the *2004 Bureau TRS Order* and the determination of the VRS compensation rate. CSD's and NVRSC's filings were accompanied by petitions for emergency stay of the *2004 Bureau TRS Order.* Those petitions sought to have the VRS per-minute compensation rate of $8.854, which was adopted as the final VRS rate for the September 1, 2003 to June 30, 2004 funding period, apply to the 2004–2005 fund year, and not the rate of $7.293 adopted in the *2004 Bureau TRS Order,* until such time as the Commission resolves the applications for review and the ''quality issues'' raised in the *2004 TRS Report and Order's* Further Notice of Proposed Rulemaking (*FNPRM*). The Commission addresses the petitions for stay below, and denies them as moot.

Hands On makes three arguments related to the process by which NECA determined the proposed TRS rates, arguing that: (1) The *2003 Bureau TRS Order* ''was not a sufficient guide'' for NECA's evaluation of a provider's submitted cost data; Hands On Application at 17–18; (2) NECA lacked authority to review and disallow submitted cost data; Hands On Application at 22–23; and (3) providers did not have the opportunity to contest disallowances; Hands On Application at 23–26. Hands On makes the related argument that even if the *2003 Bureau TRS Order* provided sufficient guidance for the determination of the TRS compensation rates, NECA did not follow that guidance. CSD asserts that the Bureau improperly excluded certain costs in setting the 2004–2005 VRS. CSD Application at 2–13. Finally, CSD and the NVRSC argue that the determination of the rate is at odds with the mandate that the Commission encourage new technology. CSD Application at 13–15; NVRSC Application at 7–11; *see* 47 U.S.C. 225(d)(2).

Hamilton's application for review challenges the *2004 Bureau TRS Order* to the extent it ''abandoned the 'cost-plus' reimbursement rate methodology for traditional TRS.'' Hamilton Application at 1. Hamilton notes, however, that this issue is ''inextricably interwoven'' with issues presented in the *2004 TRS Report and Order* (on which the *2004 Bureau TRS Order* relied), and that it filed the application for review ''to ensure that the *2004 Bureau TRS Order* does not become a final order'' before the Commission addresses Hamilton's petition for reconsideration of the *2004 TRS Report and Order.* Hamilton Application at 1–2. Therefore, Hamilton's real challenge is to the Commission's *2004 TRS Report and Order*, not to the *2004 Bureau TRS Order*. In these circumstances, the Commission denies Hamilton's application for review because it does not assert that the Bureau erred in adopting the *2004 Bureau TRS Order.* The Commission will address the pending petitions for reconsideration of the *2004 TRS Report and Order* in a separate order.

Discussion

The Process of Setting the 2004–2005 VRS Compensation Rate Was Proper

The Commission finds that the procedural arguments raised by Hands On are without merit. NECA properly looked to the prior *2003 Bureau TRS Order* for guidance in analyzing the submitted costs because that order was the most recent pronouncement on the relevant issues. At the time NECA filed its proposed 2004–2005 TRS compensation rates with the Commission, the *2003 Bureau TRS Order* was the only Commission or Bureau level order that specifically addressed cost disallowances. The *2003 Bureau TRS Order* reflected the general principle that the providers' submitted costs must relate to the ''reasonable'' costs of providing TRS, and that the

Commission has the duty to ensure that costs underlying the compensation rates are appropriate under this standard. *2003 Bureau TRS Order*, 18 FCC Rcd 12834–12836, paragraphs 32–37. The *2003 Bureau TRS Order* noted categories of submitted costs where the Bureau found that certain costs were not reasonable. *2003 Bureau TRS Order*, 18 FCC Rcd 12835, paragraph 34 (profit calculations, taxes, and labor costs are unreasonable). That order made clear that because of confidentiality concerns, the cost disallowances would be addressed individually with the providers. *2003 Bureau TRS Order*, 18 FCC Rcd 12835, paragraph 33 and note 91. Hands On contends that the *2003 Bureau TRS Order* did not sufficiently detail permissible costs, and as a result, NECA's cost adjustments were an unreliable basis for the Bureau's evaluation of its proposed rates. Hands On Application at 18–21. Hands On asserts, for example, that NECA did not sufficiently explain in its May 3, 2004, filing why it made the cost adjustments that it did, and did not tie those adjustments to the *2003 Bureau TRS Order.* Hands On Application at 19. As the Commission has noted, however, NECA's proposed rates are reviewed by the Bureau, which makes an independent determination of the appropriate TRS compensation rates. *See* paragraphs 5–8. Hands On acknowledges that the regulations specifically permit the fund administrator to examine, verify, and audit data it receives from the providers, but asserts that the regulations do not permit the fund administrator ''to exclude categories of costs or to substitute its judgment for the good faith judgment of the providers.'' Hands On Application at 23. The Commission disagrees. It is the fund administrator's role to request and collect the providers' cost and demand data, to review that data for compliance with the Commission's rules, and to propose compensation rates to the Commission based on that data. *See 2004 Bureau TRS Order*, 19 FCC Rcd 12239, paragraph 40 (rejecting the notion that NECA cannot make adjustments to cost data in proposing rates to the Commission). In so doing, the fund administrator need not defer to the judgment of the providers concerning what are allowable costs; indeed, such an arrangement would be an abdication of the administrator's role in overseeing the integrity of the fund.

Hands On further states that even if NECA has the authority to review and disallow submitted cost data, it must give the providers an opportunity to contest the disallowances. The Commission agrees. Indeed, NECA did discuss possible cost adjustments with the providers, including Hands On, *before* it submitted its proposed rates to the Commission. *See 2004 Bureau TRS Order*, 19 FCC Rcd 12229, paragraph 13 and note 43 (also citing NECA filing). NECA also provided the Commission with the details of its cost disallowances for each provider. *See* Hands On Supplement to Application for Review at 1–2 (noting meetings between the Bureau and Hands On addressing its cost disallowances); *see also* Ex parte letter from George L. Lyon, Jr., Counsel for Hands On, CC Docket No, 98–67 (filed October 25, 2004). In addition, the Bureau gave each provider, including Hands On, an opportunity to review and contest disallowances specific to it. Hands On further complains that NECA's report proposing the compensation rates to the Commission does not detail individual cost disallowances. Hands On Supplement to Application for Review at 23–26; *see also* Hands On Supplement to Application for Review at 2 (asserting that all elements of rate determination, including all of the providers' cost disallowances, must be on the public record). The Bureau reviewed Hands On's cost disallowances with Hands On in great detail in meetings and over the telephone, and as a result, the Bureau restored nearly one-third of the costs initially disallowed. Hands On's challenges to those disallowed costs not restored are addressed below. *See* paragraph 17. Because of confidentiality issues, all cost disallowances are not shared with all providers. *See generally 2004 Bureau TRS Order*, 19 FCC Rcd 12239, paragraph 39 (noting that NECA cannot detail all cost disallowances because of confidentiality issues); *see* 47 CFR 64.604(c)(5)(iii)(I) of the Commission's rules (requiring the fund administrator to keep the providers' data confidential).

In sum, neither Hands On, nor any other provider, has been denied a meaningful opportunity to challenge any cost disallowances specific to it under the procedures outlined above and followed by the fund administrator and the Bureau in adopting the 2004–2005 TRS compensation rates. NVRSC makes the related argument that the Bureau erred by adopting NECA's proposed VRS compensation rate when the Bureau also noted it might subsequently modify the rate based on submissions of capital investment data and challenges to specific cost disallowances. NVRSC Application at 9. The *Modified 2004 Bureau TRS Order*, however, applied the modified VRS rate to the entire 2004–2005 fund year, thus ensuring that the compensation rates properly reflected all reasonable costs of providing the services. Further, the adoption of the modified rate makes NVRSC's argument moot.

The 2004–2005 VRS Rate Properly Excluded Quality of Service Factors

The Commission rejects claims that the Bureau did not properly consider the effect of the VRS rate on the quality of service, and should have allowed costs related to waived requirements. *See generally* CSD Application at 3–8; NVRSC Application at 13–15; Hands On Application at 4–16. TRS compensation rates are designed to compensate providers for the reasonable costs of providing service in compliance with non-waived mandatory minimum standards.

Arguments regarding quality of service generally concern the effect of the rate on the ability of providers to offer VRS 24 hours a day, seven days a week (24/7), and to promptly answer calls. The Commission raised these quality of service issues in the *2004 TRS Report and Order's FNPRM*, and did not adopt speed of answer and 24/7 service requirements for VRS until July 14, 2005. *VRS Speed of Answer Order* at paragraph 1 (the requirements are effective January 1, 2006). The Bureau does not have the discretion to include costs in its calculations that relate to matters that the Commission has raised only in a pending *FNPRM*, or that the Commission has indicated are not appropriate for reimbursement. Such costs include, for example, engineering, research and development, or other costs relating to enhancements that go beyond the required standards applicable to the particular service. *2004 TRS Report and Order*, 19 FCC Rcd 12547–12548, 12551, paragraphs 189–190, 197. The Commission agrees with the Bureau that ''providers are not entitled to unlimited financing from the Interstate TRS Fund to enable them to further develop a service that is not even required.'' *2004 Bureau TRS Order,* 19 FCC Rcd 12236, paragraph 31, note 84. This statement was taken from the Commission's *2004 TRS Report and Order*. Therefore, CSD's argument is directed not at the *2004 Bureau TRS Order,* but rather the *2004 TRS Report and Order*. The Commission finds, therefore, that because the Commission had only proposed speed of answer and 24/7 service requirements for VRS at the time the Bureau adopted the 2004–2005 rate, the Bureau correctly excluded costs of meeting such requirements from the 2004–2005 rate calculations. Such costs

may be included in subsequent cost submissions, and the resulting rate will reflect reasonable costs incurred to comply with these new requirements. CSD makes the related assertion that the VRS rate was based on the incorrect assumption that the ''lower'' VRS rate adopted for the previous fund year (2003–2004) did not affect the quality of VRS service. CSD Application at 8–10; *see also* NVRSC Application at 15. The order itself makes clear, however, that the VRS rate was adopted based solely on the projected cost (and demand) data submitted by the providers, as modified based on certain disallowances. *2004 Bureau TRS Order*, 19 FCC Rcd 12242, paragraph 50.

Section 225 of the Communications Act provides that the Commission shall ensure that its TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. CSD Application at 13–14. NVRSC asserts the VRS rate is too low to allow providers to enhance the quality of the service through the development of new and improved technology. NVRSC Application at 8–10; *see generally* 47 U.S.C. 225(d)(2). Petitioners argue that, pursuant to section 225 of the Communications Act, providers should be compensated from the Interstate TRS Fund for research and development directed at complying with technical and operational standards that have been waived. CSD Application at 13–15; NVRSC Application at 19–20. The Commission rejects this argument. As a general matter, the Commission believes that the principle recognized in the *2004 TRS Report and Order*—that compensable costs must be directed to providing the service in compliance with applicable non-waived mandatory minimum standards *2004 TRS Report and Order*, 19 FCC Rcd 12547–12548, paragraphs 189–190—is consistent with the mandate that the Commission not impair the development of new technology. Providers are free to develop new TRS features and services to enhance the provision of TRS, and may gain a competitive advantage in doing so. But absent more specific direction from the Commission resulting from the annual waiver reports or information otherwise brought to the Commission's attention, providers may not be compensated from the Interstate TRS Fund for research and development to meet waived mandatory minimum standards. Moreover, the very existence of VRS—and the Commission's adoption of other new forms of TRS such as Captioned Telephone service See, *e.g.*, *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98–67, CG Docket No. 03–123, FCC 05–141; published at 70 FR 54294, September 14, 2005 (finding that two-line Captioned Telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund)—reflect the Commission's faithful adherence to encouraging new technologies to meet this statutory mandate.

The Cost Disallowances Related to Installation Were Proper

The Commission rejects Hands On's assertion that that the Interstate TRS Fund should pay for its installation of video cameras and VRS software at its customers' premises (which includes on-site training) to ensure ''connectivity.'' Hands On Application at 35. Hands On's application for review challenges other cost disallowances. *See* Hands On Application at 26–37. Subsequent to the filing of Hands On's application for review, however, the Bureau reviewed with Hands On its cost disallowances, and ultimately restored approximately 30% of the initially disallowed costs. As a result, subsequent to the release of the *Modified 2004 Bureau TRS Order*, Hands On withdrew its objections concerning cost disallowances in the areas of accounting staff, corporate overhead, operations, software licensing, and general and administrative personnel. Hands On Supplement to Application for Review at 2–3. Hands On's supplemental filing, however, does not address its initial challenges to cost disallowances for engineering personnel. *See* Hands On Application at 30–31. After meetings between the Bureau and Hands On, Hands On agreed that some of the excluded engineering personnel could be removed, and the Bureau ultimately restored costs for some other engineering personnel previously excluded. Therefore, issues regarding disallowances for engineering personnel have been resolved. Installation expenses are not ''reasonable costs'' of providing TRS, and are not permitted for any provider. The Commission has consistently stated that compensable expenses must be the providers' expenses in making the service available and not the customer's costs of receiving the service. *See*, *e.g.*, *2004 TRS Report and Order*, 19 FCC Rcd 12543–12544, paragraphs 179, 181. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software.

Allowance for Working Capital

The Commission rejects Hands On's contention that the Bureau should have adopted a higher allowance for working capital. This factor, which was set at 1.4 percent, compensates the providers for the time they are out of pocket their expenses before they are compensated by NECA. Hands On Application at 20–21; *see 2004 Bureau TRS Order*, 19 FCC Rcd 12230, paragraph 16 and note 53 (setting forth in detail the derivation of the 1.4 percent figure for an allowance for working capital). Hands On asserts that the 1.4 percent figure does not adequately cover the time period for which providers are out of pocket their expenses because it is based on a 30 day period rather than a 45 day period. Hands On Application at 20–21. Hands On maintains that, although the providers are reimbursed on a monthly basis one month after service is provided, they incur costs at the beginning of each month, but do not receive compensation for that month until the end of the following month. Hands On Application at 20.

Hands On's argument confuses when a provider incurs an expense with when the provider pays the expense. The purpose of the working capital allowance is to reimburse the providers for the time they are actually out of pocket money they have paid for services rendered. Even granting Hands On's assumption that most of the providers' costs are labor costs, and that ''most providers pay their employees semi-monthly,'' the Commission believes that the 30 day period reasonably compensates the providers for the time they are actually out of pocket. Hands On Application at 21. Assuming, for example, that employees are paid on the 15th and 30th of the month, the average payment date would be the 22nd. The Commission also assumes that labor is paid at least a week in arrears, *i.e.*, that payment is not concurrent with period of performance. For example, the payment on the 15th of the month would be for labor from the 22nd of the prior month to the 8th of the month, and the payment on the 30th of the month would be for labor from the 8th to the 22nd of the month. Under these circumstances, the average out-of-pocket date for labor incurred in a particular month, which would be paid by NECA at the end of the following month, would be the 30th of the month. Further, the Commission assumes that other types of expenses are generally paid approximately 30 days after the provider is billed. Accordingly,

the Commission declines to increase the working capital allowance.

The 2003–2004 VRS Compensation Rate Does Not Apply to the 2004–2005 Fund Year

The Commission rejects CSD's and NVRSC's argument that, instead of adopting a VRS rate for the 2004–2005 fund year based on the cost and demand data submitted by the providers for that fund year, the Bureau should have continued to apply the modified VRS rate adopted in the *2004 TRS Report and Order* ($8.854 per minute) applicable to the previous fund year (2003–2004), pending resolution of VRS issues raised in the *2004 TRS Report and Order's FNPRM*. CSD Application at 16–17; NVRSC Application at 9–10, 18–20. NVRSC asserts that the Bureau should *not* have followed the *2004 TRS Report and Order* in adopting the 2004–2005 VRS rate, but rather should have continued the VRS rate from the 2003–2004 fund year. NVRSC Application at 9–10. According to CSD and NVRSC, VRS providers should be compensated at the rate of $8.854 per minute in 2004–2005, not at the rate of $7.596 ultimately adopted by the Bureau for the 2004–2005 fund year. CSD Application at 15–16; NVRSC Application at 20.

This argument is inconsistent with the cost recovery mechanism that has been in place for over ten years. As explained above, for each fund year the compensation rates are based on the *providers*' own projected cost and demand data for the upcoming two-year period. If there is concern that the rates were not calculated correctly, the answer is not to apply rates from a previous fund year based on an entirely different set of cost and demand projections, but to review the calculation of the challenged rates and the data upon which they rely and make any resulting adjustments retroactive to the beginning of the fund year. In this instance, therefore, no basis to apply the VRS rate from the 2003–2004 fund year to the 2004–2005 fund year.

The Emergency Petitions for a Stay of the 2004 Bureau TRS Order

CSD and NVRSC filed a petition for emergency stay, seeking to have the 2003–2004 VRS per-minute compensation rate of $8.854 apply to the 2004–2005 fund year, instead of the rate of $7.293 adopted in the *2004 Bureau TRS Order* for the 2004–2005 fund year, until such time as the Commission resolved the pending applications for review. The petitions for an emergency stay accompanied the applications for review. Because, as set forth above, the Commission has affirmed the *2004 Bureau TRS Order* (as modified by the *Modified 2004 Bureau TRS Order*), and have rejected the argument that the 2003–2004 VRS rate should apply in the 2004–2005 fund year, the Commission dismisses the stay requests as moot.

Congressional Review Act

The Commission will not send a copy of the Memorandum Opinion and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(1A), because the adopted rules are rules of particular applicability.

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, that the Memorandum Opinion and Order *is* hereby *adopted*.

The applications for review filed by CSD, Hands On, NVRSC, and Hamilton *are* hereby *denied*, as provided herein.

The Memorandum Opinion and Order *shall become effective* August 16, 2006.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–13490 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1531; MB Docket No. 05–297; RM–11290]

Radio Broadcasting Services; Savanna, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Charles Crawford, the Audio Division allots Channel 275A at Savanna, Oklahoma, as the community's first local aural transmission service. A later filed minor change application, File No. BPH–20050509AAB, filed by JDC Radio, Inc., licensee of Station KQIB(FM), Channel 275C3, Idabel, Oklahoma, is dismissed. Channel 275A is allotted at Savanna with a site restriction of 7.0 kilometers (4.3 miles) south at coordinates 34–46–00 NL and 95–50–00 WL. A filing window period for Channel 275A at Savanna will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective September 11, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–297, adopted July 26, 2006, and released July 28, 2006. At the request of Charles Crawford, the Audio Division allots Channel 275A at Savanna, Oklahoma, as that community's first local aural transmission service. 70 FR 70775 (November 23, 2005). The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Savanna, Channel 275A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–13359 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1466; MB Docket No. 04–84; RM–10879]

Radio Broadcasting Services; Willcox, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making filed by Calvary Chapel of Tucson requesting the reservation of vacant Channel 223C3 at Willcox, Arizona for noncommercial educational use. A staff engineering analysis determines that Channel *223C3 can be allotted at Willcox in compliance with the Commission's minimum distance spacing requirements at reference coordinates 32–16–22 NL and 109–48–14 WL.

DATES: Effective September 11, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–84, adopted July 26, 2006, and released July 28, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 223C3 and by adding Channel *223C3 at Willcox.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–13357 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1532; MB Docket No. 05–219; RM–11249]

Radio Broadcasting Services; Brawley and Campo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a proposal filed by CCR-Brawley IV, LLC as proposed in the *Notice of Proposed Rule Making* in this proceeding. Specifically, the license of Station KSIQ, Channel 241B, Brawley, California, is modified to specify operation on Channel 241B1 at Campo, California. The reference coordinates for the Channel 241B1 allotment at Campo, California, are 32–38–30 and 116–28–05. With this action, the proceeding is terminated.

DATES: Effective September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 05–219, adopted July 26, 2006, and released July 28, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202(b) [Amended]

■ 2. Section 73.202(b), the table of FM Allotments under California, is amended by removing Channel 241B at Brawley and by adding Campo, Channel 241B1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–13358 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 71, No. 158
Wednesday, August 16, 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

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06–981–2 PR]

Almonds Grown in California; Changes to Incoming Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changing the incoming quality control requirements under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). These changes would help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. This action is intended to improve the overall quality of almonds placed into consumer channels.

DATES: Comments must be received by August 23, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Maureen.Pello@usda.gov*, or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on changing the incoming quality control requirements under the administrative rules and regulations of the order. These changes would help minimize the risk of aflatoxin in almonds by removing inedible almonds from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. These changes are intended to improve the overall quality of almonds placed into consumer channels, and were recommended by the Board at a meeting on May 18, 2006.

Section 981.42 of the order provides authority for a quality control program. Paragraph (a) of that section requires handlers to obtain incoming inspections on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Based on these inspections, handlers incur an inedible disposition obligation. They must satisfy their obligation by disposing of inedible almonds in outlets such as oil and animal feed.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in excess of 1 percent of kernel weight shall constitute that handler's disposition obligation. Handlers must satisfy the disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users of such product. Accepted users dispose of this material through non-human consumption outlets. Paragraph (a)(5) of § 981.442 specifies further that at least 25 percent of a handler's total annual disposition obligation be satisfied with inedible kernels as defined under § 981.408. Handlers with total annual inedible obligations of less than 1,000 pounds are exempt from the 25 percent requirement.

Board research has shown that aflatoxin in almonds is directly related to insect damage in inedible kernels. In order to help minimize the risk of aflatoxin in almonds, the Board recommended reducing the tolerance for

inedible kernels from 1 to .50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. Such revisions are intended to improve the overall quality of almonds placed into consumer channels.

All of the Board's members supported the change regarding true inedibles, but three of the Board's 10 members opposed the change to reduce the incoming tolerance for inedible kernels (the Board's chairperson abstained). Those opposed pointed to the existing 2 percent outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. The majority of Board members supported both changes. Paragraphs (a)(4) and (a)(5) of § 981.442 are proposed to be revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Data for the most recently completed crop year indicate that about 52 percent of the handlers shipped under $6,500,000 worth of almonds. Dividing average almond crop value for 2003–2005 reported by the National Agricultural Statistics Service ($2.171 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about $362,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule would revise paragraphs (a)(4) and (a)(5) of § 981.442 of the order's administrative rules and regulations regarding inedible almonds. These changes would help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. Specifically, this action would reduce the tolerance for inedible kernels in each variety of almonds received by a handler from 1 to .50 percent, and increase the percent of a handler's annual inedible obligation that must be satisfied with dispositions containing inedible almonds from 25 to 50 percent. Authority for these changes is provided in § 981.42(a) of the order.

Regarding the impact of the proposed action on affected entities, this action is intended to improve the overall quality of almonds placed into consumer channels and therefore would be beneficial to the industry. In addition, this rule is not expected to change handler inspection costs. Handlers must currently have an incoming inspection done on each lot of almonds received to determine the percent of inedible kernels. Additionally, inedible almond dispositions must be inspected to determine the percent of inedible kernels in such dispositions. Such inspections are performed by the inspection agency, which means the Federal-State Inspection Service. The inspection agency charges a fee of $40 per hour, plus $0.75 per ton, with a minimum total fee of $55, to perform an inedible disposition inspection.

The Board considered various alternatives and options before making its recommendation on inedible almonds. It was decided that a 0.5 percent tolerance was appropriate rather than 0 percent. As previously stated, opposition Board members pointed to the existing 2 percent outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. Ultimately, the majority of Board members supported both changes. The Board's Food Quality and Safety (FQS) Committee met again via teleconference on June 13, 2006, and concurred with the Board's recommendation.

This action would impose no additional reporting and recordkeeping burden on California almonds handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. There are U.S. Standards for Grades of Shelled Almonds (7 CFR 51.2105 through 51.2131) and U.S. Standards for Grades of Almonds in the Shell (7 CFR 51.2075 through 51.2091) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). However, these standards are voluntary for the almond industry.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all Board meetings, the task force meetings on March 23 and April 26, 2006, the FQS Committee meetings on April 11, May 8, and June 13, 2006, and the Board meeting on May 18, 2006, were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 7-day comment period is provided to allow interested persons to respond to this proposal. Seven days is deemed appropriate because the 2006–07 crop year begins on August 1, 2006, and therefore, this rule, if adopted, should be in effect as soon as possible.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.442 is amended by revising the first sentence of paragraph (a)(4)(i) and the eleventh sentence in paragraph (a)(5) to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of .50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * *

(5) *Meeting the disposition obligation.* * * * At least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided,* That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. * * *

* * * * *

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–6941 Filed 8–11–06; 2:16 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25563; Directorate Identifier 2006–NM–083–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C 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 Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C airplanes. This proposed AD would require modifying the left– and right–hand standby fuel pump switches. This proposed AD would also require revising the Emergency and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew of the proper procedures to follow in the event of failure of the standby fuel pump to shut off. This proposed AD results from a report of inadvertent operation of a standby fuel pump due to an electrical system malfunction. We are proposing this AD to prevent this inadvertent operation, which could result in inadvertent fuel transfer by the left or right wing fuel system and subsequent over–limit fuel imbalance between the left and right wing fuel loads. This imbalance could affect lateral control of the airplane which could result in reduced controllability.

DATES: We must receive comments on this proposed AD by October 2, 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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for the service information identified in this proposed AD

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

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–2006–25563; Directorate Identifier 2006–NM–083–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 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

We have received a report indicating that inadvertent operation of a standby fuel pump due to an electrical system malfunction occurred on a Learjet Model 35A (C–21A) airplane. This condition, if not corrected, could result in inadvertent fuel transfer by the left or right wing fuel system and subsequent over-limit fuel imbalance between the left and right wing fuel loads. This imbalance could affect lateral control of the airplane which could result in reduced controllability.

Relevant Service Information

We reviewed the Bombardier service bulletins identified in the following table:

SERVICE INFORMATION

Service bulletin	Revision level	Date	Learjet model(s)
23–28–6	Original Issue	April 21, 1998	23
24/25–28–3	2	February 21, 1998	24/25
28/29–28–4	3	June 2, 1999	28/29
31–28–7	3	January 26, 2001	31
35/36–28–11	4	December 4, 2000	35/36
55–28–13	3	December 15, 2000	55

The service bulletins describe the following procedures: For airplanes on which the replacement of the standby fuel pump switch has been accomplished per the original or earlier revisions of the applicable referenced service bulletins, the procedures include installing fuses and fuse holders, and modifying the electrical wiring. For airplanes on which the replacement has not been accomplished per the original issue or earlier revisions of the applicable referenced service bulletins, the procedures include replacing the standby fuel pump switches, installing the fuel pump dimming box assembly, and modifying the electrical wiring. The procedures also describe verifying that the subject temporary flight manual (TFM) changes have been incorporated into the applicable airplane flight manual (AFM).

We have also reviewed the following Learjet TFM changes:

TFM	Date
TFM 96–08	May 30, 1996.
TFM 96–09	May 30, 1996.
TFM 98–01	May 11, 1999.
TFM 98–02	May 11, 1999.

The TFMs describe procedures for revising the Emergency and Abnormal Procedures sections of the AFM to advise the flightcrew of the proper procedures to follow in the event of failure of the standby fuel pump to shut off. 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

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 1,613 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour, depending on airplane configuration.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	Between 4 and 12	Between $1,426 and $1,470.	Between $1,746 and $2,430.	1,150	Between $2,007,900 and $2,794,500.
AFM Revision	1	None	$80	1,150	$92,000.

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):

Learjet: Docket No. FAA–2006–25563; Directorate Identifier 2006–NM–083–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 2, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Learjet models identified in the applicable Bombardier service bulletin listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY BY SERVICE BULLETIN

Service bulletin	Revision level	Date	Learjet model(s)
23–28–6	Original Issue	April 21, 1998	23.
24/25–28–3	2	February 21, 1998	24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, and 24F–A; 25, 25A, 25B, 25C, 25D, and 25F.
28/29–28–4	3	June 2, 1999	28 and 29.
31–28–7	3	January 26, 2001	31 and 31A.
35/36–28–11	4	December 4, 2000	35 and 35A (C–21A); 36 and 36A.
55–28–13	3	December 15, 2000	55, 55B and 55C.

Unsafe Condition

(d) This AD results from a report of inadvertent operation of a standby fuel pump due to an electrical system malfunction. We are issuing this AD to prevent this inadvertent operation, which could result in inadvertent fuel transfer by the left or right wing fuel system and subsequent over-limit fuel imbalance between the left and right wing fuel loads. This imbalance could affect lateral control of the airplane which could result in reduced controllability.

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.

Modification

(f) Within 24 months after the effective date of this AD: Modify the left- and right-hand standby fuel pump switches, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

Airplane Flight Manual (AFM) Revision

(g) Before further flight after accomplishing the modification required by paragraph (f) of this AD: Revise the Emergency and Abnormal Procedures sections of the applicable AFM to advise the flightcrew of proper procedures to follow in the event of failure of the standby fuel pump to shut off by including the information in the Learjet temporary flight manual (TFM) Changes identified in Table 2 of this AD.

TABLE 2.—TFM CHANGES

Learjet model(s)	TFM	Date
24/25, 28/29, 31, 35/35, 55	TFM 96–08	May 30, 1996.
24/25, 28/29, 31, 35/35, 55	TFM 96–09	May 30, 1996.
23	TFM 98–01	May 11, 1999.
23	TFM 98–02	May 11, 1999.

This may be done by inserting a copy of the TFM changes into the AFM. When the TFM changes have been included in the general revisions of the AFM, those general revisions may be inserted into the AFM, provided the relevant information in the general revisions is identical to that in the TFM changes.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), 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.

Issued in Renton, Washington, on August 3, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13453 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[USCBP 2005–0035]

Extension of Port Limits of St. Louis, MO

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Department of Homeland Security (DHS) Regulations pertaining to the field organization of the Bureau of Customs and Border Protection (CBP) by extending the geographical limits of the port of St. Louis, Missouri, to include the entire Lambert-St. Louis International Airport after the completion of its ongoing expansion. The expansion of the airport is expected to be complete by March 2006. The extension would also modify the geographic description of the port of St. Louis, Missouri, to align the port boundaries with the Federal Interstate Highways that encircle the St. Louis metropolitan area. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before October 16, 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–2005–0035.
- *Mail:* Border Security 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 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 Mr. Joseph Clark at (202) 572–8768.

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

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing efforts to provide better service to carriers, importers, and the general public, the Bureau of Customs and Border Protection (CBP), of the Department of Homeland Security (DHS), is proposing to extend the port boundaries for the port of entry at St. Louis, Missouri.

The Lambert-St. Louis International Airport is currently located within the boundaries of the St. Louis, Missouri, port of entry. However, the airport has initiated an expansion project, which, when completed, will place part of the airport outside of the port's current boundaries. The expansion is expected to be complete by March 2006. In order to accommodate the entire airport and to make the boundaries more easily identifiable to the public, CBP is proposing to extend the port limits of the port of St. Louis, Missouri, in such a way that will align the port boundaries with the Federal Interstate Highways that encircle the St. Louis metropolitan area. CBP has determined that this proposed change in the boundaries of the port of St. Louis, Missouri, will not result in a change in the service that is provided to the public by the port, nor will it require a change in the staffing or workload at the port.

Current Port Limits of St. Louis, Missouri

The current port limits of St. Louis, Missouri, are described as follows in Treasury Decision (T.D.) 69–224 of September 27, 1969:

Beginning at a point where Federal Interstate Highway 270 crosses the Mississippi River; thence west along Federal Interstate Highway 270 to a point where this highway and State Highway 140 intersect; thence south along State Highway 140 to a point just north of where this highway intersects with State Highway 100 and becomes U.S. Highway 61; thence continuing in a south and southeasterly direction along U.S. Highway 61 across the Mississippi River to a point where this highway and State Highway 3 intersect; thence south along State Highway 3 to a point where this highway and State Highway 158 intersect; thence in a northeasterly direction along State Highway 158 to a point where this highway and State Highway 159 intersect; thence north along State Highway 159 to a point where this highway and Federal Interstate Highway 270 intersect; thence west along Federal Interstate Highway 270 to the Mississippi River, the point of beginning.

Proposed Port Limits of St. Louis, Missouri

The new port limits of St. Louis, Missouri, are proposed as follows:

Beginning at the point where Federal Interstate Highway 270 crosses the Mississippi River; thence west, southwest, south and southeast, along Federal Interstate Highway 270 to the point where it becomes Federal Interstate Highway 255; thence southeast on Federal Interstate Highway 255 across the Mississippi River; thence north and east to the point where Federal Interstate Highway 255 intersects with Federal Interstate Highway 270; thence west along Federal Interstate Highway 270 to the Mississippi River, the point of beginning.

Proposed Amendment to Regulations

If the proposed port limits are adopted, CBP will amend the list of CBP ports of entry at 19 CFR section 101.3(b)(1), to reflect the new description of the limits of the St. Louis, Missouri, port of entry.

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. CBP also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Authority

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

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this regulatory proposal is not a significant regulatory action as defined under Executive Order 12866. This proposed rule also will not have significant economic impact on a substantial number of small entities.

Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Michael Chertoff,

Secretary.

[FR Doc. E6–13446 Filed 8–15–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3286

[Docket No. FR–4812–N–03]

RIN 2502–AH97

HUD's Manufactured Home Installation Program Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule announces an extension of the public comment period on HUD's proposed rule regarding the Manufactured Home Installation Program, published on June 14, 2006. The June 14, 2006, proposed rule provided for a 60-day public comment period, which would close the public comment period on August 14, 2006. This notice advises that the public comment period has been extended to September 14, 2006.

DATES: Comments must be submitted on or before September 14, 2006.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. All communications should refer to the above docket number and title. Facsimile (FAX) comments and e-mail comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000; telephone (202) 708–6401 (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) 877–8389.

SUPPLEMENTARY INFORMATION: On June 14, 2006 (71 FR 34476), HUD published its proposed rule that would establish a Federal manufactured home installation program. HUD is required to establish such a program in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*), as amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–659, enacted December 27, 2000). States that have their own installation programs that include the elements required by statute are permitted to administer under their own state installation programs the new requirements that would be established through this proposed and final rulemaking.

The June 14, 2006, proposed rule provided for a 60-day public comment period. In response to significant public interest, HUD wants to provide additional time for interested parties to prepare and submit comments that HUD will consider in the development of the final rule; therefore, HUD is announcing through this notice that it is extending the public comment period on the June 14, 2006, proposed rule for an additional month. The new public comment deadline is September 14, 2006.

Dated: August 9, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. E6–13382 Filed 8–15–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112994–06]

RIN 1545–BF47

Guidance Under Section 7874 Regarding Expatriated Entities and Their Foreign Parents; Correction Notice

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing; correction.

SUMMARY: This document contains corrections to notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that was published in the **Federal Register** on Tuesday, June 6, 2006 (71 FR 32495) relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B).

FOR FURTHER INFORMATION CONTACT: Milton Cahn at (202) 622–3918 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–112994–06) that is the subject of these corrections are under section 7874 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–112994–06) contains errors that may prove to be misleading are in need of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing (REG–112994–06), that was the subject of FR Doc. E6–8698, is corrected as follows:

1. On page 32495, column 2, in the preamble, under the caption **SUMMARY**, line 8, the language ''of the Code. The text of those'' is corrected to read ''of the Internal Revenue Code. The text of those''.

2. On page 32495, column 2, in the preamble, under the caption **DATES**, lines 5 and 6, the language ''24, 2006 at 10 a.m., must be received by October 3, 2006'' is corrected to read ''31, 2006, at 10 a.m., must be received by October 10, 2006''.

3. On page 32495, column 2, in the preamble, under the caption **ADDRESSES**, lines 2–11, the language ''CC:PA:LPD:PR (REG–112994–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–112994–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent''. is corrected to read CC:PA:LPD (REG–112994–06), Internal Revenue Service, PO Box 7604 Ben Franklin Station, Washington, DC 20044 or sent''.

4. On page 32495, column 2, in the preamble, under the caption **ADDRESSES**, lines 1–3 from the bottom of the paragraph, the language, ''held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC'' is corrected to read ''held in the auditorium, Internal Revenue Service, New Carrollton Federal Building (NCFB), 5000 Ellin Rd., Lanham, MD 20706''.

5. On page 32495, column 2, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, line 3, the language ''Milton Cahn at (202) 622–3860;'' is corrected to read ''Milton Cahn at (202) 927–0889 or (202) 622–3918;''.

6. On page 32495, column 3, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, lines 2 and 3 from the top of the column, the language ''Treena Garrett, (202) 622–7180 (not toll-free numbers)'' is corrected to read ''Kelly Banks, (202) 927–1443 (not toll-free numbers)''.

7. On page 32495, column 3, in the preamble, under the paragraph heading ''*Background and Explanation of Provisions*'', line 5 from the bottom of the paragraph, the language ''7874(a)(2)(B) of the Code. The text of'' is corrected to read ''7874(a)(2)(B) of the Internal Revenue Code. The text of''.

8. On page 32495, column 3, in the preamble, under the paragraph ''*Special Analyses*'', line 5 from the bottom of the paragraph, the language ''of the Code, this notice of proposed'' is corrected to read ''of the Internal Revenue Code, this notice of proposed''.

9. On page 32496, column 1, in the preamble, under the paragraph heading ''*Comments and Public Hearing*'', first paragraph of the column, lines 2 through 5, the language ''for October 24, 2006, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.'' is corrected to read ''for October 31, 2006, at 10 a.m. in the auditorium, Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706.''

10. On page 32496, column 1, in the preamble, under the paragraph heading ''*Comments and Public Hearing*'', second paragraph of the column, lines 2 through 5, the language ''for October 24, 2006, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington DC. Due to building'' is corrected to read ''for October 31, 2006, at 10 a.m. in the auditorium, Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706.''

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Office of Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13424 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–078]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Red Bull Flugtag Baltimore'', a marine event to be held October 21, 2006, on the waters of the Patapsco River, Inner Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Baltimore Inner Harbor during the event.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–078), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 21, 2006, Red Bull North America will sponsor ''Red Bull Flugtag Baltimore'' at the Inner Harbor in Baltimore, MD. The event will consist of 30 teams who attempt to fly a human powered craft from an 80-foot long flight deck that extends over the water immediately adjacent to the southwest corner of the promenade surrounding the Baltimore Inner Harbor. The regulated area originates at the southwest corner of the Inner Harbor adjacent to the Maryland Science Center and extends outward over the water within an approximately 150 yard arc. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patapsco River, Inner Harbor, Baltimore, MD. The regulations would be in effect from 10:30 a.m. to 5:30 p.m. on October 21, 2006. The effect would be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be permitted enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed when event activity is halted, and when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to

enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Baltimore Inner Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic may be able to transit the regulated area at slow speed when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of the Baltimore Inner Harbor during the event.

Although this regulation prevents traffic from transiting a small segment of the Baltimore Inner Harbor during the event, this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic may be able to transit the regulated area when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD 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 (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35T–05–078 to read as follows:

§ 100.35T–05–078 Patapsco River, Inner Harbor, Baltimore, MD.

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

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Red Bull Flugtag Baltimore under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes the waters of the Patapsco River, Baltimore, MD, Inner Harbor within the immediate vicinity of the southwest corner of the harbor adjacent to the Maryland Science Center. The area is bounded on the south and west by the shoreline promenade, bounded on the north by a line drawn along latitude 39°16′58″ North and bounded on the east by a line drawn along longitude 076°36′36.5″ West. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event area.

(c) *Effective period.* This section will be enforced from 10:30 a.m. to 5:30 p.m. on October 21, 2006.

Dated: July 28, 2006.

Larry L. Hereth,

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

[FR Doc. E6–13494 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2004–NH–0001; A–1–FRL–8210–6]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Withdrawal of Proposed Rulemaking To Control Gasoline Fuel Parameters and Remove the Reformulated Gasoline Program From Four Counties in New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: In a letter dated May 31, 2006, the New Hampshire Department of Environmental Services (DES) requested withdrawal of their previously submitted State Implementation Plan (SIP) revision for oxygen flexible reformulated gasoline (OFRFG). EPA had proposed to approve this revision on February 2, 2004 (69 FR 4903), and received comments from five parties which outlined concerns. For reasons outlined below, New Hampshire has withdrawn this SIP revision request. Therefore, EPA is also withdrawing its proposed approval of the SIP revision.

DATES: The proposed rule is withdrawn as of August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, EPA New England (CAQ), 1 Congress Street, suite 1100, Boston MA 02203; telephone, 617–918–1045; fax, 617–918–0045; *judge.robert@epa.gov.*

SUMMARY: On February 2, 2004 (69 FR 4903), EPA proposed approval of a State Implementation Plan (SIP) revision submitted by the New Hampshire Department of Environmental Services (DES) on October 31, 2002 and October 3, 2003, establishing fuel emissions performance requirements for gasoline distributed in southern New Hampshire which includes Hillsborough, Merrimack, Rockingham, and Strafford Counties. Final EPA approval of this SIP revision would ultimately result in New Hampshire no longer utilizing Federal reformulated gasoline (RFG) in this area 90 days after the effective date of the rule. New Hampshire had hoped their program would result in gasoline with less methyl tertiary butyl ether (MTBE) being distributed in the State.

On May 31, 2006, DES submitted a letter by which the State of New Hampshire withdrew their request to adopt their own State specific fuel program (OFRFG), and their request to opt-out of the Federal reformulated gasoline program. In this letter, New

Hampshire outlined several reasons for withdrawing this SIP revision request. They explained that since the time of their initial SIP submission and EPA's subsequent proposed approval in February 2004, several circumstances that impact New Hampshire's choice to opt-out of RFG and implement their own State fuel program have changed. Specifically, they noted that MTBE bans were implemented in 2004 in Connecticut and New York areas with Federal reformulated gasoline without supply or price disruptions. Informed by this development, the New Hampshire General Court passed House Bill 58 in 2005 which banned (effective January, 2007) the importation and distribution of gasoline containing MTBE in New Hampshire. (Other similar MTBE ban legislation was also enacted in Maine, Vermont, and Rhode Island). And finally, New Hampshire pointed to the enactment of Federal energy legislation (the Energy Policy Act of 2005) with provisions that eliminated the Clean Air Act (CAA) minimum 2 percent oxygen mandate for RFG (the requirement that had resulted in between 3 and 10 times higher MTBE levels in RFG than conventional gasoline), mandated increased use of renewable fuels (primarily ethanol) nationally, and limited EPA's ability to approve new ''boutique'' fuel blends.

Given those circumstances, New Hampshire felt that their state, as well as many other areas of the country, would soon be receiving cleaner fuels with significantly reduced levels of MTBE. As such, they feel they achieved the state's objective of reducing MTBE in its gasoline without removing itself from the Federal RFG program and its associated toxics emission reduction benefits. Therefore, New Hampshire has requested that EPA no longer consider this SIP revision request, and has withdrawn the SIP revision request from EPA. As a result, EPA is also withdrawing its previous proposed approval of New Hampshire's SIP revision request.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 7, 2006.

Robert W. Varney,

Regional Administrator, EPA-New England.

[FR Doc. E6–13492 Filed 8–15–06; 8:45 am]

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Notices

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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 Marketing Service

[CN–06–003]

American Pima Spot Quotations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Agricultural Marketing Service's (AMS), Cotton Program, Market News Branch changes to the American Pima Spot Quotations. The changes include combining the San Joaquin Valley and Desert Southwest Pima cotton markets into one unified American Pima Market; changing the quotation terms to Uniform-Density free (UD-free), Freight-on-Board (FOB) warehouse; and, quoting discounts for cotton fiber strength that is 37.4 grams per Tex (gpt) and lower. The changes will be reflected in both the Daily Spot Cotton Quotations and the Monthly and Annual Cotton Price Statistics that are currently published by the AMS, Cotton Program, Market News Branch. This action is necessary to more accurately reflect the overall American Pima cotton market.

DATES: Effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture is authorized under the Cotton Statistics and Estimates Act of 1927 (Act) (7 U.S.C. 473 *et seq.*) for the collection, authentication, publication and distribution of timely information on the market supply, demand, location, condition and market prices for cotton. The AMS, Cotton Program disseminates market information and reports from spot cotton markets under the authority of the Act and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 *et seq.*).

AMS, Cotton Program, Market News Branch reports American Pima cotton spot prices. The market news price reporting format has changed as the classification of American Pima cotton has changed. Current recipients of the report will only notice minor changes to the report layout as of August 1, 2006, as outlined below. The data collected and used for the report will not change.

In recent years, American Pima cotton production has shifted dramatically, and the vast majority of the American Pima cotton crop is produced in the San Joaquin Valley, California. As production has increased in the San Joaquin Valley, production has sharply decreased in the Desert Southwest in Arizona, New Mexico and the area around El Paso, Texas. In 1994, 45 percent of the American Pima cotton crop was grown in the Desert Southwest with the remaining 55 percent grown in the San Joaquin Valley. In 2005, just 11 percent of the American Pima cotton crop was grown in the Desert Southwest, with the remaining 89 percent grown in the San Joaquin Valley. In addition to the production shift, the amount of cotton traded for immediate delivery and immediate payment (referred to as a spot transaction) also decreased. By changing from two separate markets to one combined market, for reporting purposes, the spot quotations will more accurately reflect the overall American Pima cotton market.

Currently, quotation terms reflect those used in the Desert Southwest, ''FOB (freight on board) warehouse, compression charges not included''). Therefore, most cotton traded had to be converted to Desert Southwest terms. With the spot quotations changed to reflect just one Pima market and the majority of the American Pima cotton now being grown and traded in the San Joaquin Valley, the quotation terms will reflect where the bulk of the cotton is grown and traded. Beginning August 1, 2006 the quotation terms for the American Pima Spot Quotations will be changed to ''UD (universal density) free, FOB warehouse.''

The final change to the Pima Spot Quotations will involve reporting strength discounts. Beginning with the 2004 Crop, strength discounts were applied to American Pima cotton placed into the Commodity Credit Corporation (CCC) loan program. For the past two years the Cotton Program's Market News Branch has surveyed buyers and sellers of American Pima to determine if there were any commercial discounts being applied to Pima cotton with strength measuring 37.4 grams per Tex (gpt) and lower. Results indicated that there were measurable discounts being applied to cotton with strength 37.4 gpt and lower. All ranges quoted by Cotton Program's Market News Branch for American Pima cotton will be the same as those used by the CCC loan schedule of premiums and discounts. These CCC ranges (from lowest to highest) are 35.4 and below, 35.5–36.4, 36.5–37.4 and 37.5 and above.

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–13501 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Scientific Review Panel at the National Animal Disease Center, Ames, IA

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Scientific Review Panel at the National Animal Disease Center, Ames, Iowa.

DATES: August 23, 2006, 8:30 a.m. to 12 noon Central Time. Written requests to make oral comments at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: City Council Chambers, City Hall, 515 Clark Avenue, Ames, Iowa 50010. Requests to make oral comments at the meeting may be sent to the contact person at USDA–ARS, Midwest Area Director, 1815 North University

Street, Room 2006, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Steven Shafer, Midwest Area Director, USDA–ARS, Telephone (309) 681–6602; Fax (309) 681–6684; E-mail *sshafer@mwa.ars.usda.gov*.

SUPPLEMENTARY INFORMATION: On May 4, 2006, the City of Ames received allegations that wastes from areas at the National Animal Disease Center (NADC) with animals challenged with prions were not properly treated prior to discharge to the City wastewater plant. USDA, in cooperation with the City of Ames, is convening an expert panel to review scientific information about deactivation of prions and assess practices used at NADC to treat liquid wastes from areas where animals with prions are housed and handled that enter the Ames wastewater treatment system. (*Note:* For the purposes of this panel and its review, prions are defined as specific proteins that are abnormally shaped and can cause transmissible diseases associated with the allegations). This meeting will initiate implementation of the panel's charge to evaluate four main issues related to the handling and disposal of potentially prion-contaminated materials in wastewater from the NADC: (1) Identify scientifically accepted methods for effectively destroying prions; (2) Assess the concerns raised regarding NADC's current and past methods for the destruction of prions; (3) Determine the risk posed to humans and the environment from the current, as well as previous, methods for the destruction of prions utilized at NADC; and (4) If remediation is needed, provide scientifically sound approaches for corrective action(s) that may be taken. Final conclusions of the review will be developed during a meeting at a later date, also to be announced. At the conclusion of its review, the panel will prepare a written report that documents the panel's findings for the four main issues being evaluated. On August 23, 2006, between 8:30 a.m. and 12 noon Central Time, if time permits, reasonable provision will be made for verbal comments of no more than three minutes each in duration. The meeting will be open to the public, but space is limited. If you want to be assured of a seat at this meeting, you must register by contacting the contact person named above 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. Pre-registrations will be limited to 80 people; others may be able to attend on a space-available basis.

Dated: August 7, 2006.

Caird E. Rexroad, Jr.,

Associate Administrator, Agricultural Research Service.

[FR Doc. 06–6987 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three (3) revised conservation practice standards in Section IV of the FOTG. The revised standards are: Surface Drainage, Field Ditch (607), Surface Drainage, Main or Lateral (608), and Water and Sediment Control Basin (638).

These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to *shannon.zezula@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 27, 2006.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. E6–13462 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Hurricane Disaster Assistance

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service programs are administered through USDA Rural Development. This Notice is intended to announce the availability of supplemental hurricane disaster assistance to be administered through the Community Facilities (CF) Direct Loan and Grant program. USDA Rural Development will provide CF Grant funds in the amount of $20,000,000 and CF Direct Loan funds in the amount of $149,253,000 for essential community facilities in rural areas affected by Hurricane Katrina and other hurricanes of the 2005 season.

DATES: *Effective Date:* August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Information for the Community Facilities Direct Loan and Grant Program may be obtained by contacting your USDA Rural Development State Office as outlined in Section I.D.

For questions regarding information contained in this Notice, please contact Derek L. Jones, Loan Specialist, Community Programs, at 202–720–1504.

Background: The CF Direct Loan and Grant Program is designed to finance and facilitate the development of many different types of essential community facilities serving rural areas. These facilities include, but are not limited to, hospitals, medical clinics, elderly care facilities, police stations and vehicles, fire and rescue stations and vehicles, vocational and medical rehabilitation centers, and educational facilities. Funds under this Notice can be used to construct, enlarge, repair, or improve community facilities. This can include the purchase of equipment required for a facility's operation.

Chapter 1 of title I of 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) (Act) provides

USDA Rural Development with additional authorities to waive certain program requirements and resources to address the damage caused by the Gulf Coast hurricanes. Section 2103 of title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 extended the expiration date of these waiver authorities under the Act for an additional 18 months and provided a total amount of $169,253,000 in CF Direct Loan and Grant funds for CF projects.

Accordingly, the matching funds requirement for the CF Grant program will be waived for assistance provided under this Notice. In addition, the median household income requirements and the grant limits will also be waived for the purpose of this Notice.

I. General Provisions

A. Designated Disaster Area

For the purposes of this Notice, the designated disaster area shall be those Presidentially-declared areas in the states of Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

B. Limitation of Grant Amounts

The Act enables the Secretary of Agriculture to make grants under the CF Grant program without regard to any grant amount limitation. Rural Development has determined that it will review and make awards under this NOFA as applications are received. Applications will be reviewed, approved, and obligated in the State Rural Development Office.

C. Contacts for Additional Information

For questions about USDA Rural Development's programs and for application assistance, please contact your USDA Rural Development State Office. The contact information for your State Office can be found at: *http://www.rurdev.usda.gov.* You can also reach your State Office by calling (202) 720–4323 and pressing ''1''.

D. Programs Referenced in This Notice Are Subject to Applicable Civil Rights Laws

These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

II. Assistance Available Through This Notice

Direct Loan and Grant Program

1. Description of Assistance

Section 105 of the Act enables USDA Rural Development to make Community Facilities Direct Loan and Grants in designated disaster areas. CF Grants can be made without regard to graduated funding or matching fund requirements.

2. Eligibility Criteria

Public entities such as municipalities, counties, and special-purpose districts, as well as non-profit corporations and tribal governments in designated Rural disaster areas with a population of 20,000 or less are eligible to apply.

3. Priority

Administrator's points may be awarded for geographic distribution of funds and for projects with pre-existing hurricane or tornado damage which were subsequently affected by hurricanes of the 2005 season.

4. Applicable Statutory or Regulatory Authority

Consolidated Farm and Rural Development Act, Section 306 (7 U.S.C. 1926(a)(1) and (19)); and, to the extent not waived by this Notice, 7 CFR, Part 3570, Subpart B, Community Facilities Grant Program, and 7 CFR Part 1942, Subpart A, Community Facilities Direct Loan Program.

III. Emergency Declaration

Consistent with Proclamation 7925 issued by President Bush, the USDA Rural Development Mission Area has determined that it would be impracticable, unnecessary, and contrary to public interest to delay the effective date of this Notice for any reason. The USDA Rural Development Agencies need to act promptly on hurricane related needs in the designated disaster areas.

IV. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender''.

Dated: August 2, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–13432 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2005 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2005 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2005 cost of money rates have been established as follows: 6.18% and 5.00% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

All loan advances made during fiscal year 2005 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 6.18% (the liquidating account rate). All loan advances made during fiscal year 2005 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 5.00% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2005 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than or equal to the minimum rate (5.00%) allowed under 7 U.S.C. 938(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.18% and 5.00%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Governor, Rural Telephone Bank, STOP 1590—Room 5151, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 (2

U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 2005 on loans approved prior to October 1, 1991) and (2) the cost of money rate for advances made from the financing account (advances made during fiscal year 2005 on loans approved on or after October 1, 1991).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stock, debentures and other obligations; and the costs to the Bank of obtaining funds.

During fiscal year 2005, the Bank was authorized to pay the following dividends: The dividend on Class A stock as 2.00% as established in 7 U.S.C. 946(c); no dividends were payable on Class B stock in accordance with 7 U.S.C. 946(d); and the dividend on Class C stock was established by the Bank at 5.74%.

Dissolution of the Bank

At its quarterly meeting on August 4, 2005, the Board of Directors (the ''Board'') approved a resolution to dissolve the Bank. On November 10, 2005, the liquidation and dissolution process was initiated with the signing of the 2006 Agriculture Appropriations bill by President Bush, which contained a provision lifting the restriction on the retirement of more than 5 percent of the Class A stock held by the Government.

In accordance with the Board's resolution and the terms of the Loan Transfer Agreement between the Bank and the Government, dated August 4, 2005, the Bank's liquidating account loan portfolio was transferred to the Government on October 1, 2005. As a result of that transfer, there will be no more advances of liquidating account loan funds. Therefore, this is the last notice that will report an interest rate for liquidating account loan advances.

The dissolution of the Bank will not affect future advances of financing account loan funds. Requests for financing account advances will continue to be processed by employees of USDA Rural Development's Telecommunications Program, just as they were while the Bank remained in operation. The terms and conditions of the financing account loans will not change, nor will the method for determining the interest rates, including the determination of the cost of money rates after the end of the fiscal year. The only significant change to the financing account advances is that effective October 1, 2005, no Class B stock in the Bank will be purchased with a financing account loan advance.

Sources and Costs of Funds—Liquidating Account

In accordance with 7 U.S.C. 946(a), the Bank did not issue Class A stock in fiscal year 2005. There were no net issuances of Class B stock because the rescissions of loan funds advanced for Class B stock exceeded the amount of issuances. The amount received by the Bank in fiscal year 2005 from the issuance of Class C stock was $8,048.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2005. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2005 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $794,953. The cost associated with this excess is the historic cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historic cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost of the money rates for fiscal years 1974 through 1987 are defined in 7 U.S.C. 948(b) and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with 7 U.S.C. 946(a), the Bank did not issue Class A stock in fiscal year 2005. Advances for the purchase of Class B stock and cash purchases for Class B stock were $4,570,841. There were rescissions of loan funds advanced for Class B stock in the amount of $8,967; therefore, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $4,561,874. The Bank did not receive any amounts in fiscal year 2005 from the issuance of Class C Stock.

During fiscal year 2005, issuance of debentures or any other obligations related to advances from the financing account were $91,416,689 at an interest rate of 5.250%.

The excess of fiscal year 2005 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations amounted to $8,967. The cost associated with this excess is the historic cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The Bank's cost of money rate for advances from the financial account is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: August 11, 2006.

James M. Andrew,

Governor, Rural Telephone Bank.

RURAL TELEPHONE BANK COST OF MONEY RATE—LIQUDATING ACCOUNT

FY 2005 source of bank funds	*(a)* Amount ($)	*(b)* Cost (%)	*(c)* (a)×(b) ($)	(c)/Advances (%)
Issuance of Class A Stock		2.00		0.0000
Issuance of Class B Stock		0.00		0.0000
Issuance of Class C Stock	8,048	5.74	462	0.0575
Issuance of Debentures and Other Obligations		0.00		0.0000
Excess of Total Advances Over Issuances	794,953	6.19	49,194	6.1263
Total FY 2005 Advances	803,001			
Calculated cost of money rate =				6.18
Minimum rate allowable =				5.00

RURAL TELEPHONE BANK HISTORICAL COST OF MONEY RATE—LIQUIDATING ACCOUNT

Fiscal year	(a) Cost of money (%)	(b) advances ($)	(c) (a)×(b) ($)	(c)/Total Advances (%)
FY 1974	5.01	111,022,574	5,562,231	0.231
FY 1975	5.85	130,663,197	7,643,797	0.318
FY 1976	5.33	99,915,066	5,325,473	0.221
FY 1977	5.00	80,907,425	4,045,371	0.168
FY 1978	5.87	142,297,190	8,352,845	0.347
FY 1979	5.93	130,540,067	7,741,026	0.322
FY 1980	8.10	199,944,235	16,195,483	0.673
FY 1981	9.46	148,599,372	14,057,501	0.584
FY 1982	8.39	112,232,127	9,416,275	0.391
FY 1983	6.99	93,402,836	6,528,858	0.271
FY 1984	6.55	90,450,549	5,924,511	0.246
FY 1985	5.00	72,583,394	3,629,170	0.151
FY 1986	5.00	71,582,383	3,579,119	0.149
FY 1987	5.00	51,974,938	2,598,747	0.108
FY 1988	5.00	119,488,367	5,974,418	0.248
FY 1989	5.00	97,046,947	4,852,347	0.202
FY 1990	5.00	107,694,991	5,384,750	0.224
FY 1991	5.43	163,143,075	3,858,669	0.368
FY 1992	6.14	84,940,822	5,215,366	0.217
FY 1993	6.05	84,605,366	5,118,625	0.213
FY 1994	6.15	54,530,897	3,353,650	0.139
FY 1995	6.04	35,967,133	2,172,415	0.090
FY 1996	6.05	30,965,187	1,873,394	0.078
FY 1997	5.98	32,602,587	1,949,635	0.081
FY 1998	5.96	20,673,798	1,232,158	0.051
FY 1999	6.01	17,796,518	1,069,571	0.044
FY 2000	6.01	10,436,622	627,241	0.026
FY 2001	5.95	6,638,107	394,967	0.016
FY 2002	6.51	1,864,500	121,379	0.005
FY 2003	6.05	604,800	36,590	0.002
FY 2004	6.18	880,504	54,415	0.002
Total advances		2,405,995,574		
Cost of money				6.19

RURAL TELEPHONE BANK COST OF MONEY RATE—FINANCING ACCOUNT

FY 2005 source of bank funds	(a) Amount ($)	(b) Cost (%)	(c) (a)×(b) ($)	(c)/Advances (%)
Issuance of Class A Stock	.....	2.00	.....	0.0000
Issuance of Class B Stock	4,561,874	0.00	.....	0.0000
Issuance of Class C Stock	.....	5.740	.....	0.0000
Issuance of Debentures and Other Obligations*	91,416,689	5.250	4,799,659	5.0003
Excess of Total Advances Over Issuances	8,967	5.956	534	0.0006
Total FY 2005 Advances	945,987,530			
Calculated cost of money rate =	.....	.....	.....	5.00
Minimum rate allowable =	.....	.....	.....	5.00

* RTB borrowed $99,306,000 from the financing account in FY 2005; the remaining funds will be used to cover other obligations of the fund.

RURAL TELEPHONE BANK HISTORICAL COST OF MONEY RATE—FINANCING ACCOUNT

Fiscal year	(a) Cost of money (%)	(b) Advances ($)	(c) (a)×(b) ($)	(c)/Total Advances (%)
FY 1992	7.38	4,056,250	299,351	0.055
FY 1993	6.35	23,839,200	1,513,789	0.278
FY 1994	6.40	56,838,902	3,637,690	0.669
FY 1995	6.88	37,161,517	2,556,712	0.470
FY 1996	6.42	44,536,621	2,859,251	0.526
FY 1997	6.54	34,368,726	2,247,715	0.413
FY 1998	5.71	34,446,458	1,966,893	0.362
FY 1999	5.54	38,685,732	2,143,190	0.394

RURAL TELEPHONE BANK HISTORICAL COST OF MONEY RATE—FINANCING ACCOUNT—Continued

Fiscal year	(a) Cost of money (%)	(b) Advances ($)	(c) (a)×(b) ($)	(c)/Total Advances (%)
FY 2000	6.05	31,401,867	1,899,813	0.349
FY 2001	5.17	55,405,896	2,864,485	0.527
FY 2002	6.05	60,232,919	3,644,092	0.670
FY 2003	5.67	55,835,695	3,165,884	0.582
FY 2004	5.36	67,074,751	3,595,207	0.661
Total advances		543,884,534		
Cost of money				5.96

[FR Doc. 06–6970 Filed 8–15–06; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public scoping meeting and prepare an Environmental Assessment (EA).

SUMMARY: Rural Utilities Service (RUS), an agency which administers the U.S. Department of Agriculture's Rural Development Utilities Programs. RUS intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) in connection with possible impacts related to a project proposed by Georgia Transmission Corporation (GTC), with headquarters in Tucker, Georgia.

The proposal consists of the construction of approximately 7 miles of 230 kilovolt (kV) transmission line from the proposed East Walton 500/230 kV Substation to the proposed Bethabara Substation. The 230 kilovolt transmission line proposal would be located in Walton and Oconee Counties, Georgia. The proposed East Walton 500/230 kV Substation is located in Walton County and the proposed Bethabara Substation in Oconee County. This proposal is a connected action to the East Walton-Rockville 500 kV Transmission Line, the East Walton-Jack's 230 kV Transmission Line that was presented at the scoping meetings held on Monday, April 17, 2006, at Carver Middle School in Monroe, Georgia and Tuesday, April 18, 2006, at the Madison Morgan Cultural Center in Madison, Georgia. GTC is requesting RUS provide financing for the proposal.

DATES: RUS will conduct one scoping meeting in an open house format, seeking the input of the public and other interested parties. The meeting will be held from 5 p.m. until 7 p.m., August 22, 2006, in Fellowship Hall of the Bethabara Baptist Church, 4651 Monroe Highway (US 78), Statham, Georgia 30666.

An Electric Alternative Evaluation and Macro Corridor Study Report, prepared by Georgia Transmission Corporation, will be presented at the public scoping meeting. The Report will be available for public review at RUS' address provided in this notice, at RUS' Web site: *http://www.usda.gov/rus/water/ees/ea.htm*, at Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30084 and at the following locations:

Walton County Library, 217 West Spring Street, Monroe, Georgia 30655; 770 267–4630.

Oconee County Library, 1080 Experiment Station Road, Watkinsville, Georgia 30677; 706 769–3950.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, USDA Rural Development, Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone (202) 720–0468. Mrs. Strength's E-mail address is *stephanie.strength@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 230 kilovolt transmission line from the proposed East Walton 500/230 kV Substation to the proposed Bethabara Substation. It would require a right-of-way of 100 feet. Guyed and unguyed concrete or steel poles ranging in height from 80- to 120-feet would support the East Walton-Bethabara 230 kV conductors. It is anticipated that the transmission line would be in service in 2011.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposal. Representatives from RUS and Georgia Transmission Corporation will be available at the scoping meeting to discuss RUS' environmental review process, describe the project, the purpose and need for the proposal, macro corridors under consideration, and to discuss the scope of environmental issues to be considered, answer questions, and accept comments. Comments regarding the proposal may be submitted (orally or in writing) at the public scoping meeting or in writing for receipt no later than September 22, 2006, to RUS at the address provided in this notice.

Georgia Transmission Corporation will prepare an environmental analysis to be submitted to RUS for review from information provided in the alternative evaluation and site selection study and input that may be provided by government agencies, private organizations and the public. RUS will use the environmental analysis to determine the significance of the impacts of the proposal and may adopt it as its Environmental Assessment for the proposal. RUS' Environmental Assessment will be available for review and comment for 30 days.

Should RUS determine, based on the Environmental Assessment that the impacts of the construction and operation of the transmission line would not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact will be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by RUS' environmental policies and procedures.

Dated: August 7, 2006.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E6–13411 Filed 8–15–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Tom Killiam, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–5222, respectively.

Background

On May 8, 2006, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on brake rotors from the People's Republic of China for the period April 1, 2004, through March 31, 2005. *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006) (''Preliminary Results''). The final results of this administrative review are currently due by September 5, 2006.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue final results in an administrative review of an antidumping duty order within 120 days after the date on which the notice of preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the specified time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to 180 days.

The Department has determined that completion of the final results within the originally anticipated time limit, September 5, 2006, is impracticable. The Department requires additional time to analyze the parties' responses to the supplemental questionnaires issued on June 22, 2006, as well as to address the concerns of the interested parties as raised in their June 19, 2006 briefs, June 27, 2006 rebuttal briefs, July 17, 2006 comments on bentonite and coal powder usage, and July 24, 2006, rebuttal comments on this issue. Consequently, it is not practicable to complete the review within the time specified under the Act. Therefore, the Department is extending the time limit for completion of these final results by 45 days to October 20, 2006, in accordance with Section 751(a)(3)(A) of the Act.

Additionally, on April 29, 2005, Shanxi Zhongding Auto Parts Co., Ltd. agreed to waive the time limits of its new shipper review, pursuant to 19 CFR 351.214(j)(3), and to have its review conducted concurrently with the 2004/2005 administrative review of this order for the period April 1, 2004, through March 31, 2005. Therefore, the final results of this new shipper review will also be extended by 45 days to October 20, 2006.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–13474 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Certain Cased Pencils from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain cased pencils from the People's Republic of China (''PRC'') covering the period December 1, 2004, through November 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). On December 30, 2005, the petitioners[1] requested an administrative review of the antidumping duty order for Tianjin Custom Wood Processing Co., Ltd. (''TCW'').[2] On January 3, 2006, Orient International Holding Shanghai Foreign Trade Corp. (''SFTC'') requested an administrative review of its sales. On February 1, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain cased pencils from the PRC with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 5241 (February 1, 2006) (''*Initiation Notice*'').

On February 14, 2006, SFTC withdrew its request for review.

In response to the Department's February 8, 2006, quantity and value questionnaire, TCW stated on February 22, 2006, that it had no exports, sales or entries of subject merchandise to the United States during the POR.

On July 24, 2006, the Department placed on the record a list of manufacturers/exporters of the subject merchandise for which the Department initiated administrative reviews, and for which U.S. Customs and Border Protection (''CBP'') suspended liquidation of subject entries during the period of review. *See* the July 24, 2006, memorandum from Brian Smith to the file entitled, ''2004–2005 Administrative Review of Certain Cased Pencils from the People's Republic of China: CBP List of Exporters'' (''July 24, 2006, Memorandum'').

[1] The petitioners are Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company.

[2] The petitioners also requested a review for China First Pencil Company, Ltd., Shanghai Three Star Stationary Industry Corp, and its affiliates Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Fang Zheng Co.

On July 25, 2006, the Department issued a memorandum which stated that the CBP data examined by the Department (and referenced in the July 24, 2006, Memorandum) shows that TCW had no shipments of subject merchandise during the POR and indicated that the Department intended to rescind the administrative review with respect to TCW. *See* the July 25, 2006, memorandum from Brian Smith to the file entitled, ''Intent to Rescind in Part the Antidumping Duty Administrative Review on Certain Cased Pencils from the People's Republic of China.'' The Department also provided parties in this review until August 1, 2006, to submit comments on the July 24, 2006, Memorandum.

On July 31, 2006, the petitioner stated that it did not oppose the Department's intention of rescinding this review with respect to TCW.

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 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, SFTC withdrew its request for review before the 90-day deadline. Because SFTC was the only party to request the administrative review of itself, we are rescinding, in part, this review of the antidumping duty order on certain cased pencils from the PRC with respect to SFTC.

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary will rescind an administrative review, in whole or in part, with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Therefore, we are also rescinding this review with respect to TCW because the Department reviewed CBP data which indicated that TCW did not export subject merchandise to the United States during the POR.

This review will continue with respect to the other companies listed in the *Initiation Notice*.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties for the rescinded companies, where applicable, 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 sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–13469 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Corrosion–Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani at (202) 482–0395, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2005, the U.S. Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on corrosion–resistant carbon steel flat products from Korea, covering the period August 1, 2004, to July 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On April 18, 2006, the Department published a notice of extension for the preliminary results of this review, extending the time for issuing the preliminary results by 100 days to August 11, 2006. *See Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 19872 (April 18, 2006).

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245–day period to issue its preliminary results to a maximum of 365 days.

We determine that completion of the preliminary results of this review by August 11, 2006, is not practicable because the Department requires additional time to analyze supplemental questionnaire responses and comments recently filed by petitioners and respondents participating in this review. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results to the full 365–day period. Therefore, the preliminary results are now due no later than August 31, 2006. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3) and 777(i)(1) of the Act.

Dated: August 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–13468 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–0405 and 202–482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC''). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006). This review covers the period December 1, 2004, through November 30, 2005. The preliminary results of review are currently due no later than September 5, 2006.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. *See* Section 751(a)(3)(A) of the Act.

Completion of the preliminary results within the 245-day period is not practicable because of the Department's verification schedule of the companies involved in this administrative review. It is also more practicable to align this administrative review with an ongoing new shipper review of honey from PRC. *See Honey from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of New Shipper Review*, 71 FR 37904 (July 3, 2006). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 80 days until November 21, 2006.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: August 9, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–13467 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–560–818)

Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We determine that imports of certain lined paper products (''CLPP'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice. Moreover, we determine that critical circumstances exist with respect to PT. Pabrik Kertas Tjiwi Kimia Tbk (''TK''), but not with respect to all other Indonesian producer/exporters of CLPP from Indonesia. See the ''Critical Circumstances'' section below.

EFFECTIVE DATE: August 16, 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:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). In addition, unless otherwise indicated, all citations to Department of Commerce (''the Department'') regulations refer to the regulations codified at 19 CFR part 351 (2004).

Case History

The preliminary determination in this investigation was published on March 27, 2006. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia*, 71 FR 15162 (March 27, 2006) (''*Preliminary Determination*''). Since the publication of the *Preliminary Determination*, the following events have occurred.

On March 27, 2006, the respondent, TK submitted a letter alleging ministerial errors in the *Preliminary Determination*. On April 20, 2006, the Department issued a memorandum extending the deadline for case briefs, hearing request, and rebuttal briefs from April 26, 2006, and May 1, 2006, respectively, to May 1, 2006 (by noon), and May 8, 2006, respectively. On April 21, 2006, petitioner[1] filed a letter responding to TK's ministerial errors letter. Also on April 21, 2006, the Department issued a memorandum finding that TK's March 27, 2006 allegation did not constitute a ministerial error.

On April 24, 2006, TK requested that the Department postpone the final determination for sixty days. On April 26, 2006, the Department issued a letter responding to letters submitted by TK to the Department on March 22 and 27, 2006. The Department informed TK that the Department remained confident in the integrity of the administrative protective order (''APO'') procedures. On May 1, 2006, TK submitted its case brief and submitted a request for a hearing. Also on May 1, 2006, the Department issued a memorandum describing the Assistant Secretary for Import Administration's tour of a petitioner's facility. On May 5, 2006, TK submitted a letter stating its dissatisfaction with the Department's April 26, 2006, letter.

On May 8, 2006 (officially received on May 9, 2006), petitioner submitted the final business proprietary version of the rebuttal brief for the antidumping duty investigation. On May 9, 2006, the Department issued a memorandum describing an *ex parte* meeting between the Assistant Secretary for Import Administration and the Government of Indonesia (''GOI'') and TK for both the antidumping and countervailing duty investigations. Also on May 9, 2006, TK withdrew its May 1, 2006, request for a hearing in the antidumping duty investigation. Finally, on May 9, 2006, the Department published notification of the postponement of the final determination until no later than 135 days after the publication of the *Preliminary Determination*, (*i.e.*, August 9, 2006).

Period of Investigation

The period of investigation (''POI'') is July 1, 2004, through June 30, 2005.

Scope of Investigation

The scope of this investigation includes certain lined paper products, typically school supplies (for purposes

[1] The petitioner in this investigation is the Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.) (''petitioner'').

of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear–out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this investigation whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this investigation are:

• unlined copy machine paper;
• writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
• three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
• index cards;
• printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
• newspapers;
• pictures and photographs;
• desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
• telephone logs;
• address books;
• columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
• lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
• lined continuous computer paper;
• boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper, '' and ''letterhead''), whether or not containing a lined header or decorative lines;
• Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double–margin vertical ruling line down the center of the page. For a six–inch by nine–inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this investigation are the following trademarked products:

• Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each

ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this investigation is typically imported under headings 4820.10.2010, 4820.102020, 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the investigation is dispositive.

Scope Comments

Prior to the *Preliminary Determination*, Continental Accessory Corporation requested that ''fashion stationery,'' a niche lined paper product, be excluded from the scope of the investigation. We preliminarily found that ''fashion notebooks'' fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that ''fashion notebooks'' fall within the scope of this investigation. Our analysis has not changed since our *Preliminary Determination*.

Facts Available

As stated in the *Preliminary Determination*, section 776(a)(2) of the Act provides that, when a respondent withholds information requested by the Department, fails to provide such information by the deadlines requested, impedes the proceeding, or submits unverifiable information, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. TK withheld information that was requested by the Department, thereby significantly impeding the proceeding. Further, the information that was provided could not be verified, as required by section 782(i) of the Act because TK withdrew from active participation in the review. TK's withdrawal from active participation in the proceeding precluded the Department from verifying TK's information. The Department warned TK of the consequences for failure to respond. *See* Withdrawal Conversation Memorandum; and see second supplemental questionnaire for Section D (January 26, 2006), and third supplemental questionnaire on sections A–C (February 3, 2006). Because the Department was unable to verify TK's information, we cannot use TK's response to calculate a margin. Accordingly, the Department is forced to utilize facts otherwise available. *See* Issues and Decision Memorandum for the Final Results of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia; from Stephen J. Claeys, to Joseph A. Spetrini, at Comment 1 (August 9, 2006) (''Issues and Decision Memo'').

Application of Adverse Inferences for Facts Available

The use of an adverse inference pursuant to section 776(b) is warranted in this investigation because TK has not cooperated to the best of its ability as it willfully chose not to respond to the Department's supplemental questionnaires and withdrew from active participation in the investigation. The statute authorizes the Department to use adverse inferences when the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' *See* section 776(c) of the Act. Here, TK failed to cooperate to the best of its ability to comply with the Department's January 2006, and February 2006 requests for information. Moreover, TK's withdrawal from active participation in the proceeding precluded the Department from verifying TK's information. Accordingly, the Department is justified in utilizing an adverse inference in this proceeding.

We have assigned TK the highest margin stated in the notice of initiation. *See Initiation of Antidumping Duty Investigation: Certain Lined Paper Products from Indonesia*, 70 FR 58374 (October 6, 2005) (''*Initiation Notice*''). A complete explanation of the selection, corroboration, and application of adverse facts available can be found in the *Preliminary Determination. See Preliminary Determination*, 71 FR at 15164–66.

Since the publication of the *Preliminary Determination*, interested parties have commented on our application of adverse facts available with respect to the LTFV determination. All AFA issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file in the Central Records Unit, Main Commerce Building, Room B–099, and is accessible on the Web at http://ia.ita.doc.gov/frn/index/html. Accordingly, for the final determination, we continue to use the highest margin stated in *Initiation Notice* for TK. The ''All Others'' rate remains unchanged as well. *See* Decision Memo at Comments 1–11.

Final Critical Circumstances Determination

On November 28, 2005, the petitioner in this investigation submitted an allegation of critical circumstances with respect to imports of CLPP from Indonesia. On March 27, 2006, the Department published its *Preliminary Determination* that it had reason to believe or suspect critical circumstances exist with respect to imports of CLPP from Indonesia. *See Preliminary Determination*, 71 FR at 15166–67. We now find that critical circumstances exist for imports of CLPP from Indonesia. *See* Issues and Decision Memo at Comment 12.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all entries of subject merchandise from Indonesia, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for ''all other'' Indonesian exporters. For PT. Pabrik Kertas Tjiwi Kimia Tbk, the Department will direct CBP to continue to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist for the POI:

Manufacturer or Exporter	Margin (percent)
PT. Pabrik Kertas Tjiwi Kimia Tbk	118.63
All Others	97.85

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Indonesia are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 9, 2006.

Joseph A Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E6–13470 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–560–819)

Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of certain lined paper products (CLPP) from Indonesia. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: August 16, 2006.

FOR FURTHER INFORMATION CONTACT: David Layton or David Neubacher, 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) 482–0371 or (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioner in this investigation is the Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.) (petitioner).

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2004 through December 31, 2004.

Case History

The following events have occurred since the announcement of the preliminary

determination on February 7, 2006, and subsequent publication in the **Federal Register** on February 13, 2006. *See Notice of Preliminary Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia*, 71 FR 7524 (February 13, 2006) (*Preliminary Determination*).

Prior to the *Preliminary Determination*, the petitioner submitted comments alleging that the Government of Indonesia (GOI) provided partial forgiveness of the debt owed by the Sinar Mas Group (SMG)/Asia Pulp & Paper (APP) to the Indonesian Bank Restructuring Agency (IBRA) and entrusted and directed creditors of APP to agree to a Master Restructuring Agreement (MRA), which resulted in preferential repayment terms and possible debt forgiveness. The Department did not include these alleged subsidies in its investigation. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled *New Subsidy Allegation*, dated February 10, 2006, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (CRU).

Also on February 10, 2006,[1] PT. Pabrik Kertas Tjiwi Kimia Tbk (TK) submitted comments on the Department's release of proprietary information to the counsel of an ineligible interested party and TK withdrew from the investigation as an active participant, but reserved its right as an interested party[2] to participate in briefings or hearings. The Department spoke with TK's counsel and confirmed the company would not answer further questionnaires and did not expect verification of its information on the record.[3] Following TK's withdrawal from the investigation, TK and the GOI submitted further comments on the record concerning the Department's APO procedures. The petitioner submitted comments on TK's and the GOI's filings on April 21, 2006. We addressed TK's and the GOI's concerns in a letter to the parties on April 26, 2006.[4]

On February 15, 2006, TK submitted ministerial error allegations relating to the *Preliminary Determination*. We addressed these ministerial error allegations in an March 8, 2006 memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled *Ministerial Error Allegations*, which is on file in the CRU.

We issued a supplemental questionnaire to the GOI on February 16, 2006. On February 24, 2006,[5] the GOI submitted a letter to the Department in which it stated that it would not provide a response to the Department's questionnaire. The GOI reiterated TK's concerns over the Department's APO procedures (*see above*) and stated that the GOI would not respond to any request from the Department that would involve the release of proprietary information. However, the GOI did state that it would respond to any requests by the Department for ''understanding Indonesian government laws and regulations and policies on the broader

[1] Per the Department's request, the submission was refiled on March 22, 2006.

[2] Upon learning of this possibility, we immediately contacted counsel for the company to determine its status on the case. The law firm promptly withdrew its application under the Administrative Protective Order (APO) in the cases involving Indonesia and certified destruction of all APO material it had received related to the Indonesia cases. This was done before February 10, 2006. The respondents did not express concern about any other party with APO access.

[3] *See* Memorandum from Susan Kuhbach, Director, to the File regarding Conversation with Counsel for PT. Pabrik Kertas Tjiwi Kimia Tbk.: Respondent's Withdrawal from Active Participation (March 17, 2006, replacing memo placed on the record on February 17, 2006).

[4] *See* Letter from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to Claire Reade, Arnold & Porter LLP regarding Countervailing Duty Investigation: Certain Lined Paper Products from Indonesia (April 26, 2006).

[5] Per the Department's request, the submission was refiled on March 27, 2006.

level.''[6] On March 28, 2006, we sent a letter to the GOI requesting that it clarify statements in its March 27, 2006 letter and also reissued the February 16, 2006 supplemental questionnaire to the government. We received a response to our clarification letter and partial response to our February 16, 2006 supplemental questionnaire on April 7, 2006. As the GOI refused to provide a complete response to our questionnaire and refused to allow the Department to conduct a comprehensive verification of its information on the record, we did not conduct verification.[7]

On March 7, 2006, the Department published notification of alignment of the final determinations in the antidumping and countervailing duty investigations of CLPP from Indonesia. *See Certain Lined Paper Products From India and Indonesia: Alignment of First Countervailing Duty Determination With Antidumping Duty Determination*, 71 FR 11379 (March 7, 2006). The Department subsequently postponed the final determinations for the antidumping and countervailing investigations of CLPP from Indonesia. *See Notice of Postponement of Final Determination of Antidumping and Countervailing Duty Investigations and Extension of Provisional Measures: Certain Lined Paper Products from Indonesia*, 71 FR 26925 (May 9, 2006).

On March 30, 2006, the GOI requested that the Department provide clarification on its possible use of adverse facts available. We addressed the GOI's concerns in a letter to the GOI on April 5, 2006.[8]

On April 19, 2006, we issued a deadline for the receipt of factual information. The GOI, TK and the petitioner submitted factual information on April 24, 2006. The GOI and TK filed responses to the petitioner's factual information on April 26 and 28, 2006, respectively.

We received case briefs from the GOI, TK, and the petitioner on May 1, 2006. The same parties submitted rebuttal briefs on May 8, 2006. No public hearing was held.

On August 4, 2006, we placed publicly available data on the record of the investigation and requested comments from parties on the information. The petitioner, TK and the GOI provided comments and rebuttal comments to the information on August 7 and 8, 2006, respectively.

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[9] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[10] including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear–out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this petition are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper, '' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled,[11] measuring 6 inches by 9 inches;

Also excluded from the scope of these investigations are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™.[12]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen).

[6] *See id.* at 6.

[7] *See* Memorandum from Constance Handley, Program Manager, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding Verification of Government of Indonesia Information (April 19, 2006).

[8] *See* Letter from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to Claire Reade, Arnold & Porter LLP regarding Countervailing Duty Investigation: Certain Lined Paper Products from Indonesia (April 5, 2006).

[9] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic.

[10] There shall be no minimum page requirement for looseleaf filler paper.

[11] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[12] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[13]

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[14]

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[15]

Merchandise subject to this investigation is typically imported under headings 4820.10.2010, 4820.102020, 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classifications are provided for convenience and U.S. Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

Scope Comments

On October 25, 2005, Continental Accessory Corporation (Continental) filed a request to exclude its fashion notebooks from the scope of the investigation of CLPP from India, Indonesia and the People's Republic of China. The petitioner submitted comments on Continental's request on November 16, 2005.

The Department has analyzed both parties' comments and denied Continental's request to have its fashion notebooks excluded from the scope of the investigation. See Memorandum from Damian Felton, International Trade Compliance Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding Scope Exclusion/Clarification Request: Continental Accessory Corporation, dated March 20, 2006, which is on file in the CRU.

Injury Test

Because Indonesia is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On October 31, 2005, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, India, and Indonesia. *See Certain Lined Paper School Supplies From China, India and Indonesia*, 70 FR 62329 (October 31, 2005).

Critical Circumstances

In the *Preliminary Determination*, the Department preliminary determined that critical circumstances did not exist with respect to imports of CLPP from Indonesia, in accordance with 703(e)(1) of the Act, because there was no indication that the respondent in this investigation received subsidies inconsistent with the WTO Subsidies Agreement, *i.e.*, export subsidies.

Since the *Preliminary Determination*, the Department has not received or found additional information on the record that would contradict our preliminary decision that TK does not receive subsidies inconsistent with the WTO Subsidies Agreement. Therefore, in accordance with 705(a)(2) of the Act, we continue to find that critical circumstances do not exist with respect to imports of subject merchandise from Indonesia.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 9, 2006 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which 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 investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the company under investigation, TK. With respect to the ''all others'' rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and

[13] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[14] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[15] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an ''all others'' rate for exporters and producers not individually investigated. In this case, although the rate for the only investigated company is based entirely on facts available under section 776 of the Act, there is no other information on the record upon which we could determine an ''all others'' rate. As a result, we have used the rate for TK as the ''all others'' rate.

Exporter/Manufacturer	Net Subsidy Rate
PT. Pabrik Kertas Tjiwi Kimia Tbk	40.55 percent
All Others	40.55 percent

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the CBP to suspend liquidation of all entries of certain lined paper products from Indonesia which were entered or withdrawn from warehouse, for consumption on or after February 13, 2006, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for subject merchandise for countervailing duty purposes entered on or after June 13, 2006, but to continue the suspension of liquidation of entries made from February 13, 2006, through June 12, 2006.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 9, 2006.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of Adverse Facts Available
Comment 2: Attribution of Subsidies Received by Cross–owned Companies on Input Products
Comment 3: Are Subsidized Logs ''Primarily Dedicated'' to Certain Lined Paper Products?
Comment 4: Provision of Standing Timber at Preferential Rates
Comment 5: Government Ban on Log Exports

Comment 6: Subsidized Funding of Reforestation (Hutan Tanaman Industria (HTI) Program)
Comment 7: Loan Guarantee
Comment 8: Calculation of Subsidy Denominator

[FR Doc. E6–13472 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Commerce Department's International Trade Administration (ITA) and its U.S. Commercial Service posts in India will host a U.S. delegation to the India Business Summit to be led by Under Secretary for International Trade Franklin L. Lavin, November 29–30, 2006, followed by spin-off missions in six Indian cities, December 4–5, 2006. Leaders of U.S. business, industry, education, and state and local government are among those encouraged to take part in the Summit, which will provide access to India's high-level business, industry, and government representatives and insights into the country's trade and investment climate. The spin-off missions in Bangalore, Calcutta, Chennai, Hyderabad, Mumbai, and New Delhi are open to qualified U.S. exporters in a range of sectors; they will include market briefings, networking events, and one-on-one business appointments with prospective agents, distributors, partners, and end-users.

Recruitment Update: Applications for the Summit and/or the spin-off missions will be reviewed on a rolling basis. Recruitment will close October 2, 2006, or earlier, if all available spaces are filled prior to that date. More information is available at *http://export.gov/Indiamission.*

FOR FURTHER INFORMATION CONTACT: Nancy Hesser at the Department of Commerce in Washington, DC. Telephone: (202) 482–4663. Fax: (202) 482–2718.

Dated: August 10, 2006.

Nancy Hesser,

Manager, Commercial Service Trade Missions Program.

[FR Doc. E6–13471 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Steller Sea Lion Protection Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA); Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 16, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dan Lew, (206) 526–4252 or *Dan.Lew@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) plans to conduct a survey with the objective of measuring the preferences that U.S. residents have toward protecting the Steller sea lion (Eumetopias jubatus), which is a listed species under the Endangered Species Act of 1973 (16 U.S.C. 35). NMFS is charged with protecting this species and has identified numerous potential protection options, and begun implementing selected options, to this end (68 FR 204). Since different management options are available to protect Steller sea lions, it is important to understand the public's attitudes toward the variety of potential impacts on Steller sea lions, Alaskan fisheries and fishing communities, and the nation. This information is currently not available, yet is crucial to ensure the efficient management of Alaskan fisheries and protection of Steller sea lions.

II. Method of Collection

Data will be collected primarily through a mail survey of a random sample of U.S. households. Additional data will be collected in telephone interviews with individuals who do not respond to the mail survey.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 2,400 by mail, 2,000 by telephone.
Estimated Time Per Response: 30 minutes per mail respondent, 6 minutes per telephone respondent.
Estimated Total Annual Burden Hours: 1,400.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 10, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–13386 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 16, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305) 361–4482 or *Steve.Turner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The participants in most Federally-managed fisheries in the Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. A subset of these vessels also provide information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

II. Method of Collection

The information is submitted on paper forms. Logbooks are completed daily and submitted on either a by trip or monthly basis, depending on the fishery. Fixed costs are submitted on an annual basis. Other information is submitted on a trip basis.

III. Data

OMB Number: 0648–0016.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; individuals or households.
Estimated Number of Respondents: 5,658.
Estimated Time Per Response: 20 minutes for a catch and effort report for the Columbian waters fishery; 10 minutes for logbook trip reports in other fisheries; 2 minutes for a negative catch and effort or logbook trip report; 12 minutes for a headboat logbook in the Gulf of Mexico reef fishery and coastal migratory pelagic fisheries and the South Atlantic snapper-grouper fishery; 15 minutes for an aquacultured live rock logbook report; 10 minutes for a trip operating cost survey from the 20% sample of fishermen selected; 30 minutes for an annual fixed-cost economic survey from the 20% sample of fishermen selected; 10 minutes for cost data in the swordfish fishery; and 15 minutes for a discard and marine mammal/bird/sea turtle interaction report from the 20% sample of fishermen selected.
Estimated Total Annual Burden Hours: 16,773.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 10, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–13387 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080806D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to renew and to modify scientific research permits; request for comments.

SUMMARY: Notice is hereby given that NMFS has received applications to modify and renew permits for scientific research from the Southwest Fisheries Science Center (SWFSC) in Santa Cruz, CA (1044) and Dr. Michael Fawcett (M. Fawcett) in Bodega, CA (1045). This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received no later than 5 p.m. Pacific Standard Time on September 15, 2006.

ADDRESSES: Comments submitted by e-mail must be sent to the following address *FRNpermits.SR@noaa.gov*. The applications and related documents are available for review by appointment, for permits 1044 Modification 4 and 1045 Modification 1: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 (ph: 707–575–6097, fax: 707–578–3435, e-mail: *Jeffrey.Jahn@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at phone number 707–575–6097, or e-mail: *Jeffrey.Jahn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to Federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*), endangered Central California Coast coho salmon (*O. kisutch*), threatened California Coastal Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Northern California steelhead (*O. mykiss*), threatened Central California Coast steelhead (*O. mykiss*), threatened Central Valley steelhead (*O. mykiss*), threatened South-Central California Coast steelhead (*O. mykiss*), and endangered Southern California steelhead (*O. mykiss*).

Permit Extension and Modification Request Received

SWFSC requests a 5–year extension and modification of permit (1044) for take of Southern Oregon/Northern California Coast coho salmon, Central California Coast coho salmon, California Coastal Chinook salmon, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Northern California steelhead, Central California Coast steelhead, Central Valley steelhead, South-Central California Coast steelhead, and Southern California steelhead to conduct salmonid population distribution, population abundance, life history, population dynamics, and population genetics research in various streams and estuaries throughout California.

SWFSC requests authorization for an estimated annual non-lethal take of 500 juvenile California Coastal Chinook salmon, 500 juvenile Sacramento River winter-run Chinook salmon, and 500 juvenile Central Valley spring-run Chinook salmon, with no more than 2.5 percent unintentional mortality to result from capture (by electrofishing, seine, trap, or hook and line), handling, and release of fish. SWFSC also requests authorization for an estimated annual non-lethal take of 3,500 juvenile Southern Oregon/Northern California Coast coho salmon and 2,000 juvenile Central California Coast coho salmon, with no more than 2.5 percent unintentional mortality to result from capture (by electrofishing, seine, trap, or hook and line), handling, sampling (by collection of scales, fin clips, or stomach contents), marking (using fin clips, passive integrated transponder (PIT) tags, visible implant elastomer (VIE) tags, or visible implant alpha (VI alpha) tags), and release of fish.

SWFSC also requests authorization for an estimated annual non-lethal take of 25,000 juvenile Northern California steelhead, 20,000 juvenile Central California Coast steelhead, 5,000 juvenile Central Valley steelhead, 35,000 juvenile South-Central California Coast steelhead, and 3,000 juvenile Southern California steelhead, with no more than 5 percent unintentional mortality to result from capture (by electrofishing, seine, trap, or hook and line), handling, sampling (by collection of scales, fin clips, or stomach contents), marking (using fin clips, PIT tags, VIE tags, or VI alpha tags), and release of fish.

SWFSC also requests authorization for an estimated annual non-lethal take of 1,000 adult Southern Oregon/Northern California Coast coho salmon and 250 adult Northern California steelhead with no more than 1 percent unintentional mortality to result from capture (by seine, trap, or hook and line), handling, sampling (by collection of scales or fin clips), marking (using fin clips, PIT tags, or external anchor tags), and release of fish.

In addition, SWFSC requests take of previously dead adult carcasses of Southern Oregon/Northern California Coast coho salmon, Central California Coast coho salmon, California Coastal Chinook salmon, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Northern California steelhead to conduct salmonid population distribution, population abundance, life history, population dynamics, and population genetics research in various streams throughout California. SWFSC requests authorization to handle, tissue sample, and release an estimated 2,000 Southern Oregon/Northern California Coast coho salmon adult carcasses, 250 Central California Coast coho salmon adult carcasses, 250 California Coastal Chinook salmon adult carcasses, 500 Sacramento River winter-run Chinook salmon adult carcasses, 1,000 Central Valley spring-run Chinook salmon adult carcasses, and 250 Northern California steelhead adult carcasses annually. In addition, SWFSC requests intentional lethal take of Northern California steelhead, Central California Coast steelhead, Central Valley steelhead, and South-Central California Coast steelhead to conduct salmonid life history, population dynamics, and population genetics research in various streams, estuaries, and coastal waters of California. SWFSC requests authorization for an estimated annual lethal take of 1,000 juvenile Northern California steelhead, 1,000 juvenile Central California Coast steelhead, 1,000 juvenile Central Valley steelhead, 400 adult Central Valley steelhead, 1,000 juvenile South-Central California Coast steelhead, and 100 adult South-Central California Coast steelhead to be captured (by electrofishing, seine, trap, or hook and line), handled, and sacrificed for collection of various tissues.

Renewal and Modification Request Received

M. Fawcett requests to renew and modify a 5–year permit (1045) for take of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to conduct fish population monitoring in the Russian River watershed (including Green Valley Creek, Mark West Creek, Santa Rosa Creek, Maacama Creek, Sausal Creek, Gird Creek, and Miller Creek) in Sonoma County, California. M. Fawcett requests authorization for an estimated annual non-lethal take of 150 juvenile Central California Coast coho salmon, 50 juvenile California Coastal Chinook salmon, and 4,900 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, and release of fish. M. Fawcett also requests authorization for an estimated annual non-lethal take of 100 juvenile Central California Coast coho salmon and 300 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, fin clipping, and release of fish.

M. Fawcett also requests take of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to conduct fish population monitoring in the estuary and watershed of Salmon Creek in Sonoma County, California. M. Fawcett requests authorization for an estimated annual non-lethal take of 25 juvenile Central California Coast coho salmon, 50 juvenile California Coastal Chinook salmon, and 900 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, and release of fish. M. Fawcett also requests authorization for an estimated annual non-lethal take of 50 juvenile Central California Coast coho salmon and 100 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, fin clipping, and release of fish.

In addition, M. Fawcett requests take of juvenile Northern California steelhead and Central California Coast steelhead to conduct fish population and genetics monitoring in numerous small coastal streams between Gualala River and Estero Americano in Sonoma County, California. M. Fawcett requests authorization for an estimated annual non-lethal take of 50 juvenile Northern California steelhead and 25 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, and release of fish. M. Fawcett also requests authorization for an estimated annual non-lethal take of 200 juvenile Northern California steelhead and 75 juvenile Central California Coast steelhead, with no more than 1 percent unintentional mortality to result from capture (by seine), handling, fin clipping, and release of fish.

Dated: August 11, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources,National Marine Fisheries Service.

[FR Doc. E6–13465 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.080806E]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of a proposed Hood Canal Summer Chum Salmon Recovery Plan (Plan) for the Evolutionarily Significant Unit (ESU) of Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Salmon (*Oncorhynchus keta*) for public review. This proposed Recovery Plan consists of the Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Salmon Recovery Plan prepared by the Hood Canal Coordinating Council (the HCCC Plan) and a NMFS Supplement to the HCCC Plan. NMFS is soliciting review and comment on the proposed Plan from the public and all interested parties.

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific Daylight Time on October 16, 2006.

ADDRESSES: Please send written comments and materials to Elizabeth Babcock, National Marine Fisheries Service, Salmon Recovery Division, 7600 Sandpoint Way N.E. Seattle, WA 98115. Comments may also be submitted by e-mail to: *HCsalmonplan@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Hood Canal Salmon Plan. Comments may also be submitted via facsimile (fax) to 206–526–6426.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Carol Joyce by calling 503–230–5408 or by e-mailing a request to *carol.joyce@noaa.gov*, with the subject line ''CD-ROM Request for Hood Canal

Salmon Plan''. Electronic copies of the Plan are also available on-line on the Hood Canal Coordinating Council Web site, www.hccc.wa.gov/. A description of previous public and scientific review, including scientific peer review, can be found in the NMFS Supplement to the Plan.

FOR FURTHER INFORMATION CONTACT: Elizabeth Babcock, NMFS Puget Sound Salmon Recovery Coordinator, at 206–526–4505, or Elizabeth Gaar, NMFS Salmon Recovery Division, at 503–230–5434.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate: (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon ESUs to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. The agency's approach to recovery planning has been to support and participate in locally led collaborative efforts involving local communities, state, tribal, and Federal entities, and other stakeholders to develop recovery plans. As the lead ESA agency for listed salmon, NMFS is responsible for reviewing these locally produced recovery plans and deciding whether adoption is merited.

On November 15, 2005, the Hood Canal Coordinating Council (HCCC), a regional council of governments, presented its locally developed listed species recovery plan (Plan) to NMFS. The HCCC is a watershed-based council of governments that was established in 1985 in response to concerns about water quality problems and related natural resource issues in the watershed. It was incorporated in 2000 as a 501(c)3, Public Benefit Corporation under RCW 24.03. Its board of directors includes the county commissioners from Jefferson, Kitsap, and Mason counties, and elected tribal council members from the Skokomish and Port Gamble S'Klallam Tribes. It also includes a slate of ex-officio board members composed of representatives from state and Federal agencies.

After review of the Plan, NMFS has added a Supplement, which describes how the Plan satisfies ESA recovery plan requirements, including qualifications and additional actions that NMFS believes are necessary to support recovery, and describes the agency's intent to use the Plan as an ESA recovery plan for the Hood Canal Summer Chum ESU. The Plan, including the Supplement, which together constitute NMFS' proposed recovery plan for Hood Canal summer chum, is now available for public review and comment. As noted above, it is available at the Hood Canal Coordinating Council Web site, *www.hccc.wa.gov/*, and at the NMFS Northwest Region Salmon Recovery Division Web site, *www.nwr.noaa.gov/Salmon-Recovery-Planning/index.cfm*. NMFS will consider all substantive comments and information presented during the public comment period (see **DATES**).

By endorsing a locally developed recovery plan, NMFS is making a commitment to implement the actions in the Plan for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar implementation commitments from state agencies and local governments. NMFS expects the Plan to help NMFS and other Federal agencies take a more consistent approach to future ESA section 7 consultations. For example, the Plan will provide greater biological context for the effects that a proposed action may have on the listed ESU. This context will be enhanced by adding recovery plan science to the ''best available information'' for section 7 consultations. Such information includes: viability criteria for the ESU and its independent populations; better understanding of and information on limiting factors and threats facing the ESU; better information on priority areas for addressing specific limiting factors; and better geographic context for where the ESU can tolerate varying levels of risk.

ESUs Addressed and Planning Area

The Plan covers the range of the Hood Canal summer-run chum salmon ESU (*Oncorhynchus keta*), listed as threatened on March 25, 1999 (64 FR 14508). NMFS reviewed the ESU in 2005 and determined that it still warranted ESA protection (Good et al., 2005). The range of the Hood Canal summer chum is the northeastern portion of the Olympic Peninsula in Washington State. The ESU includes summer-run chum salmon populations that spawn naturally in tributaries to Hood Canal as well as in Olympic Peninsula rivers between Hood Canal and Dungeness Bay. The recovery planning area includes portions of the Washington counties of Jefferson, Mason, Kitsap, and Clallam; the reservations of the Skokomish, Port Gamble S'Klallam, and Jamestown S'Klallam Tribes; and portions of Water Resource Inventory Areas (WRIAs) 14, 15, 16, 17, and 18.

The Plan focuses on the recovery of Hood Canal summer chum salmon. Two other ESA-listed salmonid species, Puget Sound Chinook salmon and Coastal/Puget Sound bull trout, are indigenous to the Hood Canal and eastern Strait of Juan de Fuca regions encompassed by the Plan. The Shared Strategy for Puget Sound, a nonprofit organization that coordinates recovery planning for Puget Sound Chinook, submitted a recovery plan for Puget Sound Chinook salmon to NMFS and on December 27, 2005, NMFS published a Notice of Availability of the Shared Strategy plan as a proposed recovery plan for Puget Sound Chinook (70 FR 76445). Coastal/Puget Sound bull trout are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS), and are the subject of a recovery plan published by the USFWS in May 2004. Many of the actions identified in the Hood Canal summer chum plan will also benefit the latter two species. The Shared Strategy and Hood Canal Coordinating Council will work together to make their respective recovery efforts consistent and complementary.

The Plan

The Plan is one of many ongoing salmon recovery planning efforts funded under the Washington State Strategy for Salmon Recovery. The State of Washington designated HCCC as the Lead Entity for salmon recovery planning for the Hood Canal watershed. The HCCC has included extensive public involvement in its recovery planning process.

The Plan draws extensively on the research and publications of the

Summer Chum Salmon Conservation Initiative (SCSCI) (WDFW and PNPTT 2000). The SCSCI process, initiated in 2000, is an ongoing planning forum and mechanism by which the Hood Canal fisheries co-managers are engaged in the development and implementation of harvest management regimes and supplementation programs designed to bring about the recovery of summer chum salmon. The co-managers directly responsible for fisheries harvest and hatchery management for the Hood Canal and the eastern Strait of Juan de Fuca watersheds are the Point No Point Treaty Tribes (PNPTT) (Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam), which have Treaty rights to usual and accustomed fishing in this area, and the Washington State Department of Fish and Wildlife (WDFW). These regimes and programs are designed to provide opportunities for the recovery of summer chum salmon when integrated with aspects of habitat protection and restoration, also considered in the process. Annual reviews are documented in supplemental reports (e.g., WDFW and PNPTT 2003 and PNPTT and WDFW 2003), which can be found at *wdfw.wa.gov/fish/chum/chum.htm*.

The HCCC Plan makes extensive use of the SCSCI and subsequent supplemental reports, as well as the watershed plans for WRIAs 14, 15, 16, 17, and 18 (Correa 2002; Correa, 2003; Kuttel, 2003). The fishery co-managers, WDFW and PNPTT, participated in the development of aspects of this Plan, and it is designed to support and complement the co-managers' fisheries and interim salmon recovery goals and objectives.

As in other regional domains defined by NMFS Northwest Region, the Hood Canal planning effort was supported by a NMFS-appointed science panel, the Puget Sound Technical Recovery Team (PSTRT). This panel of seven scientific experts from Federal, state, local, and tribal organizations identified historical populations, recommended ESU viability criteria, and provided scientific review of the Plan. In addition, staff biologists of the Skokomish and Port Gamble S'Klallam Tribes reviewed the Plan at each stage, and County staff reviewed the land use planning sections. NMFS Northwest Region staff biologists also reviewed draft versions of the Plan and provided substantial guidance for revisions.

The Plan incorporates the NMFS viable salmonid population (VSP) framework as a basis for biological status assessments and recovery goals for Hood Canal summer chum salmon, and the Supplement incorporates the most recent work of the PSTRT on viability criteria for this ESU.

The PSTRT identified two independent populations of Hood Canal summer chum. The Strait of Juan de Fuca population spawns in rivers and streams entering the eastern Strait and Admiralty Inlet. The Hood Canal population includes all spawning aggregations within the Hood Canal catchment (Ruckelshaus et al., 2006).

Sixteen historically present ''stocks'' made up the Hood Canal summer chum salmon, of which eight are extant. The co-managers identified these stocks in the SCSCI and subsequent supplemental reports (WDFW and PNPTT 2000, 2003). The PSTRT considers these stocks ''subpopulations, which contribute to either the Hood Canal or Strait of Juan de Fuca population, depending on their geographical location'' (Currens, 2004, p. 19). As noted in the Plan, the PSTRT report stated that summer chum salmon in the Hood Canal and eastern Strait are probably ''a single metapopulation held together historically by a stepping stone pattern of demographic exchange'' (Currens, ibid.), created by straying between adjacent streams.

For planning purposes, the Plan assigned the 16 stocks to six geographic groupings called ''conservation units.'' The Plan organizes descriptions of population status, limiting factors and threats, and recommended site-specific actions based on these conservation units.

Causes for Decline

The Plan identifies the main causes for the decline of the Hood Canal summer chum as fishery exploitation/harvest and cumulative habitat loss.

Harvest: The Plan draws upon data and conclusions from the SCSCI indicating that harvest (including U.S. and Canada fisheries) was a factor in the decline of summer chum salmon prior to 1992. Exploitation rates ranging from 21 percent for the Salmon/Snow and Jimmycomelately populations to 90 percent for the Quilcene population were seen to correlate with declines in escapements. Under the SCSCI, as adopted by the recovery plan, total exploitation rates are expected to average 10.8 percent and 8.8 percent for the Hood Canal and Strait of Juan de Fuca populations, respectively. However, recent exploitation rates have been lower, generally below 3 percent and 1 percent for Hood Canal and Strait of Juan de Fuca populations, respectively.

Habitat: Chapter 6 of the Plan summarizes overall habitat issues for the ESU. More detail is included in the Plan's individual chapters on conservation units. NMFS' 2005 Report to Congress on the Pacific Coastal Salmon Recovery Fund (PCSRF) described habitat-related factors for decline as the following: (1) degraded floodplain and mainstem river channel structure; (2) degraded estuarine conditions and loss of estuarine habitat; (3) riparian area degradation and loss of in-river large woody debris in mainstem; (4) excessive sediment in spawning gravels; (5) reduced stream flow in migration areas; (6) degraded nearshore conditions. These factors are all covered in detail in the Plan.

Recovery Goals and Strategy

The Plan provides a strategy to achieve its overall goal of recovery and delisting of the summer-run chum salmon in Hood Canal and the eastern Strait of Juan de Fuca. The Plan's recovery strategy focuses on habitat actions and incorporates the co-managers' harvest management and hatchery supplementation programs that are ongoing as part of the SCSCI.

The Plan adopts ''interim'' (for the next 10 years) recovery goals developed by the co-managers in the SCSCI (PNPTT and WDFW 2003) for each of the stocks that make up the two extant summer chum populations. The PSTRT provided its recommendations for viability criteria for the two populations that make up the ESU; these criteria describe characteristics predicted to result in a negligible risk of extinction for the ESU in the long term (100 years). NMFS has asked the PSTRT to continue to work with HCCC staff and the co-managers to integrate these long-term criteria for the ESU with the interim recovery goals for the component stocks described in the Plan. This will not necessitate a revision of the Plan but will be considered part of the adaptive management and implementation phase of the recovery plan.

The co-managers set interim stock-level recovery goals in terms of abundance, escapement, productivity, and diversity of natural-origin recruits. The co-managers' interim ESU-wide recovery criterion is for all eight of the extant stocks to meet all the individual stock recovery goals. The Plan addresses the VSP parameter of life history and genetic diversity through habitat protection and restoration actions encompassing the entire geographic extent of the ESU, and reintroduction of natural-origin summer chum aggregations to several streams where they were historically present.

Management Actions

The Plan lists potential sources of funding, administrative paths, and target activities that could be undertaken for salmon recovery in the region (pp. 43–45), then makes site-specific recommendations based on conservation units (Chapters 7–12). A full range of policy options for acquiring, funneling, and allocating resources for salmon habitat conservation was developed and presented to the members of the HCCC Board for review and decision-making.

Habitat: The first priority level of recovery would focus on the eight extant stocks' watersheds and associated marine areas (nearshore areas within a one-mile radius of the watershed's estuary). The second priority level of recovery adds the eight extirpated stocks' watersheds and associated marine areas (nearshore areas within one mile radius of the watershed's estuary). The HCCC provided a summary table for the Supplement, linking limiting factors and recommended actions by conservation unit and stock.

Harvest: The co-managers developed, through the SCSCI, a harvest management strategy called the Base Conservation Regime (BCR) (details in WDFW and PNPTT 2000, section 3.5.6.1). The intent of the BCR is to initiate rebuilding, by fostering incremental increases in escapement over time, while providing a limited opportunity for fisheries conducted for the harvest of other salmon species. The BCR will pass through to spawning escapement, on average, in excess of 95 percent of the Hood Canal-Strait of Juan de Fuca summer chum salmon abundance in U.S. waters.

The harvest management component of the SCSCI was provided to NMFS in 2000 as the co-managers' proposed joint Resource Management Plan (RMP) for managing salmon fisheries to meet summer chum salmon ESA conservation needs. NMFS subsequently determined that the RMP adequately addressed all requirements specified under Limit 6 of the ESA 4(d) Rule for Hood Canal summer chum salmon (66 FR 31600, June 12, 2001). More information can be found at *www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/HC-Chum-RMP.cfm*. NMFS and the co-managers will continue to evaluate the performance of the harvest management strategy as new information becomes available, consistent with the evaluation and adaptive management elements of the SCSCI and the Plan.

Hatcheries: The Plan incorporates the supplementation and reintroduction approach implemented by the co-managers under the SCSCI beginning in 1992 to conserve summer chum salmon in the action area. Under the SCSCI, artificial production directed at summer chum recovery would be applied only to preserve stocks identified as at moderate or high risk of extinction, and to reintroduce naturally spawning aggregations in selected watersheds where the indigenous stocks had become extirpated. In addition, implementation of conservation hatchery actions was guided by these premises: ''Commensurate, timely improvements in the condition of habitat critical for summer chum salmon survival are necessary to recover the listed populations to healthy levels. . . The intent of the supplementation efforts is to reduce the short-term extinction risk to existing wild populations, and to increase the likelihood of their recovery'' (the Plan, p. 54).

NMFS agrees with the PSTRT's conclusion in its 2005 review of the Plan that the hatchery strategy to supplement summer chum in Hood Canal is very well designed and has been well implemented throughout its tenure. The monitoring information resulting from the hatchery program is exemplary, and the co-managers have used the data to adjust their supplementation strategies as needed.

Time and Cost Estimates

The ESA section 4(f)(1) requires that the recovery plan include ''estimates of the time required and the cost to carry out those measures needed to achieve the Plan's goal and to achieve intermediate steps toward that goal'' (16 U.S.C. 1533(f)(1)). Appendix D of the recovery plan (Costing of the Hood Canal Coordinating Council's Summer Chum salmon Recovery Plan, August 2004) provides cost estimates to carry out specific recovery actions for the first 10 years of plan implementation. The cost estimates cover all capital projects judged to be feasible in the six conservation units, and non-capital work projected to occur over the 10–year period.

The plan estimates that recovery of the Hood Canal Summer Chum ESU could take 50 to 100 years. NMFS supports the policy determination to focus on the first 10 years of implementation, with the proviso that specific actions and costs will be estimated before the end of this first implementation period for subsequent years to achieve long-term goals, and to proceed until a determination is made that listing is no longer necessary. Because of the impracticability of estimating all actions and costs over 50 to 100 years, NMFS agrees that 10 years is a reasonable period of time during which to implement and evaluate the actions identified in the Plan to gain a preliminary view of the status and trends of important recovery indicators and make mid-course corrections as needed.

Adaptive Management

The Plan has extensive provisions for monitoring, evaluation, and adaptive management. In addition, the HCCC is developing a more detailed monitoring and adaptive management plan to be in place by December 2006 as part of the overall implementation program. NMFS believes the adaptive management and monitoring element of the Plan is adequate.

Implementation

Implementation of the Plan is designed to ultimately achieve goals for the four VSP criteria of abundance, productivity, diversity, and spatial structure. The PSTRT will continue its collaborative work with the co-managers to integrate and refine the interim goals and long-term criteria for abundance and productivity. The PSTRT has generally described diversity and spatial structure criteria; NMFS expects that management objectives for diversity and spatial structure will be further refined over the next several years as part of recovery plan implementation. As these objectives are refined, the recovery plan and resource management plans will incorporate both the objectives and analyses of the effectiveness of the plans in meeting all four VSP objectives based on information gathered through the adaptive management programs.

NMFS concludes that the Plan makes substantial progress toward defining objective and measurable criteria that, when met, would result in a determination that the species be removed from the list. It is understood that additional work will be done to refine and complete ESU-level viability criteria and to reconcile the interim stock-level goals accordingly. Based on this work, NMFS will confirm final delisting criteria in the final **Federal Register** notice for this recovery plan.

In accordance with its responsibilities under section 4(c)(2) of the Act, NMFS will conduct status reviews of Hood Canal chum salmon once every five years to evaluate the ESU's status and determine whether the ESU should be removed from the list or changed in status. Such evaluations will take into account the following:

- The biological recovery criteria (Ruckelshaus *et al.*, 2006) and listing factor (threats) criteria described in the Supplement.
- The management programs in place to address the threats.
- Principles presented in the Viable Salmonid Populations paper (McElhany et al. 2000).
- Co-managers' interim stock-level recovery goals.
- Best available information on population and ESU status and new advances in risk evaluation methodologies.
- Other considerations, including: the number and status of extant spawning groups; the status of the major spawning groups; linkages and connectivity among groups; diversity groups and the two populations; the diversity of life history and phenotypes expressed; and considerations regarding catastrophic risk.
- Principles laid out in NMFS' Hatchery Listing Policy (70 FR 37204, June 28, 2005).

Public Comments Solicited

NMFS solicits written comments on the proposed Recovery Plan, including the Supplement. The Supplement states NMFS' assessment of the Plan's relationship to ESA requirements for recovery plans and specifies recovery (de-listing) criteria for the ESU. The Supplement also explains the agency's intent to use the Plan to guide and prioritize Federal actions in the ESU and to ultimately adopt the Plan as a final Federal recovery plan for the ESU. All substantive comments received by the date specified above will be considered prior to NMFS' decision whether to endorse the Plan as a final recovery plan. Additionally, NMFS will provide a summary of the comments and responses through its regional Web site and provide a news release for the public announcing the availability of the response to comments. NMFS seeks comments particularly in the following areas: (1) the analysis of limiting factors and threats; (2) the recovery strategies and measures; (3) the criteria for removing the ESU from the Federal list of endangered and threatened wildlife and plants; and (4) meeting the ESA requirement for estimates of time and cost to implement recovery actions by soliciting implementation schedules (see discussion in the Supplement).

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Washington Department of Fish and Wildlife (WDFW) and the Point No Point Treaty Tribes (PNPTT). 2000. Summer chum salmon conservation initiative - an implementation plan to recover summer chum in the Hood Canal and Strait of Juan de Fuca region. Fish Program, Washington Department of Fish and Wildlife. Olympia, Washington. 424p. plus three appendices.

2003. Summer chum salmon conservation initiative - an implementation plan to recover summer chum in the Hood Canal and Strait of Juan de Fuca region. Supplemental report No. 3. Annual report for the 2000 summer chum salmon return to the Hood Canal and Strait of Juan de Fuca region. Washington Department of Fish and Wildlife, Olympia, Washington. 123 p.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 11, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–13463 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 060804210–6210–01]

Science Advisory Board; The Minority Report of the NOAA Science Advisory Board's Hurricane Intensity Research Working Group, External Review of NOAA's Hurricane Intensity Research and Development Enterprise

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA Research (OAR) publishes this notice on behalf of the NOAA Science Advisory Board (SAB) to announce the availability for public comment of the minority report of the SAB Hurricane Intensity Research Working Group (here called the HIRWG) external review of NOAA's Hurricane Intensity Research and Development Enterprise. The report of the HIRWG has been prepared pursuant to the request from the Under Secretary of Commerce for Oceans and Atmosphere to the SAB to conduct an external review of NOAA's Hurricane Intensity research and development enterprise. A preliminary report was presented for a 30-day public comment period starting on May 24, 2006. Since that time, a minority report has been written that presents a view point of a minority of

the HIRWG. This minority report is now being submitted for public comment.

DATES: Comments on this minority report must be submitted by 5 p.m. EDT on September 15, 2006.

ADDRESSES: The Minority Report of the HIRWG will be available on the NOAA Science Advisory Board Web site at *http://www.sab.noaa.gov/reports/HIRWG_Minority_Report_0806.pdf.* For reference, the preliminary report may also be viewed at *http://www.sab.noaa.gov/Reports/Reports.html.*

The public is encouraged to submit comments electronically to *noaa.sab.comments2@noaa.gov.* For individuals who do not have access to a computer, comments may be submitted in writing to: NOAA Science Advisory Board (SAB) c/o Dr. Cynthia Decker, Silver Spring Metro Center Bldg 3 Room 11117, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11117, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Cynthia.Decker@noaa.gov*) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: The report of the HIRWG is composed pursuant to the request from the Under Secretary of Commerce for Oceans and Atmosphere to the SAB to conduct an external review of NOAA's hurricane intensity research and development enterprise. This review addresses questions and proposes recommendations regarding the appropriateness of the mix of scientific activities conducted and/or sponsored by NOAA to its mission and on the organization of NOAA hurricane intensity research and science enterprise.

The minority report of the HIRWG has been drafted to provide additional viewpoints to the majority report of the HIRWG. The minority report provides alternative ideas regarding modeling and prediction activities, observations and data collection, laboratory experiments, and NOAA's organization in relation to hurricane intensity research and development.

The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary on long- and short-term strategies for research, education, and application of science to resource management and environmental assessment and prediction.

NOAA welcomes all comments on the content of the minority report. We also request comments on any inconsistencies perceived within the report and possible omissions of important topics or issues. For any shortcoming noted within the draft report, please propose specific remedies. This minority report is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated where appropriate, and a final report will be posted on the SAB Web site.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, and e-mail address(es). Overview comments on the section should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page numbers to which they apply. Please number all pages and place your name at the top of each page.

Dated: August 9, 2006.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–13388 Filed 8–15–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–44]

36(b)(1) Arms Sales Notification; Republication

Editorial Note: FR Doc. 06–6727 was originally published at page 44634 in the issue of Monday, August 7, 2006. In that publication a graphic was improperly substituted. The corrected document is republished below in its entirety.

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 06–44 with attached transmittal and policy justification.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 1505–01–D

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 JUL 2006

In reply refer to:
I-06/008213

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 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. 06-44, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Spain for defense articles and services estimated to cost $73 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**

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. 06-44

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:** Spain

(ii) **Total Estimated Value:**

Major Defense Equipment*	$54 million
Other	$19 million
TOTAL	$73 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 43 T55-GA-714A Turbine Engines, modification and fielding kits, test equipment, technical assistance, spare and repair parts, and other related elements of logistics support.

(iv) **Military Department:** Army (VMG)

(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:** None

(viii) **Date Report Delivered to Congress:** 27 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain – Turbine Engines

The Government of Spain has requested a possible sale of 43 T55-GA-714A Turbine Engines, modification and fielding kits, test equipment, technical assistance, spare and repair parts, and other related elements of logistics support. The estimated cost is $73 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Spain and furthering standardization and interoperability with U.S. forces.

Spain needs these engines to replace those used in the CH-47 Chinook aircraft supporting coalition operations. The proposed sale will enhance Spain's ability to continue to engage in coalition warfare along with the U.S. Army. Spain will have no difficulty absorbing these additional engines into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Honeywell International of Phoenix Arizona. 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 U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Editorial Note: FR Doc. 06–6727 was originally published at page 44634 in the issue of Monday, August 7, 2006. In that publication a graphic was improperly substituted. The corrected document is republished in its entirety.

[FR Doc. R6–6727 Filed 8–15–06; 8:45 am]

BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–43]

36(b)(1) Arms Sales Notification; Republication

Editorial Note: FR Doc. 06–6728 was originally published at page 44637 in the issue of Monday, August 7, 2006. In that publication a graphic was improperly substituted. The corrected document is republished below in its entirety.

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 06–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 1505–01–D

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

2 8 JUL 2006
In reply refer to:
I-06/008039

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 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. 06-43, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Netherlands for defense articles and services estimated to cost $200 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**

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. 06-43

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:** Netherlands

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 2 million
Other	$198 million
TOTAL	$200 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** establishment of a Continental United States (CONUS)-based Royal Netherlands Air Force F-16 Formal Training Unit (FTU) to include: 130 Laser Guided Training rounds, 150,000 20mm Target Practice training bullets, 3,750 BDU-33 low-drag training bombs, 875 MK-106 high-drag training bombs, pilot training, JP-8 fuel, air refueling support, CONUS base start up, base operating support, facilities, and other related operational/logistics services and support.

(iv) **Military Department:** Air Force (NAB)

(v) **Prior Related Cases, if any:**
FMS case YFH - $24 million - 1Oct90
FMS case YFF - $16 million - 4Dec89

(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:** 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands – F-16 Pilot Training and Logistics Support

The Government of the Netherlands has requested a possible sale to establish a Continental United States (CONUS)-based Royal Netherlands Air Force F-16 Formal Training Unit (FTU) to include: 130 Laser Guided Training rounds, 150,000 20mm Target Practice training bullets, 3,750 BDU-33 low-drag training bombs, 875 MK-106 high-drag training bombs, pilot training, JP-8 fuel, air refueling support, CONUS base start up, base operating support, facilities, and other related operational/logistics services and support. The estimated cost is $200 million.

This proposed sale contributes to the foreign policy and national security objectives of the U.S. by improving the military capabilities of the Netherlands and enhancing standardization and interoperability with U.S. forces.

Springfield-Beckley Air National Guard Base, Ohio is the location where the Netherlands Air Force will train aircrews in aircraft operations and tactics. This training will enhance the Royal Netherlands Air Force's ability to continue contributions to the Global War on Terrorism, to North Atlantic Treaty Organization air policing operations in Afghanistan, as well as, to possible future coalition operations.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The U.S. Air Force will provide program management for the FTU. The Ohio Air National Guard will provide instruction, flight operations, and maintenance support and facilities. There is no prime contractor involved in this program. 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 U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Editorial Note: FR Doc. 06–6728 was originally published at page 44637 in the issue of Monday, August 7, 2006. In that publication a graphic was improperly substituted. The corrected document is republished in its entirety.

[FR Doc. R6–6728 Filed 8–15–06; 8:45 am]

BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement To Evaluate the Impacts Associated With a Previously Authorized Pier Extension in Strait of Georgia at Cherry Point, Near Ferndale, Whatcom County, WA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Seattle District is the permitting agency and lead Federal agency for this action. The U.S Coast Guard (USCG) is cooperating agency. The Corps is announcing its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). The EIS will support the Corps' permit evaluation process under Section 10 of the Rivers and Harbors Act for the BP Cherry Point marine pier extension.

DATES: Submit comments by September 15, 2006.

Scoping meetings for this project will be held on:

1. September 5, 2005 from 7 p.m. to 9 p.m., Port Angeles, WA. An open house will be held from 6:30 p.m. to 7 p.m. prior to the meeting.
2. September 7, 2006 from 7 p.m. to 9:30 p.m., Anacortes, WA. An open house will be head from 6:30 p.m. to 7 p.m. prior to the meeting.
3. September 12, 2006 from 7 p.m. to 9 p.m., Ferndale, WA. An open house will be held from 6:30 p.m. to 7 p.m. prior to the meeting.
4. September 13, 2006 from 7 p.m. to 9 p.m., Seattle, WA. An open house will be held from 6:30 p.m. to 7 p.m. prior to the meeting.

ADDRESSES: Written comments on the scope of the EIS or requests for information should be sent to Mrs. Olivia Romano at the U.S. Army Corps of Engineers, Seattle Regulatory Branch, Post Office Box 3755, Seattle, Washington 98124–3755, or sent via e-mail to *Olivia.h.romano@usace.army.mil*.

The scoping meetings will be held at:

1. *Port Angeles:* The Port Angeles Public Library on 22108 Peabody Street, in Port Angeles, Washington.
2. *Anacortes:* The Seafarer's Memorial Park Building on 601 14th Street, in Anacortes, Washington.
3. *Ferndale:* The American Legion Hall on 5537 2nd Avenue, in Ferndale, Washington.
4. *Seattle:* The Federal Center South, 4735 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mrs. Olivia Romano at the U.S. Army Corps of Engineers, Seattle Regulatory Branch, 4735 E. Marginal Way South, Seattle, Washington 98134, (206) 764–6960, or e-mail to *Olivia.h.romano@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The Corps has been directed by Ninth Circuit Court of Appeals to complete an EIS on the impacts of the permitted pier extension, including vessel traffic study and risk of oil spills from potential increase in oil tanker traffic in Puget Sound and reevaluate the pier extension's potential violation of the Magnuson Amendment of the Marine Mammals Protection Act.

Proposed Action

To evaluate the potential environmental impacts for the continued operation of the pier extension (north wing) to the existing BP Cherry Point dock. The evaluation will include a vessel traffic study and oil spill risk analyses for the all vessels unloading and loading at the dock.

Preliminary Alternatives to the Proposed Action

The EIS will evaluate a range of alternatives including a No Action Alternative. The EIS will consider alternatives that may result from comments received during the agency and public scoping period. The EIS will also discuss alternatives considered and eliminated from further detailed study. The Corps will use this evaluation to determine compliance with Section 10 of Rivers and Harbors Act and compliance with Magnuson Amendment of Marine Mammals Protection Act.

EIS Scoping Process

The EIS process begins with the publication of this Notice of Intent. The scoping period will continue for 30 days after publication of this Notice of Intent and will close on September 15, 2006. During the scoping period the Corps invite Federal agencies, State and local governments, Native American Tribes, and the public to participate in the scoping process either by providing written comments or by attending the public scoping meetings scheduled for September 5, 6, 7, and 13, 2006 at the time and location indicated above. We have identified the following as probable major topics to be analyzed in depth in the Draft EIS: Oil spill impacts on aquatic resources, fish and wildlife habitat functions, threatened and endangered species impacts, surface water quality, and cumulative impacts. Both written and oral scoping comments will be considered in the preparation of the Draft EIS. Comments postmarked or received by e-mail after the specified date will be considered to the extent feasible.

The purpose of the scoping meeting is to assist the Corps and U.S. Coast Guard in defining issues, public concerns, alternatives, and the depth to which they will be evaluated in the EIS. The public scoping meeting will begin with a briefing on the existing BP dock and the vessel traffic study. Copies of the meeting handouts will be available to anyone unable to attend by contacting the Corps Seattle District as described in the **FOR FURTHER INFORMATION CONTACT** section. Following the initial presentation, Corps representatives will answer scope-related questions and accept comments.

EIS Preparation

Development of the Draft EIS will begin after the close of the public scoping period. The Draft EIS is expected to be available for public review in the fall of 2008.

Other Environmental Review and Consultations

To the fullest extent possible, the EIS will be integrated with analysis and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531 et seq.); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, et seq.), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–655; 16 U.S.C. 470, et seq.); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C 742a, et seq. and 661–666c); and the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, et seq.); and all applicable and appropriate Executive Orders.

Dated: August 10, 2006.

Michelle Walker,

Chief, Regulatory Branch, Seattle District.

[FR Doc. E6–13473 Filed 8–15–06; 8:45 am]

BILLING CODE 3710–ER–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will form consensus advice for the final report on the findings and recommendations of the Innovation and Technology Transition Subcommittee to the CNO. The meeting will consist of discussions of Navy research and development strategies and processes.

DATES: The meeting will be held on August 28, 2006, from 10 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held in the Center for Naval Analysis Corporation Boardroom, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: Ms. Gia Harrigan, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4907.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the

public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: August 9, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–13451 Filed 8–15–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 16, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 10, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 981,000.

Burden Hours: 981,000.

Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3171. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–13457 Filed 8–15–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–385–001]

Distrigas of Massachusetts LLC; Notice of Compliance Filing

August 9, 2006.

Take notice that on August 4, 2006, Distrigas of Massachusetts LLC (DOMAC), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective July 6, 2006:

Substitute Fifth Revised Sheet No. 40.
Substitute First Revised Sheet No. 48H.

DOMAC states that this filing is intended to comply with the directives set forth in the Order issued July 5, 2006 in the above-captioned Docket No. RP06–385–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13372 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–467–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

August 9, 2006.

Take notice that on August 4, 2006, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets proposed to be effective September 4, 2006:

Sixth Revised Sheet No. 40.
Second Revised Sheet No. 48H.

DOMAC states that these tariff sheets clarify that DOMAC will continue to collect any Call Payment amounts to which it would otherwise be entitled during periods in which DOMAC has suspended service to a buyer under the terms of DOMAC's Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–13376 Filed 8–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

August 8, 2006.

Dominion Energy Kewaunee, Inc. (Docket No. EG06–50–000); James A. Goodman, as Receiver for PMCC Calpine New England Investment LLC (Docket No. EG06–52–000); Signal Hill Wichita Falls Power, L.P. (Docket No. EG06–53–000); Empresa Eléctrica de Talca S.A. (Docket No. FC06–4–000); Empresa de Transmisión Eléctrica Transemel S.A. (Docket No. FC06–5–000); Alcoa Inc., Manicouagan Power Company, Alcoa of Australia Limited, Alcoa Alumínio S.A., Suriname Aluminum Company L.L.C. (Docket No. FC06–6–000)

Take notice that during the month of July 2006, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,
Secretary.
[FR Doc. E6–13367 Filed 8–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2539–003]

Erie Boulevard Hydropower, L.P.; Notice Granting Late Interventions

August 8, 2006.

On December 23, 1991, an application was filed by the predecessor to Erie Boulevard Hydropower, L.P. for a new license for the School Street Project No. 2539. The project is located on the Mohawk River, in Albany and Saratoga Counties, New York.

On February 11, 1993, the Commission issued a notice of application for new license, and solicited comments, protests, and motions to intervene. The notice established April 12, 1993, as the deadline for filing comments, protests, and motions to intervene. On May 3, 1995, and January 16, 1996, the New York State Department of Environmental Conservation (NYSDEC) and National Marine Fisheries Service (NMFS) filed motions to intervene.

NYSDEC states that it is a department of the government of the state of New York, charged by law with the administrative management of the state's fish and wildlife resources. NMFS states that it is responsible for oversight and evaluation of activities that may affect marine, estuarine, and anadromous fishery resources, and that the Mohawk River supports a major spawning run of anadromous blueback herring.

The motions to intervene were filed early in this proceeding and well before the Commission issued its draft environment assessment for the project. Granting the late motions to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it.[1] Therefore, pursuant to Rule 214,[2] the late motions to intervene in this proceeding filed by NYSDEC and NMFS are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,
Secretary.
[FR Doc. E6–13366 Filed 8–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–468–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 9, 2006.

Take notice that on August 7, 2006, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective September 7, 2006:

[1] Both motions were referenced and these entities' comments considered in the draft environmental assessment. It appears inadvertent that the motions were not acted upon at that point.

[2] 18 CFR 385.214 (2006).

Fourth Revised Sheet No. 313.
Second Revised Sheet No. 313A .
Third Revised Sheet No. 314.
Third Revised Sheet No. 315.
Sheet Nos. 316–317.

Mississippi Canyon states that the purpose of its filing is to revise Mississippi Canyon's pro forma Service Request Form to ensure that potential shippers provide all information required by Mississippi Canyon's Tariff to appropriately evaluate and process requests for service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13377 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–060]

Northern Natural Gas Company; Notice of Negotiated Rates

August 9, 2006.

Take notice that on August 3, 2006, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute 39 Revised Sheet No. 66.
Substitute 32 Revised Sheet No. 66A.
33 Revised Sheet No. 66A.

Northern states that the above-referenced tariff sheets to reflect updated negotiated rate contract information.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13368 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–414–001]

Northern Natural Gas Company; Notice of Compliance Filing

August 9, 2006.

Take notice that on August 4, 2006, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Tenth Revised Sheet No. 252, with an effective date of August 1, 2006.

Northern states that the filing is being made in compliance with the Commission's July 31, 2006 order in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13373 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–466–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 9, 2006.

Take notice that on August 4, 2006, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of September 4, 2006:

40 Revised Sheet No. 66.
34 Revised Sheet No. 66A.
Third Revised Sheet No. 66D.

Northern states that it is filing the above-referenced tariff sheets to submit a Rate Schedule PDD service agreement for Commission acceptance as a non-conforming and negotiated rate agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13375 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–009]

Rockies Express Pipeline LLC; Notice of Negotiated Rate

August 9, 2006.

Take notice that on August 4, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective August 7, 2006:

Fifth Revised Sheet No. 22.
Original Sheet No. 24.
Sheet Nos. 25–29.

REX states that the filing is being made to reflect a negotiated-rate contract with Williams Power Company, Inc.

REX stated that a copy of this filing has been served upon all parties to this proceeding, REX's customers, the Colorado Public Utilities Commission and the Wyoming Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13371 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–415–001]

Texas Gas Transmission, LLC; Notice of Supplemental Filing

August 9, 2006.

Take notice that on August 8, 2006, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 223, to become effective September 1, 2006.

Texas Gas states that the purpose of this filing is to propose certain modifications to Section 10.5(e) of the General Terms and Conditions in Texas Gas' tariff, in response to certain comments filed by the Tennessee Valley Authority in the above-referenced docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13374 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 9, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–146–000.

Applicants: Northern States Power Company.

Description: Xcel Energy Services, Inc on behalf of Northern States Power Co requests authorization to consummate a transmission asset exchange transaction with Great River Energy, Union Power Association and Cooperative Power Association.

Filed Date: 8/2/2006.

Accession Number: 20060804–0136.

Comment Date: 5 p.m. eastern time on Wednesday, August 23, 2006.

Docket Numbers: EC06–147–000.

Applicants: Entegra Power Group LLC; Gila River Power, L.P.; Union Power Partners, L.P.; Morgan Stanley & Co. Incorporated; Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Description: Entegra Power Group, LLC et al. submit an application for order granting blanket authorization for certain future transfers & acquisitions of equity interests under Section 203 of the Federal Power Act.

Filed Date: 8/3/2006.

Accession Number: 20060808–0120.

Comment Date: 5 p.m. eastern time on Thursday, August 24, 2006.

Docket Numbers: EC06–148–000.

Applicants: Alliance Energy, New York LLC, Power City Generating, Inc.; Power City Partners, L.P. and RPL Holdings, LLC.

Description: Alliance Energy, New York LLC et al. submit its joint application for sale of a jurisdictional facility under Section 206 of the Federal Power Act.

Filed Date: 8/4/2006.

Accession Number: 20060809–0028.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: EC06–149–000.

Applicants: PNM Resources, Inc.; Public Service Company of New Mexico; Texas-New Mexico Power Company; TNP Enterprises, Inc.

Description: PNM Resources, Inc. et al. submit an application for approval of Intra-Corporate Reorganization pursuant to Section 203 of the Federal Power Act.

Filed Date: 8/8/2006.

Accession Number: 20060809–0092.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Docket Numbers: EC06–150–000.

Applicants: Berkshire Power Company, LLC; Berkshire Power Company, LLC .

Description: EIF Berkshire Holdings LLC and Berkshire Power Co LLC submit an application under Section 203 of the Federal Power Act for a disposition of ownership interests.

Filed Date: 8/8/2006.

Accession Number: 20060809–0117.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–69–000.

Applicants: Spanish Fork Wind Park 2, LLC.

Description: Spanish Fork Wind Park 2, LLC submits an application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(a) of the PUHCA of 1935, et al.

Filed Date: 8/8/2006.

Accession Number: 20060807–5266.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1361–009; ER98–4138–005; ER99–2781–007; ER98–3096–011; ER01–202–004; ER00–1770–010; ER02–453–006; ER04–472–003; ER04–529–003.

Applicants: Atlantic City Electric Company; Potomac Electric Power Company; Delmarva Power & Light Company; Pepco Energy Services, Inc.; Potomac Power Resources, LLC; Conectiv Energy Supply, Inc.; Conectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Rolling Hills Landfill Gas, LLC.

Description: Pepco Holdings, Inc et al. submit notification of change in status.

Filed Date: 8/3/2006.

Accession Number: 20060804–0148.

Comment Date: 5 p.m. eastern time on Thursday, August 24, 2006.

Docket Numbers: ER97–2846–010; ER99–2311–007; ER01–2928–009; ER03–1383–005; ER01–1418–006; ER02–1238–007; ER01–1419–006; ER01–1310–007; ER03–398–007.

Applicants: Florida Power Corporation; Carolina Power & Light Company; Progress Ventures, Inc.; DeSoto County Generating Company, LLC; Effingham County Power, LLC; MPC Generating, LLC; Rowan County Power, LLC; Walton County Power, LLC; and Washington County Power, LLC.

Description: Progress Ventures, Inc submits a notice of change in status, effective 1/1/09–12/31/10, in which they will purchase 100 MW and the associated energy from Morgan Stanley Capital Group, Inc.

Filed Date: 8/1/2006.

Accession Number: 20060804–0094.

Comment Date: 5 p.m. eastern time on Tuesday, August 22, 2006.

Docket Numbers: ER00–2885–010: ER06–864–002; ER01–2765–009; ER02–1582–008; ER02–1785–005; ER02–2102–009.

Applicants: Cedar Brakes I, L.L.C.; Bear Energy LP; Cedar Brakes II, L.L.C.; Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P.; Utility Contract Funding, L.L.C.

Description: Bear Energy LP et al. notifies FERC that they have entered into an agreement to provide energy management services in accordance with Order 652 and their market-based rate authorizations.

Filed Date: 8/7/2006.

Accession Number: 20060809–0069.

Comment Date: 5 p.m. eastern time on Monday, August 28, 2006.

Docket Numbers: ER02–2310–005.
Applicants: Crescent Ridge LLC.
Description: Crescent Ridge LLC submits a notice of Non-Material Change in Status as a result of upstream ownership.
Filed Date: 7/31/2006.
Accession Number: 20060731–5056.
Comment Date: 5 p.m. eastern time on Monday, August 21, 2006.

Docket Numbers: ER03–1413–005.
Applicants: Sempra Energy Trading Corp.
Description: Sempra Energy Trading Corp submits its updated market analysis and a revised market-based rate tariff.
Filed Date: 8/1/2006.
Accession Number: 20060804–0097.
Comment Date: 5 p.m. eastern time on Tuesday, August 22, 2006.

Docket Numbers: ER05–487–004.
Applicants: FPL Energy Cowboy Wind, LLC.
Description: FPL Energy Cowboy Wind, LLC submits its notice of change in material facts.
Filed Date: 7/31/2006.
Accession Number: 20060731–5067.
Comment Date: 5 p.m. eastern time on Monday, August 21, 2006.

Docket Numbers: ER05–717–004; ER05–721–004; ER04–374–003; ER99–2341–006; ER06–230–001.
Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invenergy TN LLC; Hardee Power Partners Limited; Wolverine Creek Energy LLC.
Description: Spring Canyon Energy LLC et al. submit a notice of change in status.
Filed Date: 8/3/2006.
Accession Number: 20060807–0156.
Comment Date: 5 p.m. eastern time on Thursday, August 24, 2006.

Docket Numbers: ER05–1050–003.
Applicants: AmerGen Energy Company LLC.
Description: AmerGen Energy Company submits a refund report in Compliance with Commission's June 28, 2006 Order.
Filed Date: 8/4/2006.
Accession Number: 20060804–5063.
Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–9–003.
Applicants: FPL Energy Burleigh County Wind, LLC.
Description: FPL Energy Burleigh County Wind, LLC submits a notice of change in material facts.
Filed Date: 7/31/2006.
Accession Number: 20060731–5062.
Comment Date: 5 p.m. eastern time on Monday, August 21, 2006.

Docket Numbers: ER06–199–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff in compliance with FERC's 7/7/06 Order.
Filed Date: 8/7/2006.
Accession Number: 20060809–0026.
Comment Date: 5 p.m. eastern time on Monday, August 28, 2006.

Docket Numbers: ER06–729–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool Inc its revised Open Access Transmission Tariff, to be effective 10/1/06 pursuant to Commission's Order issued 5/11/06.
Filed Date: 8/1/2006.
Accession Number: 20060804–0090.
Comment Date: 5 p.m. eastern time on Tuesday, August 22, 2006.

Docket Numbers: ER06–964–001.
Applicants: Acadia Power Partners, LLC.
Description: Acadia Power Partners, LLC submits Substitute First Revised Sheet 3 to its FERC Electric Tariff, Original Volume 1, pursuant to the Commission's 6/30/06 Order.
Filed Date: 7/28/2006.
Accession Number: 20060804–0093.
Comment Date: 5 p.m. eastern time on Friday, August 18, 2006.

Docket Numbers: ER06–1051–002.
Applicants: Northern States Power Company.
Description: Xcel Energy Services Inc on behalf of Northern States Power Co submits supplemental information and responses to FERC's 7/5/06 data request.
Filed Date: 8/4/2006.
Accession Number: 20060807–0159.
Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1094–008.
Applicants: Unitil Power Corp.; Fitchburg Gas and Electric Light Company; Unitil Energy Systems, Inc.
Description: Unitil Power Corp et al. supplement the request for waiver filed on 6/1/06 with additional information regarding each of the Unitil Companies.
Filed Date: 7/31/2006.
Accession Number: 20060804–0058.
Comment Date: 5 p.m. eastern time on Monday, August 21, 2006.

Docket Numbers: ER06–1118–002.
Applicants: ECP Energy, LLC.
Description: ECP Energy LLC submits a Second Amended Application for Order Accepting Initial Tariff, Waiving Regulations, & Granting Blanket Approvals, & Request Consideration & Waiver of 60 day Prior Notice Requirement.
Filed Date: 8/2/2006.
Accession Number: 20060804–0145.
Comment Date: 5 p.m. eastern time on Wednesday, August 23, 2006.

Docket Numbers: ER06–1243–001.
Applicants: Liberty Power Holdings LLC.
Description: Liberty Power Holdings LLC submits amendment to the original filing dated 7/11/06 including the petitions for acceptance of initial rate schedule, waivers & blanket authority under ER06–1243.
Filed Date: 8/4/2006.
Accession Number: 20060808–0122.
Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1261–001.
Applicants: FPL Energy Mower County, LLC.
Description: FPL Energy Mower County, LLC submits an amendment to its application for market-based rate authority filed on 7/19/06.
Filed Date: 8/4/2006.
Accession Number: 20060807–0152.
Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1331–000.
Applicants: CalPeak Power LLC.
Description: Calpeak Power, LLC submits an application for acceptance of its proposed FERC Electric Tariff, Original Volume 1.
Filed Date: 8/2/2006.
Accession Number: 20060804–0095.
Comment Date: 5 p.m. eastern time on Wednesday, August 23, 2006.

Docket Numbers: ER06–1333–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits its Second Revised Sheet 4 et al. to Service Agreement No. 43, Interconnection Facilities Agreement with the City of Colton, SC.
Filed Date: 8/3/2006.
Accession Number: 20060807–0154.
Comment Date: 5 p.m. eastern time on Thursday, August 24, 2006.

Docket Numbers: ER06–1334–000.
Applicants: Spindle Hill Energy LLC.
Description: Spindle Hill Energy LLC submits an application for market-based rate authorization and related waivers and pre-approvals.
Filed Date: 8/3/2006.
Accession Number: 20060807–0157.
Comment Date: 5 p.m. eastern time on Thursday, August 24, 2006.

Docket Numbers: ER06–1335–000.
Applicants: Participating Transmission Owners Administrative Committee.
Description: New England's Participating Transmission Owners submits its annual informational filing regarding ISO Tariff changes in effect as of 6/1/06.

Filed Date: 7/31/2006.

Accession Number: 20060808–0146.

Comment Date: 5 p.m. eastern time on Monday, August 21, 2006.

Docket Numbers: ER06–1336–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an unexecuted interconnection service agreement with Indeck-Elwood, LLC and Commonwealth Edison Co.

Filed Date: 8/4/2006.

Accession Number: 20060808–0127.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1337–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits First Revised Sheet 2 et al. to its FERC Gas Tariff, First Revised Volume 5 to the Interconnection Facilities Agreement with City of Moreno Valley.

Filed Date: 8/4/2006.

Accession Number: 20060808–0125.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1338–000.

Applicants: American Electric Power Services Corporation.

Description: American Electric Power Service Corp on behalf of AEP Texas North Co submits two generation interconnection agreements with Airtricity Wild Horse Wind Farm, LLC.

Filed Date: 8/4/2006.

Accession Number: 20060808–0140.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1339–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits revised rate sheets to the Interconnection Facilities Agreement with NM Milliken Genco LLC.

Filed Date: 8/4/2006.

Accession Number: 20060808–0124.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1340–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits a correction to its May & June 2006 UCAP Deficiency Auction results.

Filed Date: 8/4/2006.

Accession Number: 20060808–0123.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1341–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc.'s submits an Interconnection Agreement with Southern Indiana Gas & Electric dba Vectran Energy Delivery of Indiana, Inc.

Filed Date: 8/7/2006.

Accession Number: 20060808–0141.

Comment Date: 5 p.m. eastern time on Monday, August 28, 2006.

Docket Numbers: ER06–1342–000.

Applicants: Southern Operating Companies.

Description: Alabama Power Co et al. submit an executed interconnection agreement with Southern Power Company, Service Agreement 479.

Filed Date: 8/7/2006.

Accession Number: 20060808–0119.

Comment Date: 5 p.m. eastern time on Monday, August 28, 2006.

Docket Numbers: ER06–1343–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Masonic Villages of Pennsylvania and PPL Electric Utilities Corp.

Filed Date: 8/4/2006.

Accession Number: 20060809–0027.

Comment Date: 5 p.m. eastern time on Friday, August 25, 2006.

Docket Numbers: ER06–1344–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits the Fourth Revised Service Agreement for Network Integration Transmission Service Agreement et al. with Tri-State Generation & Transmission Association, Inc.

Filed Date: 8/8/2006.

Accession Number: 20060809–0020.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Docket Numbers: ER06–1345–000.

Applicants: New England Power Company.

Description: New England Power Co submits its Local Service Agreements between NEP and various customers.

Filed Date: 8/8/2006.

Accession Number: 20060809–0099.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–102–000.

Applicants: Sowood Capital Management LP.

Description: Sowood Capital Management, LP submits its petition of exemption from the requirements of the PUHCA of 2005.

Filed Date: 8/2/2006.

Accession Number: 20060807–0158.

Comment Date: 5 p.m. eastern time on Wednesday, August 23, 2006.

Docket Numbers: PH06–103–000.

Applicants: IP Gyrfalcon Company, LLC.

Description: IP Gyrfalcon Company, LLC submits an Exemption Notification of requirements of PUHCA of 2005.

Filed Date: 8/8/2006.

Accession Number: 20060808–5042.

Comment Date: 5 p.m. eastern time on Tuesday, August 29, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13430 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–128]

Union Electric Company, dba AmerenUE; Notice of Availability of Final Environmental Assessment

August 8, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has reviewed the application for new license for the Osage Project, located on the Osage River in south central Missouri, and has prepared a final Environmental Assessment (EA) for the project. In the final EA, Commission staff analyzed the potential environmental effects of relicensing the project and concluded that issuing a new license for the project, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or any other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13363 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–068]

Susquehanna Power Company and PECO Energy Power Company; Notice of Availability of Environmental Assessment

August 9, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters and has prepared an environmental assessment (EA) for public review. The licensees seek Commission approval to permit use of the Conowingo Hydroelectric Project, FERC No. 405, reservoir and lands to withdraw and discharge water. The EA analyzes the environmental impacts of the proposed water withdrawal and discharge. The project is located on the Susquehanna River in Hartford and Cecil Counties in Maryland, and York and Lancaster Counties in Pennsylvania.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission (Commission). A copy of the EA is attached to a Commission order titled ''Order Modifying and Approving Non-Project Use of Project Lands and Waters'' issued August 8, 2006 and is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426. Please affix ''Conowingo Project No. 405–068'' to all comments. Comments may be filed electronically via Internet in lieu of paper filings. The Commission strongly encourages electronic filings. See 18 CFR 385.20011(a)(1) (iii) and the instructions on the Commission's Web site under the ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13370 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

August 8, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 12429–001.

c. *Date filed:* August 1, 2006.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* On the Beaverhead River, 18 miles southwest of the Town of Dillon, Beaverhead County, Montana. The project would occupy 3.5 acres of Federal land administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834 or Dr. Vincent Lamarra, Ecosystems Research Institute, Inc., 975 South State Highway, Logan, UT 84321.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *Dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource

agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: October 2, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Bureau of Reclamation's Clark Canyon dam, and would consist of the following new facilities: (1) A steel liner in the existing 9-foot-diameter concrete outlet conduit; (2) a new outlet gate structure; (3) a 9-foot-diameter steel penstock bifurcating into an 8-foot diameter and a 6-foot diameter steel penstock directing flow to the turbine units about 70 feet from the bifurcation; (4) a powerhouse containing two generating units with a combined capacity of 4.75 megawatts; (5) a 300-foot-long access road; (6) a switchyard; (7) about 0.1 mile of transmission line connecting the project to the local utility's transmission system; and (8) about 11 miles of existing transmission line that would be upgraded. The average annual generation is estimated to be 16.5 gigawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter: September 2006.

Issue Acceptance Letter: December 2006.

Issue Scoping Document 1 for comments: January 2007.

Request Additional Information: March 2007.

Issue Scoping Document 2: April 2007.

Notice of application is ready for environmental analysis: April 2007.

Notice of the availability of the EA: October 2007.

Ready for Commission's decision on the application: January 2008.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13364 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 8, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to upgrade the installed capacity.

b. *Project No:* 2077–055.

c. *Date Filed:* June 27, 2006.

d. *Applicant:* TransCanada Hydro Northeast, Inc.

e. *Name of Project:* Fifteen Mile Falls.

f. *Location:* The project is located on the Connecticut River near the Town of Littleton, Grafton County, New Hampshire, and Caledonia County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Ragonese, TransCanada Northeast, Inc., 4 Park Street, Suite 402, Concord, NH 03301–3260. Tel: (603) 225–3260.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 8, 2006.

k. *Description of Filing:* TransCanada Northeast, Inc. proposes to replace turbine runners at the Comerford Development of the project. The project consists of three developments: the Moore, Comerford and McIndoes developments with a current authorized installed capacity of 291,360 kilowatts (kW) and total hydraulic capacity of 37,400 cfs. The licensee proposes to replace existing four turbine runners of the Comerford Development in two phases. Phase 1 involves immediate replacement of turbine runner of Unit 1, and in phase 2 the turbine runners of the remaining three units would be replaced over a period of four years. The proposed changes would increase the project's total installed capacity by 28,600 kW and the hydraulic capacity would be reduced from 37,400 cfs to 37,235 cfs.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13365 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 9, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12700–000.

c. *Date filed:* June 8, 2006.

d. *Applicant:* Georges C. St Laurent, Jr.

e. *Name of Project:* St Laurent Land and Cattle Company.

f. *Location:* On a 1500 acre private ranch in Jackson County, Oregon. The water is from the Nichols Gap Creek and an irrigation district owned by Eagle Point Irrigation District.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard Enloe, Enloe & Associates, Inc., 2350 Ave. G, White City, OR 97503, (541) 826–9422, Ext. 1016, E-mail *enloe2@earthlink.net*.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following two developments:

The Lower Development

(1) An existing channel, (2) a proposed intake structure, (3) a proposed underground 4,300-foot-long, 48-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit with an installed capacity of 600-kilowatts, (5) a proposed 4,500-foot-long, 12.47 kilovolt transmission line, and (6) appurtenant facilities. The proposed project would have an average annual generation of 2,623 gigawatt-hours, which would be sold to a local utility.

The Upper Development

(1) An existing channel, (2) a proposed intake structure, (3) a proposed underground 1,450-foot-long 36-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit with an installed capacity of 400-kilowatts, (5) a proposed 1,450-foot-long 12.47 kilowatt transmission line, and appurtenant facilities. The proposed project would have an average annual generation of 1,352 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering

plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13369 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001]

City of Broken Bow, OK; Notice of Application Tendered for Filing With the Commission

August 9, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12470–001.

c. *Date Filed:* July 26, 2006.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Re-Regulation Dam Hydropower Project.

f. *Location:* On the Mountain Fork River in McCurtain County, Oklahoma. The project would be located at the United States Army Corps of Engineers' (Corps) Broken Bow Re-Regulation Dam and would occupy lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Olen Hill, City Manager, City of Broken Bow, Oklahoma; 210 North Broadway; Broken Bow, Oklahoma 74728; (405) 584–2282.

i. *FERC Contact:* Peter Leitzke at (202) 502–6059, or *peter.leitzke@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item (k) below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. *Deadline for Filing Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or September 25, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Requests for Cooperating Agency Status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

l. *Status:* This application is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed run-of-river project, using the Corps' existing Broken Bow Re-Regulation Dam and Reservoir, would consist of: (1) Three 93.5-foot-long penstocks connecting to; (2) a 112-foot-wide by 129-foot-long powerhouse containing three turbine-generator units and having a total installed capacity of 4 megawatts; (3) a tailrace returning flows to the Mountain Fork River; (4) a 1,600-foot-long, 13.8-kilovolt transmission line or a 3.5-mile-long, 13.8 kilovolt transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 17,450 megawatt-hours.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–12470), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the *OKLAHOMA STATE HISTORIC PRESERVATION OFFICER* (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter.	October 2006.
Request Additional Information.	December 2006.
Issue Acceptance letter.	January 2007.

Action	Tentative date
Issue Scoping Document 1 for comments.	March 2007.
Request Additional Information (if necessary).	May 2007.
Issue Scoping Document 2 (if necessary).	June 2007.
Notice that application is ready for environmental analysis.	August 2007.
Notice of the availability of the draft EA.	February 2008.
Notice of the availability of the final EA (if necessary).	June 2008.
Ready for Commission's decision on the application.	June 2008.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13378 Filed 8–15–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0620; FRL–8085–7]

Nominations to the FIFRA Scientific Advisory Panel: Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to FIFRA, dated October 25, 1988. The Agency expects to select one new member to serve on the panel as a result of a vacancy that will occur during the current calendar year. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting the new chartered Panel member.

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0620, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0620. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, Designated Federal Official (DFO), Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Tips for preparing your comments. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

Amendments to FIFRA enacted November 28, 1975, include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of regulations pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists.

In accordance with the statute, the SAP is composed of a permanent panel of seven members, selected and appointed by the Deputy Administrator of EPA from nominees submitted by both the National Science Foundation and the National Institutes of Health. The Agency expects to select one new member to serve on the panel as a result of a vacancy that will occur during the current calendar year. The Agency requested nominations of experts to be selected from the field of ecotoxicology and ecological risk assessment (including probabilistic ecological risk assessment). Nominees should be well published and current in their fields of expertise. The statute further stipulates that the name, address, and professional affiliation of each nominee be published in the **Federal Register.**

III. Charter

A Charter for the FIFRA Scientific Advisory Panel dated October 25, 2004 was issued in accordance with the requirements of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (5 U.S.C. App. I).

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to assess the impact of pesticides on health and the environment. No persons are ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d)(1) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of the SAP. These regulations appear in 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, in March 2006, EPA requested the National Institutes of Health (NIH) and that the National Science Foundation (NSF) nominate scientists to fill one vacancy occurring on the Panel. The Agency requested nominations of experts in the field of ecotoxicology and ecological risk assessment including probabilistic ecological risk assessment. NIH and NSF responded by letter, providing the Agency with a total of 12 nominees. Seven of the 12 nominees are interested and available to actively participate in SAP meetings (see IV Nominees). The following five nominees are not available.

1. Barnthouse, Lawrence, Ph.D., LWB Environmental Services, Inc., Oak Ridge, TN.
2. Harrahy, Elisabeth, Ph.D., Wisconsin Department of Natural Resources, Madison, WI.
3. Kelly, Elizabeth, Ph.D., Los Alamos National Laboratory, Los Alamos, NM.
4. Oberdorster, Eva, Ph.D., Southern Methodist University, Dallas, TX.
5. Piegorsch, Walter, Ph.D., University of South Carolina, Columbia, SC.

IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of the seven nominees being considered for membership on the FIFRA Scientific Advisory Panel. The Agency expects to select one of the nominees to fill a vacancy occurring this year.

1. *Nominee*: Autenrieth, Robin L., Ph.D., P.E., Professor, and Assistant Department Head, Department of Civil Engineering, Texas A and M University, College Station, TX.

i. *Expertise*: Biological sciences and environmental engineering.

ii. *Education*: B.S., Biological Sciences, University of Maryland; M.S., Civil and Environmental Engineering, Clarkson University; Ph.D., Civil and Environmental Engineering, Clarkson University.

iii. *Professional Experience*: Dr. Robin L. Autenrieth is a Professor in the Division of Environmental and Water Resources of the Zachry Department of Civil Engineering at Texas A and M University. She also has a joint appointment in the Department of Environmental and Occupational Health of the Health Science Center's School of Rural Public Health. Dr. Autenrieth teaches classes in environmental engineering related to biological processes, human health risk assessment, and sustainable practices. Her research addresses the fate of chemicals in the environment, notably biological degradation, and improving estimates of exposure and human health risk estimates. Dr. Autenrieth received a B.S. in biological sciences from the University of Maryland, a M.S. and Ph.D. in Environmental Engineering from Clarkson University. As a professor for over 20 years, Dr. Autenrieth integrates her background in biological sciences with engineering. Her early research focused on biodegradation of xenobiotic and hazardous chemicals with particular emphasis on hydrocarbons released in nearshore environments. She was one of the principals in one of the few programs

allowed to exercise controlled releases of oil to wetlands to study natural recovery and remediation strategies. Other biodegradation work with explosives and chemical warfare agents led to collaborations with colleagues in the former Soviet Union. More recently she has been using quantitative structural analysis techniques to relate both biodegradability and toxicity to generate factors that can be used in predicting the behavior of uncharacterized compounds for their fate in the environment or potential human health impact upon exposure. Laboratory studies to evaluate biodegradation kinetics of a range of chemicals have led to current studies on estrogenic compounds (e.g. hormones) and antibiotics released from confined animal operations and their impact on exposed environments. She is serving on a National Academy of Sciences committee to evaluate secondary wastes from the destruction of chemical warfare agents and has served on similar committees in the past. In Civil Engineering she serves as the Assistant Department Head.

2. *Nominee*: Chandler, G. Thomas, Ph.D., Professor and Chairman, Department of Environmental Health Sciences, University of South Carolina, Columbia, SC.

i. *Expertise*: Ecotoxicology, toxicology, aquatic/marine ecology.

ii. *Education*: B.Sc., Biology and Marine Biology, University of North Carolina at Wilmington; M.Sc., Zoology, Louisiana State University; Ph.D., Zoology (Statistics Minor), Louisiana State University.

iii. *Professional Experience*: Dr. Chandler received his Ph.D. in Zoology with a minor in Applied Statistics from Louisiana State University in 1986, where he studied soft-sediment benthic ecology, ecotoxicology, and developed novel methods for sediment-based culture of meiobenthos. He was awarded a Fulbright Post-Doctoral fellowship in 1987 to study with Professor Olav Giere of the University of Hamburg. Dr. Chandler's research in Germany characterized ecological interactions among sediment-associated bacteria, foraminifera and copepods inhabiting estuaries of the North Sea Wattenmeer. From 1991 to the present, Dr. Chandler has been affiliated with the Arnold School of Public Health at the University of South Carolina, where he has published more than 70 articles, and progressed from assistant to full professor in 7 years. His competitive research support has totaled more than 30 projects for over $9-million, with primary support from the EPA, NOAA, and the NSF. Dr. Chandler's present research focus is in estuarine ecotoxicology with an emphasis on developing rapid screens for environmental detection of endocrine disruption in crustaceans using copepod models, and evaluating/modeling population-level risks of pesticide and ED exposure. He recently authored the ASTM E2317-04 standard method for lifecycle bioassay of sublethal developmental and reproductive toxicants using a 96-well microplate format. This method is presently being validated by the OECD for rapid Tier 2 evaluation of chemicals' endocrine disrupting potentials. He has published extensively on effects, fate and behavior of pesticides used in coastal environments of the southeastern US. In collaboration with the NOAA Center for Coastal Environmental Health and Biomolecular Research, Charleston, SC, Dr. Chandler performs extensive research on the toxicological impacts of urban-use pesticides on sediment-dwelling fauna exposed to golf-course and sewage effluents in salt-marsh estuaries. Dr. Chandler is presently professor and chairman of the Department of Environmental Health Sciences, US delegate to the Environmental Directorate of the OECD (Paris), and member of the Bilateral Biomarker Working Group, Office of Science, French Embassy.

3. *Nominee*: deFur, Peter L., Ph.D., President, Environmental Stewardship Concepts; and Affiliate Associate Professor, Center for Environmental Studies, Virginia Commonwealth University, Richmond, VA.

i. *Expertise*: Risk assessment and ecological risk assessment.

ii. *Education*: B.S. and M.A., Biology, The College of William and Mary; Ph.D., Biology, University of Calgary.

iii. *Professional Experience:* Dr. Peter L. deFur is president of Environmental Stewardship Concepts, an independent private consultant, and an Affiliate Associate Professor and Graduate Coordinator in the Center for Environmental Studies at Virginia Commonwealth University where he conducts research on environmental health and ecological risk assessment. He served a term on the National Research Council Board on Environmental Studies and Toxicology (BEST) and has served on several NRC study committees. Dr. deFur has served on federal advisory committees and works with professional associations.

Dr. deFur received B.S. and M.A. degrees in Biology from the College of William and Mary in Virginia, and a Ph.D. in Biology (1980) from the University of Calgary, Alberta. He was a postdoctoral fellow in neurophysiology in the Department of Medicine at the University of Calgary. Dr. deFur held faculty positions at George Mason University and Southeastern Louisiana University before joining the staff of the Environmental Defense Fund (EDF) in Washington, DC. At EDF, Dr. deFur was involved in policy issues that include habitat preservation and quality, wetlands regulations, water quality analysis and risk assessment.

Dr. deFur has extensive experience in risk assessment and ecological risk assessment regulations, guidance and policy. He served on the NAS/NRC Risk Characterization Committee that released its report, Understanding Risk, in June 1996. Dr. deFur served on numerous scientific reviews of EPA ecological and human health risk assessments, including the assessment for the WTI incinerator in Ohio and EPA's Ecological Risk Assessment Guidelines. Dr. deFur has served on three federal advisory committees for EPA's Endocrine Disruptor Screening and Testing Program. Dr. deFur presently serves as technical advisor to citizen organizations concerning the cleanup of contaminated sites at Formerly Used Defense Sites (FUDS), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) sites.

4. *Nominee*: Harwell, Mark A., Ph.D., Principal, Harwell Gentile and Associates, LC, Palm Coast, FL.

i. *Expertise*: Ecological risk assessments and ecosystem management.

ii. *Education*: B.S., Biology, Emory University; M.S., Marine Ecology, University of Miami; Ph.D., Systems Ecology, Emory University.

ii. *Professional Experience*: Dr. Harwell is an ecosystems ecologist with expertise in ecological risk assessments and ecosystem management. He (with colleague Dr. Jack Gentile) is currently a Partner in Harwell Gentile and Associates, LC, following a 25–year career in academia at Cornell University, the University of Miami Rosenstiel School, and Florida A and M University. Drs. Harwell and Gentile were leaders in the development of the EPA ecological risk assessment framework, and have led several large risk assessments, including comparative ecological risk assessments of oil spills in Tampa Bay and the Bay of Fundy; an ecological risk assessment of the effects of climate change and the South Florida ecosystem restoration on the Everglades and Biscayne Bay; an ecotoxicological risk assessment of the Coeur d'Alene River watershed; and an assessment of

the current ecological significance of effects from the Exxon Valdez oil spill on Prince William Sound. Dr. Harwell led a series of interdisciplinary studies on human interactions with the South Florida environment, including field, mesocosm, and modeling studies in Biscayne Bay and the Florida Keys National Marine Sanctuary. He coordinated interdisciplinary studies in five National Estuarine Research Reserves, developing conceptual models of coupled human-environment systems, and contributing to ecological assessments using remote sensing and hyperspectral imagery. Dr. Harwell served for more than a decade as a member of the EPA Science Advisory Board (SAB), including two terms as Chair of the Ecological Processes and Effects Committee. He led the ecological risk component of the EPA Unfinished Business Project, and was a member of the EPA SAB Reducing Risk project. He chaired the U.S. Man and the Biosphere Human-Dominated Systems Directorate, and led its project on ecological sustainability, ecosystem management, and an ecosystem integrity report card framework. He led the Scientific Committee on Problems of the Environment (SCOPE) 5–year international study to assess the global environmental consequences of nuclear war (ENUWAR), with emphasis on ecological responses to climate change. He directed the PAN-EARTH Project, a series of national-level case studies on the ecological and agricultural effects of climate variability on Venezuela, India, Japan, China, and Sub-Saharan Africa; he was a member of the U.S. Global Change Research Program's National Assessment working group on coastal resources effects; and he serves as an expert reviewer for the Intergovernmental Panel on Climate Change. He served on the National Academy of Sciences panel on ecological risks in the U.S. and Poland, and was a member of the NAS panel on risk communications. Dr. Harwell also served as a member of the National Academy of Sciences Board on Environmental Studies and Toxicology, and was elected a Fellow of AAAS.

5. *Nominee*: Hooper, Michael, Ph.D., Associate Professor, The Institute of Environmental and Human Health, Texas Tech University, Lubbock, TX.

i. *Expertise*: Environmental toxicology.

ii. *Education*: B.S., Biochemistry, California Polytechnic State University; Ph.D., Pharmacology and Toxicology, University of California at Davis.

iii. *Professional Experience*: Dr. Michael Hooper is an associate professor in the Environmental Toxicology Department and a member of The Institute of Environmental and Human Health at Texas Tech University. He received his B.S. degree in Biochemistry at California Polytechnic State University in 1981 and his Ph.D. in Pharmacology and Toxicology at the University of California at Davis in 1988. After a research faculty position at Western Washington University's Huxley College, he moved to Clemson University in 1989 where he was a member of the graduate faculty of Environmental Toxicology and The Institute of Wildlife and Environmental Toxicology. He moved to his current position at Texas Tech University in 1997. His area of expertise is the impacts of chemical contaminants on the health of wildlife inhabiting environments contaminated with pesticides or chemical wastes, with an emphasis on the use of such data in regulatory or remediation decision making. His current research investigates the bioaccumulation and effects of chemicals from mixtures that occur on contaminated sites, studying animals that inhabit these sites and working to develop assay methods that allow assessments of vertebrate species risk through food and water exposure routes. Dr. Hooper was an advisor for the Avian Effects Dialog Group, served on the EPA's ECOFRAM panel to establish probabilistic risk assessment guidelines for pesticides, and is currently a member of the EPA Science Advisory Board panel on Aquatic Life Criteria. His research program is funded through grants from NIEHS, EPA, USFWS and USGS.

6. *Nominee*: Klaine, Stephen J., Ph.D., Professor, Department of Biological Sciences, Clemson University, Pendleton, SC.

i. *Expertise*: Aquatic toxicology, Ecological Risk Assessment.

ii. *Education*: B.S., Biology, University of Cincinnati; M.S., Environmental Science, Rice University; Ph.D., Environmental Science, Rice University.

iii. *Professional Experience*: Stephen J. Klaine is a Professor in the Department of Biological Sciences and the Graduate Program of Environmental Toxicology at Clemson University. His research interest involves quantifying the impact of land use on aquatic ecosystems and developing strategies by which economically viable land-use can coexist with good environmental quality. He received his doctorate from the Department of Environmental Science and Engineering, Rice University in 1982 and has spent the last 24 years conducting environmental research and educating graduate students. He joined the Department of Biology, University of Memphis, in 1982 where he developed an undergraduate concentration in toxicology, an extramurally-funded research program in environmental toxicology, and a graduate program that produced 8 M.S. and 4 Ph.D. graduates. In 1991, he moved his laboratory to Clemson University to help found the graduate program in environmental toxicology. Since then, he has graduated over 25 M.S. and 20 Ph.D. students from Clemson University. Current research in his laboratory focuses on characterizing: i. The bioavailablity of metals and pesticides in aquatic systems; ii. the comparative phytotoxicity of pesticides; iii. the response of aquatic organisms to episodic contaminant exposures; iv. the water quality consequences of land use; v. the effects of pharmaceuticals on fish behavior; vi. the bioavailability of single-walled carbon nanotubes in aquatic systems; and vii. the bioavailability of PCBs in aquatic systems and the movement of PCBs through the aquatic and terrestrial food chain. In addition, he is principal investigator on several proposals and projects that focus on integrating natural and social scientists to solve problems regarding natural resource management. He has served as principle investigator or co-principle investigator on over $8-million in research funding. He has previously served on the board of directors for the Society of Environmental Toxicology and is currently an aquatic toxicology editor for the journal Environmental Toxicology and Chemistry. In the last decade, he has served on several EPA Science Advisory Panels and Workshops involving pesticide and metal fate, effects and risk.

7. *Nominee*: Schlenk, Daniel, Ph.D., Professor, Department of Environmental Sciences, University of California, Riverside, CA.

i. *Expertise*: Aquatic ecotoxicology.

ii. *Education*: B.S., Toxicology, Northeast Louisiana University; Ph.D., Toxicology, Oregon State University.

iii. *Professional Experience*: Dr. Daniel Schlenk is Professor of Aquatic Ecotoxicology and Environmental Toxicology at the University of California Riverside. Dr. Schlenk received his Ph.D. in Toxicology from Oregon State University in 1989. He was supported by a National Institute of Environmental Health Science postdoctoral fellowship at Duke University from 1989–1991. Since 2003, he has been a member of the Board of Directors for the North American Society of Environmental Toxicology

and Chemistry and has been a visiting Scholar in the Department of Biochemistry, Chinese University of Hong Kong; a recipient of the Ray Lankester Investigatorship of the Marine Biological Association of the United Kingdom; a visiting Scholar of the Instituto Del Mare, Venice Italy; and a Visiting Scientist at the CSIRO Lucas Heights Laboratory, in Sydney Australia. He has served on the EPA Science Advisory Board for Aquatic Life Criteria Guidelines and on proposal review panels for the EPA, NOAA, and the National Institutes of Health. He is the co-editor-in chief of Aquatic Toxicology and serves on the editorial boards of Toxicological Sciences, Environmental Toxicology and Chemistry, The Asian Journal of Ecotoxicology and Marine Environmental Research. He has co-edited a 2 volume series entitled ''Target Organ Toxicity in Marine and Freshwater Teleosts'' and has published more than 115 peer reviewed journal articles. His research interests revolve around the fate and effects of pesticides in aquatic organisms. In particular, his laboratory has focused on the impacts of hypersaline water on the biotransformation and enantioselective toxicity of endocrine-modulating pesticides to aquatic organisms.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 8, 2006.

Elizabeth Resek,

Acting Director, Office of Science Coordination and Policy

[FR Doc. E6–13344 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0690; FRL–8210–8]

Board of Scientific Counselors Executive Committee Meeting—September 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) Executive Committee.

DATES: The conference call will be held on Tuesday, September 5, 2006 from 11 a.m. to 12 noon, 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–2006–0690 by one of the following methods:

- *http://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–2006–0690.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0690.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—September 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ-ORD–2006–0690.
- *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–2006–0690.

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–2006–0690. 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, Executive Committee Meeting—September 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 approve a revised draft report prepared by the BOSC Science to Achieve Results (STAR)/Greater Research Opportunities (GRO) Fellowship Subcommittee, and discuss follow-up to the BOSC Executive Committee's July 2006 public conference call. Proposed agenda items for the conference call include, but are not limited to, discussion of: the revised draft STAR/GRO Fellowship Subcommittee report; a process for conducting BOSC mid-cycle program reviews; and future business. 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: August 9, 2006.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E6–13483 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0493; FRL–8086–3]

Streptomycin; Tolerance Reassessment Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide streptomycin. The Agency's risk assessments and other related documents also are available in the streptomycin docket. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703)-603-0523; fax number: (703) 308-7070; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0493. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed risks associated with use of the pesticide streptomycin, reassessed five existing tolerances or legal residue limits, and on June 30, 2006, reached a tolerance reassessment and risk management decision. Streptomycin is an antibiotic pesticide used to control bacterial diseases in certain fruits, vegetables, seeds, and ornamental crops. The majority of streptomycin used in agriculture is on apples and pears. Other crops treated include celery, philodendron, tomato, peppers, dieffenbachia cuttings, chrysanthemums, roses, pyracantha, potatoes, and tobacco. Streptomycin is also registered with FDA to treat infectious diseases in animals and humans. Streptomycin is typically applied by ground or aerial spray and is also used as a liquid soak, dust treatment, and seed treatment. Spray applications are generally made in the spring according to weather and crop development. Streptomycin is one of few tools available to combat fire blight, a potentially devastating disease in fruit trees. The Agency is now issuing a Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for streptomycin, known as a TRED, as well as related technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the streptomycin tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, streptomycin was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for streptomycin.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–13346 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0492; FRL–8086–4]

Oxytetracycline; Tolerance Reassessment Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide oxytetracycline. The Agency's risk assessments and other related documents also are available in the oxytetracycline docket. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0523; fax number: (703) 308-7070; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0492. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed risks associated with use of the oxytetracycline, reassessed two existing tolerances or legal residue limits, and on June 30, 2006, reached a tolerance reassessment and risk management decision. Oxytetracycline is an antibiotic pesticide used to control bacteria, fungi, and mycoplasma-like organisms. The majority of agricultural use of oxytetracycline is on pears. Other crops treated include peaches, nectarines, and apples. Oxytetracycline use on apples has been approved under emergency exemption (Section 18) provisions for several years due to the lack of efficacious alternatives. Oxytetracycline is also registered for use on forest trees and ornamental trees, shrubs, and vines. There are no residential pesticidal uses of oxytetracycline. Oxytetracycline is also registered with FDA to treat infectious diseases in animals and humans and also as a food additive to increase animal weight gain. The Agency is now issuing a Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for Oxytetracycline, known as a TRED, as well as related technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the Oxytetracycline tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, oxytetracycline was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for oxytetracycline.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–13485 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2005–0293; FRL–8080–2

Cypermethrin Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide cypermethrin, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the cypermethrin docket. Cypermethrin is an insecticide used both in agricultural and non-agricultural settings. Most agricultural use is on cotton with minor uses on pecans, peanuts, broccoli and sweet corn. Cypermethrin also has minor uses in the treatment of cattle and other livestock. The majority of

cypermethrin use occurs in non-agricultural settings, including a wide range of commercial, industrial, and residential sites for control of ants, cockroaches, and fleas. There are also outdoor structural, perimeter, and turf uses for control of subterranean termites and other insects. In residential settings, cypermethrin can be applied both by professional applicators and residential users. EPA has reviewed cypermethrin through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before October 16, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0293 by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0293. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Dirk Helder, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-4610; fax number: (703) 308-7070; e-mail address: *helder.dirk@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, cypermethrin under section 4(g)(2)(A) of FIFRA.

Cypermethrin was first registered in 1984 by FMC Corporation, who also subsequently registered the isomer enriched zeta-cypermethrin in 1992. Cypermethrin is an insecticide used both in agricultural and non-agricultural settings with most of the agricultural use on cotton and minor uses on pecans, peanuts, broccoli and sweet corn. EPA has determined that the data base to support reregistration is substantially complete and that products containing cypermethrin are eligible for reregistration provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing cypermethrin.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, cypermethrin was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for cypermethrin.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the cypermethrin RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for cypermethrin. Comments received after the close of the comment period will be marked ≥late.≥; EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the cypermethrin RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ≥appropriate regulatory action.≥;

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 27, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–13164 Filed 8–15–06; 8:45 am]

BILLING CODE 656050-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0507; FRL–8087–2]

Inorganic Chlorates Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Inorganic Chlorates Reregistration Eligibility Decision (RED). The Agency's risk assessments and other related documents also are available in the inorganic chlorates Docket. Of the inorganic chlorates listed as active ingredients (i.e., sodium chlorate, calcium chlorate, potassium chlorate, and magnesium chlorate), only sodium chlorate is present as an active ingredient in currently registered products. Sodium chlorate is a non-selective herbicide used in both agricultural and non-agricultural settings. The majority of the agricultural use is on cotton as a defoliant/desiccant. The non-agricultural uses include building perimeters, fence rows, and parking lots. The Inorganic Chlorates RED also includes an assessment of risk resulting from chlorate concentrations in drinking water, which occur as a result of certain drinking water treatment practices. EPA has reviewed sodium chlorate through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0522; fax number: 703-308-7070; e-mail address: *clayton.molly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0507. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours

of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the inorganic chlorates under section 4(g)(2)(A) of FIFRA. Of the inorganic chlorates listed as active ingredients, only sodium chlorate is present as an active ingredient in currently registered products. Sodium chlorate is a non-selective, contact herbicide, and is used on both agricultural and non-agricultural use sites. Sodium chlorate is also used in drinking water disinfection processes. Sodium chlorate-containing pesticide products are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by any other means that achieve equivalant risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing sodium chlorate.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the sodium chlorate tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, the inorganic chlorates, which include sodium chlorate as the only active ingredient, were reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for sodium chlorate.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Few substantive comments were received during the earlier comment periods for this pesticide, and/or all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the inorganic chlorates RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended , directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–13342 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0369; FRL–8083–2]

Chloroneb; Termination of Certain Uses and Label Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the termination of certain uses and label amendments, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide chloroneb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an April 19, 2006 **Federal Register** Notice of Receipt of Request from the chloroneb registrant to voluntarily terminate certain uses of its chloroneb products and label amendments. The request would terminate chloroneb's use on residential lawns and turf, as well as on lawns and turf of parks and schools. In the April 19, 2006 Notice, EPA indicated that it would issue an order to implement the termination of certain uses, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrant withdrew their request within this period. The Agency did not receive any comments on the Notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the request to terminate the use on residential lawns and turf, as well as on lawns and turf of parks and schools. Any distribution, sale, or use of the chloroneb products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8025; fax number: (703) 308-8005; e-mail address: livingston.wilhelmena@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0369 Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

II. What Action is the Agency Taking?

This notice grants the request by the registrant identified in this notice (Table 3) to terminate certain uses and amend labels for chloroneb registrations. Chloroneb is a fungicide currently registered for use on a variety of food crops but is primarily used for pre-plant cottonseed treatment as well as on commercial turf and ornamentals. Other markets for chloroneb seed treatment uses include: sugar beets, soybeans, cotton, and beans. In a letter dated January 9, 2006, Kincaid Inc. requested that EPA terminate certain uses of pesticide product registrations identified in this notice (Table 1). Kincaid Inc. requested voluntary termination of chloroneb's use on residential lawns and turf, as well as on lawns and turf at parks and schools. With regard to turf uses, Kincaid requested that the following use be terminated: Turf: except for golf course tees, greens, collars, aprons, and spot treatment on fairways, as well as athletic fields used only by professional athletes. In addition to the use terminations, Kincaid requested the following statement be added to the label for its manufacturing-use registration (registration number 73782-1) identified in this notice (Table 2): ''This product may not be formulated into end use products for use on turf, except for use on golf course tees, greens, collars, aprons, and spot treatment on fairways, as well as athletic fields used for professional athletes.''

This notice announces the termination of certain uses of chloroneb product registrations and label amendments. The affected products and the registrant making the request are identified in the following tables of this unit.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH TERMINATION OF CERTAIN USES

EPA Registration No.	Product Name
73782–1	Chloroneb Fungicide Technical
73782–2	Demosan 65W
73782–3	Terraneb SP Turf Fungicide
73782–4	K.E. Chloroneb Systemic Flowable Fungicide

TABLE 2.—CHLORONEB PRODUCT REGISTRATION FOR LABEL AMENDMENTS

EPA Registration No.	Product Name
73782–1	Chloroneb Fungicide Technical

TABLE 3.—REGISTRANT OF CHLORONEB PRODUCTS WITH TERMINATION OF CERTAIN USES AND LABEL AMENDMENT

EPA Company No.	Company Name and Address
73782	Kincaid Inc. P.O. Box 490 Athens, TN 37371

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the April 19, 2006 **Federal Register** notice announcing the Agency's receipt of the request for voluntary termination of certain uses of chloroneb and label amendments.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation order to terminate certain uses of chloroneb registrations identified in Table 1 of Unit II. Accordingly, the Agency also orders that the label amendments for the product registration identified in Table 2 of Unit II is hereby amended. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions:

Registrant may sell and distribute existing stocks for one year from the date of the use termination request. The product may be sold, distributed, and used by people other than the registrant until existing stocks have been exhausted, provided that such sale, distribution, and use comply with the EPA-approved label and labeling of the product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–13343 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0602; FRL–8081–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0602, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0602. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 73512–A. *Applicant*: Morse Enterprises Limited, Inc., Brickell East, Floor 10, 151 S.E. 15 Road, Miami, Florida 33129. *Product name*: Chitosan Hydrolysate Liquid Manufacturing Use Product. Biochemical pesticide. *Active ingredient*: Chitosan Hydrolysate at 8.33%. *Proposal classification/Use*: For formulation into bactericide/fungicide.

2. *File Symbol*: 73512–L. *Applicant*: Morse Enterprises Limited, Inc. *Product name*: KeyPlex 350 DP. Biochemical pesticide. *Active ingredients*: Chitosan Hydrolysate at 0.8% and Salicylic Acid at 1.5%. *Proposal classification/Use:* Bactericide and fungicide for commercial crops, ornamental plants, and turf.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 4, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–13518 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0191; FRL–7776–6]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Quinclorac in or on Barley Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of quinclorac in or on barley commodities.

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0191 and pesticide petition number (PP) 0E6114, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0191. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0191. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going at regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; telephone number: 703-305-5410; e-mail address: *johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 0E6114. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to establish a tolerance for residues of the herbicide quinclorac (3,7-dichloro-8-quinolinecarboxylic acid) in or on the food commodity barley at 1.5 parts per million. An adequate analytical method for enforcement of the tolerance exists. The analytical method used for quantitative determinations was designed to measure quinclorac residues present as the parent compound.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–6913 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0596; FRL–8081–6]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Chitosan Hydrolysate in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for residues of chitosan hydrolysate in or on various commodities.

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0596 and pesticide petition number (PP) 6E7053, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0596. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7053. Morse Enterprises Limited, Inc., Brickell East, Floor 10, 151 S.E. 15 Road, Miami, Florida 33129, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical bactericide and fungicide, chitosan hydrolysate, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 2006.

Phillip Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–13487 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0598; FRL–8081–5]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Salicylic Acid in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for residues of the biochemical bactericide and fungicide salicylic acid in or on various commodities.

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0598 and pesticide petition number (PP) 6E7054, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0598. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7054. Morse Enterprises Limited, Inc., Brickell East, Floor 10, 151 S.E. 15 Road, Miami, Florida 33129, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical bactericide and fungicide, salicylic acid, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 2006.

Phillip Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–13488 Filed 8–15–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Hearing

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold a public hearing in conjunction with its *September 27, 2006* Board meeting. the public hearing will begin at 9 a.m. and will address the exposure draft (ED) entitled *Definition and Recognition of Elements of Accrual-Basis Financial Statements.* Those interested in testifying should contact Ms. Terri Pinkney, Administrative Assistant, no later than one week prior to the hearing. Ms. Pinkney can be reached at (202) 512–7350 or via e-mail at *pinkneyt@fasab.gov.* Also, they should at the same time provide a short biography and written copies of their testimony. The ED is available on the FASAB Web site *http://www.fasab.gov* under Exposure Drafts.

A more detailed agenda can be obtained from the FASAB Web site (*http://www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling (202) 512–7350 at least one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–363.

Dated: August 14, 2006.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 06–6988 Filed 8–15–06; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 4, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 16, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0113.

Title: Broadcast EEO Program Report; Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC Forms 396 and 396–A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 7,000.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Renewal reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: $268,160.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or

seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–13355 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 8, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 16, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an E-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Nos.: FCC Forms 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,000 respondents; 2,500 responses.

Estimated Time Per Response: .50–6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 6,625 hours.

Total Annual Cost: $1,358,750.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

FCC Form 609–T is used by Designated Entities (Des) to request prior Commission approval pursuant to 47 CFR 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the FCC to determine whether the public interest would be served by the approval of the reportable eligibility event. FCC Form 611–T is used by DE licensees to file an annual report, pursuant to 47 CFR 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

There is no change to the estimated average burden or number of respondents.

OMB Control Number: 3060–XXXX.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 306 respondents; 306 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Estimated Total Annual Burden: 306 hours.

Estimated Total Annual Costs: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new collection for surrenders of authorizations for international carriers (214 authorizations), space stations and earth stations. A surrender of authorization is the licensee's voluntary cancellation of a license (or authorization) to provide international telecommunications services, such as discontinuing operation of a space station.

This new collection is being initiated as a result of the Commission's release of a Public Notice (DA 06–569) on March 15, 2006 titled, ''International Bureau Announces New and Improved Filing Modules Within Its MyIBFS Electronic Filing System: Surrender of Authorization and Improved Space Station Milestone Filing.'' The Public Notice announced the International Bureau's launching of an E-filing module for surrendering authorizations and an improved milestone filing module for satellite space stations within its MyIBFS consolidated licensing and electronic filing system. (**Note**: The OMB approved the electronic filing of milestones under OMB Control No. 3060–1007).

Additionally, the Commission is requesting the OMB's approval of mandatory electronic filing of surrenders of authorizations that do not fall under Part 25 of the Commission's rules. Currently, the surrender module is available to licensees in MyIBFS who are not required to comply with Part 25 on a voluntary basis. (**Note**: The OMB approved electronic filing of all Part 25-related applications and associated documents under OMB Control No. 3060–0678).

Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter. The collection of information saves time for both licensees and Commission staff since they are received in MyIBFS electronically and include only the information that is

essential to process the requests in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–13475 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 10, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 15, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Licensing, Operation, and Transition of the 2500–26990 MHz Band.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 2,500 respondents; 5,000 responses.

Estimated Time Per Response: .25–5 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 8,335 hours.

Total Annual Cost: $273,334.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a new collection after this 30 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

New Broadband Radio Service (BRS) and Educational Broadband Service (EBS) band plan transitions take place in Basic Trading Areas (BTAs), which will provide both incumbent licensees and potential new entrants in the 2495–2690 MHz band with greatly enhanced flexibility to encourage the efficient and effective use of spectrum domestically and internationally and the growth and rapid development of innovative and efficient communications technologies and services.

The information collection requirements are contained in the following rule sections: 1) the pre-transition data request (47 CFR 27.1231(e)); 2) the transition notice (47 CFR 27.1231(e)); 3) the Initiation Plan (47 CFR 27.1231(f)); and 4) the post-transition notification (47 CFR 27.1235). The Pre-transition data request will be collected by a third-party proponent (proponent) to assist in the transitioning the 2500–2690 MHz band. The proponent may use a variety of methods, including a computerized database. The proponent will send the transition notice to all BRS and EBS licensees in the BTA that the proponent is transitioning. The FCC will collect the Initiation Plan and the Post-transition Notification from the proponent to enable the FCC to assess when transitions have begun and when they have ended. The FCC will use our electronic comment and filing system (ECFS) database to collect this information from the proponents.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–13478 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No 06–148; FCC 06–111]

TCR Sports Broadcasting Holding, L.L.P., Complainant v. Comcast Corporation, Defendant

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document designates the program carriage complaint of TCR Sports Broadcasting Holding, L.L.P., against Comcast Corporation for an evidentiary hearing to resolve the factual disputes with respect to its claims and return a recommended decision and a recommended remedy, if necessary, to the Commission within 45 days of the stay of this Order being lifted.

ADDRESSES: Please file documents with the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 3-B443, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Ratcliffe, Deputy Bureau Chief, Enforcement Bureau at (202) 418–7450.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Hearing Designation Order, FCC 06–111, released July 31, 2006. The full text of the Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of the Order

1. TCR Sports Broadcasting Holding, L.L.P. (''TCR'') is a regional sports network (''RSN''), controlled by the Baltimore Orioles, that owns the underlying rights to produce and exhibit Orioles games. In March 2005, an agreement was reached among Major League Baseball, TCR, the Montreal Expos (now the Washington Nationals), and the Orioles that provided that TCR would ''have the sole and exclusive right to present any and all of the Nationals' and Orioles' baseball games not otherwise retained or reserved by Major League Baseball's national rights agreements. * * *'' For purposes of exercising these rights with respect to the Orioles and Nationals, TCR created and does business as Mid-Atlantic Sports Network (''MASN''). Comcast Corporation (''Comcast'') is an MVPD that serves numerous communities in the Washington, D.C. metropolitan area.

2. On June 14, 2005, TCR filed a program carriage complaint alleging that Comcast violated 47 CFR 76.1301(a) by demanding a financial interest in MASN and 47 CFR 76.1301(c) by discriminating against TCR's programming in favor of Comcast's own programming. After reviewing the pleadings and supporting documentation filed by the parties, the Commission finds that TCR has established a prima facie case for both its claims. The Commission also finds that the pleadings and supporting documentation present several factual disputes, such that we are unable to determine on the basis of the existing record whether we can grant relief based on the claims. Accordingly, commencing concurrently with the Alternative Dispute Resolution (''ADR'') election process discussed below, we direct an Administrative Law Judge to hold a hearing, issue a recommended decision on the facts underlying the discrimination claim and a recommended remedy, if necessary, and then return the matter to the Commission within 45 days.

3. Pursuant to 47 CFR 76.7(g)(2) of the Commission's rules, TCR and Comcast will have ten days following the lifting of the stay of this Order to elect to resolve this dispute through ADR. Each party will notify the Commission, in writing, of its election within 10 days of release of this Order and, in the event that ADR is chosen, will update the Commission monthly on the status of the ADR process. If the parties elect to resolve the dispute through ADR, the 45-day period for review by an Administrative Law Judge will be tolled. In the event that the parties fail to reach a settlement through the ADR process, the parties shall promptly notify the Commission in writing, and the 45-day period will resume upon receipt of such notification.

4. Upon receipt of the Administrative Law Judge's recommended decision and remedy, the Commission will make the requisite legal determinations as to whether Comcast has demanded a financial interest in TCR's programming in exchange for carriage in violation of 47 CFR 76.1302(a) or has discriminated against TCR's programming in favor of Comcast's own programming, with the effect of unreasonably restraining TCR's ability to compete fairly in violation of 47 CFR 76.1302(c). If necessary, the Commission will then decide upon appropriate remedies. The Commission will issue its decision not more than 60 days after receipt of the Administrative Law Judge's recommendations, which may be extended by the Commission for one period of 60 days.

5. We note that the Commission recently approved a series of license assignments and/or transfers of control by Adelphia Communications Corporation, Time Warner Cable and Comcast. The Commission imposed remedial conditions including a commercial arbitration condition as an alternative for RSNs unaffiliated with any MVPD to the program carriage complaint procedures. An unaffiliated RSN that has been denied carriage by Comcast may submit its carriage claim to arbitration within 30 days after the denial of carriage or within ten days after the release of the Adelphia Order. On our own motion, we stay this Order pending TCR's decision whether to pursue the arbitration option afforded it in the Adelphia Order. In the event TCR declines to pursue arbitration under the conditions established in the Adelphia Order, the stay will be lifted automatically without further action by the Commission.

6. Accordingly, *it is ordered,* that TCR Sports Broadcasting Holding, L.L.P.'s Complaint against Comcast Corporation is designated for hearing at a date and place to be specified in a subsequent order by an Administrative Law Judge.

7. *It is further ordered,* that pursuant to Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. 536, and 47 CFR 76.1300 through 1302, TCR Sports Broadcasting Holding, L.L.P. and Comcast Corporation submit to the Commission, in writing within ten days of the stay of this Order being lifted, their respective elections as to whether each wishes to proceed to Alternative Dispute Resolution and, in the event that Alternative Dispute Resolution is chosen, will monthly update the Commission on the status of that process.

8. *It is further ordered,* that the Administrative Law Judge, within 45 days of the lifting of the stay of this Order, will make and return to the Commission a recommended decision on the following factual questions:

(1) Did Comcast Corporation demand a financial interest in the programming of TCR Sports Broadcasting Holding, L.L.P. in exchange for carriage of such programming?

(2) Did Comcast Corporation discriminate against TCR Sports Broadcasting Holding, L.L.P.'s programming in favor of Comcast Corporation's own programming?

9. *It is further ordered,* that the Administrative Law Judge, within 45 days of the lifting of the stay of this Order, will return to the Commission a recommended remedy, if necessary.

10. *It is further ordered,* that if the parties elect Alternative Dispute Resolution, the period for Administrative Law Judge review shall be tolled, until such time as the parties notify the Commission that they have failed to reach a settlement through Alternative Dispute Resolution.

11. *It is further ordered,* that this hearing will be governed by the rules of practice and procedure pertaining to the Commission's Hearing Proceedings, 47 CFR 1.201 through 1.364, subject to the Administrative Law Judge's discretion to regulate the hearing.

12. *It is further ordered,* that all Discovery shall be conducted in accordance with 47 CFR 1.311 through 1.325, subject to the Administrative Law Judge's discretion.

13. *It is further ordered,* that the Chief, Enforcement Bureau will be a party to the proceeding and will determine its level of participation.

14. *It is further ordered,* that the Secretary of the Commission shall cause to have this Order published in the **Federal Register**.

15. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send copies of this Order to all parties by certified mail, return receipt requested.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. E6–13484 Filed 8–15–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed new one-time collection of information, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The collection would provide information on the features and effects of overdraft protection programs in state nonmember financial institutions.

DATES: Comments must be submitted on or before October 16, 2006.

ADDRESSES: Interested parties are invited to submit written comments by mail to Steve Hanft, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; by FAX to Mr. Hanft at (202) 898–3838; or by e-mail to *comments@fdic.gov.* All comments should refer to ''Study of Overdraft Protection Programs.'' Copies of comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft, (202) 898–3907, or at the address above.

SUPPLEMENTARY INFORMATION:

Proposal to undertake the following new collection of information:

Title: Study of Overdraft Protection Programs.

OMB Number: New collection.

Frequency of Response: One-time.

Affected Public: State nonmember financial institutions and data service providers.

Estimated Number of Respondents: 500.

Estimated Time per Response: Survey questions: approximate average of 3 hours per respondent. Micro-data collection: approximate average of 40 hours per respondent.

Estimated Total Annual Burden:

Survey questions: 500 respondents times 3 hours per = 1,500 hours.

Micro-data collection: 100 respondents (financial institutions and/or service providers) times 40 hours per = 4,000 hours.

Total burden = 1,500 + 4,000 = 5,500 hours.

General Description of Collection: The FDIC is planning a study of the overdraft protection products offered by financial institutions and the usage patterns among depositors in those institutions. The study requires collection of data from financial institutions that are not currently included in the Call Reports or other standard periodic regulatory reports. These data will be collected in two parts: a survey in which a sample of 500 state-chartered nonmember financial institutions will, we anticipate, be asked up to 85 questions about each type of overdraft policy that they implement, and an additional micro-data collection in which more detailed information will be collected from 100 of these institutions. To minimize burden on respondents, FDIC will use automated data collection techniques wherever possible. The study conforms to privacy rules and will not request any information that could be used to identify individual bank customers, such as name, address, or account number. All data from, and identities of, the financial institutions will remain confidential. It is the intent of the FDIC to publish only general findings of the study.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the proposed information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of August, 2006.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. E6–13435 Filed 8–15–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 009831–024.

Title: New Zealand/United States Container Lines Association.

Parties: Hamburg-Sud and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would remove Australia-New Zealand Direct Line and CP Ships USA, LLC as parties to the agreement and add Hapag-Lloyd as a party.

Agreement No.: 010071–032.

Title: Cruise Lines International Association Agreement.

Parties: American Cruise Lines, Inc.; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; MSC Cruises; Norwegian Coastal Voyage, Inc./Bergen Line Services; Norwegian Cruise Line; Oceania Cruises; Orient Lines; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; Silversea Cruises, Ltd.; and Windstar Cruises.

Filing Party: Terry Dale, President; Cruise Lines International Association; 80 Broad Street; Suite 1800; New York, NY 10004.

Synopsis: The amendment would update the Association's membership and revise the agreement's authority to incorporate functions of the International Council of Cruise Lines under this agreement.

Agreement No.: 010955–009.

Title: ACL/H–L Reciprocal Space Charter and Sailing Agreement.

Parties: Atlantic Container Line AB and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment updates Hapag-Lloyd's corporate name, the parties' home office addresses, and the delegation of authority provision.

Agreement No.: 010979–043.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; Crowley Liner Services, Inc.; Hapag-Lloyd AG; Interline Connection, N.V.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Co., Ltd.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would delete CP Ships as a party to the agreement, add Hapag-Lloyd, delete the discussion sections under the geographic scope, clarify the parties' authority under Article 5.A, 5.F, and 5.H, add authority for the parties to enter into joint contracts with third parties for professional services and to discuss and agree on a common position with respect to proposed governmental or industry actions, add a provision dealing with civil penalties, and make administrative changes in the agreement.

Agreement No.: 010982–039.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; and Tropical Shipping and Construction Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would delete G&G Marine as a party to the agreement, clarify the parties' authority under Article 5.A, add authority for the parties to enter into joint contracts with third parties for professional services and to discuss and agree on a common position with respect to proposed governmental or industry actions, add a provision dealing with civil penalties, revise the membership and voting provisions, and make administrative changes in the agreement.

Agreement No.: 011268–022.

Title: New Zealand/United States Discussion Agreement.

Parties: New Zealand/United States Container Lines Association; Hamburg-Süd; A.P. Moller-Maersk A/S; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would remove Australia-New Zealand Direct Line and CP Ships USA, LLC as parties to the agreement and add Hapag-Lloyd as a party.

Agreement No.: 011927–002.

Title: ITS/Hatsu MUS Slot Charter Agreement.

Parties: Italia Marittima S.p.A. and Hatsu Marine Ltd.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment expands the geographic scope of the Agreement to include the East Mediterranean, specifically ports in Turkey and Malta.

Agreement No.: 011970.

Title: BBC Chartering and Logistic-Caytrans Project Services (Americas) Joint Service Agreement.

Parties: BBC Chartering & Logistic GmbH & Co. KG; Caytrans Project Services (Americas) Ltd. and Caytrans BBC.

Filing Party: Matthew J. Thomas, Esq.; Troutman Sanders LLP; 401 9th Street, NW.; Suite 1000; Washington, DC 20004–2134.

Synopsis: The agreement would authorize the parties to establish a joint service to provide a breakbulk liner service between the U.S. Gulf and East Coasts, and the Caribbean, the East Coast of Mexico, the East Coast of Central America, and the North Coast of South America. The parties request expedited review.

Agreement No.: 201172.

Title: UMS and PHA Marine Terminal Agreement.

Parties: Port of Houston Authority of Harris County, TX, and Universal Maritime Service Corporation.

Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW.; 10th Floor; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to discuss and agree, on a voluntary and non-binding basis, matters relating to the operation of marine terminal facilities in the Houston area.

Dated: August 11, 2006.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–13461 Filed 8–15–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary Licenses; Correction

In the OTI Applicant Notice published in the **Federal Register** on July 26, 2006 (71 FR 42403) reference to the name of the Qualifying Individual Mark Hezrom, President is corrected to read:

''Arik Hezrom, President''

Dated: August 11, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–13460 Filed 8–15–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Tera Trading Group, Inc. dba T.T.G. Inc., dba T.T.G. International Freight Forwarders, 1850 NW. 82 Avenue, Miami, FL 33126, Officer: Mario Rodriguez Toro, President (Qualifying Individual).

F.I.D. International, Inc., 1930 N. West 18 Street, Ste. #11, Pompano Beach, FL 33069, Officers: Neide Fagionato Perozin, Secretary (Qualifying Individual), Itamar L. Dahan, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

B.M. Pampanga's Best, Inc. dba Pampanga Express, 6235 S. Pecos Rd., #108–109, Las Vegas, NV 89120, Officers: Juancho E. Ignacio, President (Qualifying Individual), Ernesto O. Ignacio, Treasurer.

AMAX Global Logistics, 218 West Garvey Ave., Unit I, Monterey Park, CA 91754, Officers: Sammy K. Ching, President (Qualifying Individual), Shirley W. Chun, Secretary.

Intermove Ltd., 3 Simm Lane, Unit 2H, Newtown, CT 06470, Officer: Kenneth M. Mercado, President (Qualifying Individual), Jana Pirro, Manager.

LIS Logistic-Global Inc., 10540 N.W. 29 Terrace, Miami, FL 33172, Officers: Amorin G. Kimball, Secretary (Qualifying Individual), Lorena Facusse, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

BFS International, LLC, 3835 N.E. Hancock Street, #203, Portland, OR 97212, Officer: Kimberly D. Martin, Vice President (Qualifying Individual).

AMR Investments Inc., 547 Boulevard, Kenilworth, NJ 07033, Officers: Gary Walter Pedersen, Vice President (Qualifying Individual), James Madden, President.

Dated: August 11, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–13459 Filed 8–15–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of Wells River Bancorp, Inc., and thereby indirectly acquire Perpetual Savings Bank, both of Wellsville, Ohio.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Independence Bancshares, Inc., and Independence Bancshares Acquisition, LLC, both of, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Community Bancorp of McLean County, Kentucky, Inc., and thereby indirectly acquire First Security Bank and Trust, both of Island, Kentucky.

Board of Governors of the Federal Reserve System, August 11, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–13455 Filed 8–15–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Independent Bancshares, Inc., Clarkfield, Minnesota, to engage de novo in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 11, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–13454 Filed 8–15–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Report of a Revised System of Records

AGENCY: Office of the Assistant Secretary for Administration and Management, Program Support Center, HHS.

ACTION: Notice of a Modified or Altered System of Records.

SUMMARY: Notice is hereby given that the Office of the Assistant Secretary for Administration and Management, Program Support Center, HHS, is proposing to amend its existing System of Records (SOR) entitled, ''PSC Parking Program and PSC Transhare Program Records, No. 09–40–0013.'' This amendment will change the name of the system and incorporate the activities of the PSC security and personal identification verification services into the existing SOR and provide for a more effective application of services. We have provided background information about the amended system in the **SUPPLEMENTARY INFORMATION** section below.

DATES: *Effective Date:* PSC filed a revised system report with the Chairman of the Committee on Government Reform and Oversight of the House of Representatives, the Chairman of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on August 9, 2006. To ensure that all parties have adequate time in which to

comment, the revised system notice is effective 30 days after the date of publication, unless HHS receives comments which would result in a contrary determination, or 40 days from the date it was submitted to OMB and the Congress, whichever is later.

ADDRESSES: Mail public comments to Mr. Don Deering, Chief, Security Services Branch, Physical Security Branch, Room 4B–44, 5600 Fishers Lane, Rockville, MD 20857. Telephone 301–443–2714. This is not a toll-free number. Comments will be available for public inspection and copying at the above location, *by appointment only,* during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Mr. Don Deering, Chief, Security Services Branch, Physical Security Branch, Room 4B–44, 5600 Fishers Lane, Rockville, MD 20857. Telephone 301–443–2714.

SUPPLEMENTARY INFORMATION: In 1999, PSC established a system of records (SOR), ''PSC Parking Program and PSC Transhare Program Records, HHS/PSC/AOS.'' Under the authority of The Federal Property and Administrative Services Act of 1949, as amended; and Pub. L. 101–509 section 629, as amended (5 U.S.C. 7905, ''Programs to encourage commuting by means other than single-occupancy motor vehicles''). Notice of this system was published in the **Federal Register** July 14, 1999 (64 FR 37990). This amendment will incorporate the activities of the PSC security and personal identification verification services into the existing SOR and provide for a more effective application of services.

The SOR contains records relating to the administration of the parking permit system, PSC Transhare Program, PSC Security Services, and the PSC badging issuance for the Parklawn Building and HHS facilities. The records include information such as name; date of birth; place of birth; height; weight; gender; hair color and eye color; fingerprints; pay plan; grade level; employing organization; building and room; duty hours and location; name of supervisor; home address; office telephone number; background investigation type, Social Security Number; assigned parking space number; vehicle information, i.e., tag number and State; make and model of car; physician's statement in support of handicapped parking assignments and query to supervisors in support of handicapped parking assignments, where applicable; Transhare commuter card number; mode of transportation; commuter cost; name of personnel security representative (PSR).

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

The maintenance of the system is authorized by the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 101–509, section 629, as amended (5 U.S.C. 7905, ''Programs to encourage commuting by means other than single-occupancy motor vehicles''), Executive Order 12958, the Privacy Act of 1974 (5 U.S.C. 552a(e)(10)), Pub. L. 90–620, as amended (44 U.S.C. Chapters 21 and 23), 5 U.S.C. 301, 40 U.S.C. 121(c) as implemented by 41 CFR part 102–74 subpart C, and 41 CFR section 102–74.375. The above Executive Order, Statutes, and Regulations address the security of records maintained by Federal agencies, Public Buildings, Property, Conduct on Federal Property, commuter programs, and Physical Protection and Building Security.

B. Collection and Maintenance of Data in the System

For purposes of the SOR, the system contains information related to the administration of the parking permit system, PSC Transhare Program, PSC Security Services, and the PSC badging issuance for the Parklawn Building and HHS facilities. The records include information such as name; date of birth; place of birth; height; weight; gender; hair color and eye color; fingerprints; pay plan; grade level; employing organization; building and room; duty hours and location; name of supervisor; home address; office telephone number; background investigation type, Social Security Numbers; assigned parking space number; vehicle information, i.e., tag number and State; make and model of car; physician's statement in support of handicapped parking assignments and query to supervisors in support of handicapped parking assignments, where applicable; Transhare commuter card number; mode of transportation; commuter cost; name of personnel security representative (PSR).

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release PSC Parking, Transhare, Security Services, and Badge Issuance information that can be associated with an individual as provided for under ''Section III.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of this system.

III. Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purposes for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release PSC Parking, Transhare, Security Services, and Badge Issuance information that can be associated with an individual as provided for under Section III. Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of this system.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: These records or information from these records may be used:

1. To disclose pertinent information to appropriate city, county, State and Federal law enforcement agencies responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from that congressional office made at the written request of that individual.

3. To disclose information to the Department of Justice, a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is

compatible with the purpose for which the records are collected.

4. When HHS contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

5. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation, concerning personnel policies, practices, and matters affecting working conditions.

6. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

IV. Safeguards

PSC has safeguards in place for authorized users and monitors such users to ensure against unauthorized use.

1. *Authorized Users:* Data on computer files is accessed by authorized users who are PSC employees and who are responsible for implementing the program.

2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users above) protect information from public view and from unauthorized personnel entering an unsupervised office.

4. *Contractor Guidelines:* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and PSC policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E-Government Act of 2002, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and PSC policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications and the HHS Information Systems Program Handbook.

V. Effects of the Proposed System of Records on Individual Rights

PSC proposes to revise this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

PSC will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. PSC will collect only that information necessary to perform the system's functions. In addition, PSC will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. PSC, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: August 8, 2006.

J.P. VanLandingham,

Deputy Assistant Secretary for Program Support.

SYSTEM NO. 09–40–0013

SYSTEM NAME:

PSC Parking Program, PSC Transhare Program Records, PSC Security Services, and PSC Employee and Contractors Identification Badge Issuances, HHS/PSC/AOS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Property Management, Administrative Operations Service, Program Support Center, Room 4B–44 and 5B–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current HHS employees and others who use Parklawn Building parking facilities; HHS employees who apply for and participate in the PSC Transhare Program; HHS employees and contractors, who submit information for personnel security clearances, and employees, contractors, retirees, and individuals seeking access to HHS facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the administration of the parking permit system, PSC Transhare Program, PSC Security Services, and the PSC badging issuance for the Parklawn Building and HHS facilities. The records include information such as name; date of birth; place of birth; height; weight; gender; hair color and eye color; fingerprints; pay plan; grade level; employing organization; building and room; duty hours and location; name of supervisor; home address; office telephone number; background investigation type, Social Security Numbers; assigned parking space number; vehicle information, *i.e.*, tag number and State; make and model of car; physician's statement in support of handicapped parking assignments and query to supervisors in support of handicapped parking assignments, where applicable; Transhare commuter card number; mode of transportation; commuter cost; name of personnel security representative (PSR).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The maintenance of the system is authorized by the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 101–509, section 629, as amended (5 U.S.C. 7905, ''Programs to encourage commuting by means other than single-occupancy motor vehicles''), Executive Order 12958, the Privacy Act of 1974 (5 U.S.C. 552a(e)(10)), Pub. L. 90–620, as amended (44 U.S.C. Chapters 21 and 23), 5 U.S.C. 301, 40 U.S.C. 121(c) as implemented by 41 CFR part 102–74 subpart C, and 41 CFR section 102–74.375. The above Executive Order, Statutes, and Regulations address the security of records maintained by Federal agencies, Public Buildings,

Property, Conduct on Federal Property, commuter programs, and Physical Protection and Building Security.

PURPOSE(S):

These records are used to:

1. Administer the parking program at the Parklawn Building complex.
2. Manage the PSC Transhare Program, including receipt and processing of Employee applications and coordination of the fare media distribution to employees.
3. Monitor the use of funds used to support the PSC Transhare Program.
4. Issue Identification Badges and perform background investigations for Federal Employees and Contractors as described by HSPD–12 and FIPS–201 supported by the PSC for Parklawn Building complex and other HHS facilities.
5. Administer the PSC Personnel Security and Ethics Programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose pertinent information to appropriate city, county, State and Federal law enforcement agencies responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law.
2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from that congressional office made at the written request of that individual.
3. To disclose information to the Department of Justice, a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.
4. When HHS contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''
5. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation, concerning personnel policies, practices, and matters affecting working conditions.
6. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments or utilization review.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, cabinets, on disks and in an automated data base.

RETRIEVABILITY:

These records are retrieved by the name, Social Security Number, parking space number, permit number, address, vehicle information and PSC Transhare commuter card number of the individuals on whom they are maintained, and Biometric Data.

SAFEGUARDS:

1. *Authorized Users:* Data on computer files is accessed by authorized users who are PSC employees and who are responsible for implementing the program.
2. *Physical Safeguards:* Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.
3. *Procedural and Technical Safeguards:* A password is required to access the terminal, and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users above) protect information from public view and from unauthorized personnel entering an unsupervised office.
4. *Contractor Guidelines:* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

Parking records are maintained for varying periods of time, in accordance with NARA General Records Schedule 11 number 4a. (parking permits). Disposal of manual records is by shredding; electronic data is erased. PSC Transhare records are retained for a maximum of two years following the last month of an employee's participation in the PSC Transhare Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file. Identification Badge records are maintained in accordance with NARA General Records Schedule 11 number 4a. Personnel Security records are retained for a maximum of 15 years. Disposal of manual records is by shredding: electronic data is erased. Disposal of manual records is by shredding; electronic data is erased.

SYSTEM MANAGER(S) AND ADDRESS:

Safety and Security Specialist, Physical Security Branch, Division of Property Management, Administrative Operation Service, PSC, Room 4B–44, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURES:

Same as Access Procedures. The requester is required to specify reasonably the contents of the records being sought.

RECORD ACCESS PROCEDURES:

To determine whether information about themselves is contained in this system, the subject individual should contact the System Manager at the above address. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. Individuals must provide the following information for their records to be located and identified: (a) Full name, (b) Social Security Number, (furnishing the Social

Security Number is voluntary, but it may make searching for a record easier and prevent delay), (c) parking space number (if appropriate); (d) vehicle license number (if appropriate) and (e) for the PSC Transhare Program, the requester must provide the commuter card number and the dates of participation in the Program. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine. An individual who is the subject of records maintained in this records system may also request an accounting of disclosures that have been made of his or her records.

REQUESTS BY TELEPHONE:

Since positive identification of the caller cannot be established, telephone requests are not honored.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Records are developed from information supplied by applicants and, for handicapped parking assignments, by physicians and supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–13389 Filed 8–15–06; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee, Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following Subcommittee meeting.

Name: Ethics Subcommittee, Advisory Committee to the Director (ACD), CDC.

Times and Dates: 8:30 a.m.–5 p.m., September 14, 2006; 8:30 a.m.–12 p.m., September 15, 2006.

Place: Centers for Disease Control and Prevention, Tom Harkin Global Communications Center (Building 19), 1600 Clifton Road, Atlanta, GA 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Ethics Subcommittee will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matters to Be Discussed: Agenda items will include discussions in Public Health Ethics of Emergency Response; Ethical Considerations in Pandemic Influenza Preparedness; and Future Direction of the Ethics Subcommittee. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: For security reasons, please contact Drue Barrett, Ph.D., Designated Federal Official, Ethics Subcommittee, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone 404/639–4690. E-mail: *dbarrett@cdc.gov.* The deadline for notification of attendance is September 7, 2006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–13452 Filed 8–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6040–N]

Medicare Program; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Supplier Accreditation Applications From Independent Accrediting Bodies

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs independent accreditation organizations of an opportunity to submit an application to participate in the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) accreditation program. DMEPOS accreditation is required for DMEPOS suppliers. This notice contains information on how to apply for CMS approval.

DATES: Applications will be considered if received at the appropriate address, provided in the **ADDRESSES** section, no later than 5 p.m. d.s.t, on October 2, 2006.

ADDRESSES: Applications should be sent to: Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244. Mail stop C3–02–16, Attention: Sandra Bastinelli.

FOR FURTHER INFORMATION CONTACT: Sandra Bastinelli, (410) 786–3630.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a)(1) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1834(a)(20) of the Social Security Act (the Act) and requires the Secretary to establish and implement quality standards for suppliers of certain items, including consumer service standards, to be applied by recognized independent accreditation organizations. Suppliers of DMEPOS must comply with the quality standards to furnish any item for which payment is made under Medicare Part B, and to receive and retain a provider or supplier billing number used to submit claims for reimbursement for any such item for which payment may be made under Medicare. Section 1834(a)(20)(D) of the Act requires us to apply these quality standards to suppliers of the following items for which we deem the standards to be appropriate:

- Covered items, as defined in section 1834(a)(13) of the Act, for which payment may be made under section 1834(a) of the Act.
- Prosthetic devices, orthotics, and prosthetics described in section 1834(h)(4) of the Act.
- Items described in section 1842(s)(2) of the Act, which include medical supplies; home dialysis supplies and equipment; therapeutic shoes; parenteral and enteral nutrients, equipment, and supplies; electromyogram devices; salivation devices; blood products; and transfusion medicine.

Section 1834(a)(20)(E) of the Act explicitly authorizes the Secretary to establish the quality standards by program instruction to ensure that suppliers that wish to participate in

competitive bidding will know what standards they must meet to be awarded a contract. The standards will be applied prospectively and will be published on our Web site. Section 1847(b)(2)(A)(i) of the Act requires a DMEPOS supplier to meet the quality standards specified by the Secretary under section 1834(a)(20) of the Act before being awarded a contract under the Medicare DMEPOS Competitive Bidding Program.

Section 1834(a)(20)(B) of the Act requires the Secretary, notwithstanding section 1865(b) of the Act, to designate and approve one or more independent accreditation organizations to apply the quality standards to suppliers of DMEPOS and other items. For most providers and suppliers, the Medicare program currently contracts with State Agencies to perform survey and review functions for such providers and suppliers to approve their participation in or coverage under the Medicare program. Additionally, section 1865(b) of the Act sets forth the general procedures for CMS to approve non-DMEPOS national accreditation organizations. CMS deems providers or suppliers to have met Medicare conditions of participation or coverage if they are accredited by a national accreditation organization approved by CMS.

We are responsible for the oversight and monitoring of the State Agencies and the approved accreditation organizations. The procedures implemented by the Secretary for designating private and national accreditation organizations for non-DMEPOS national accreditation organizations and the Federal review process for such accreditation organizations are located at 42 CFR part 422 (for Medicare Advantage organizations) and part 488 (for most providers and suppliers).

II. Provisions of the Notice

This notice solicits applications from any independent accreditation organization that has the ability to accredit at least one of the supplier categories identified by the National Supplier Clearinghouse.

A. Eligible Organizations

Any independent accreditation organization that can show evidence of the ability to accredit at least one supplier category, as identified by the National Supplier Clearinghouse, and within the time frames set forth by CMS, is eligible to apply. Information on the National Supplier Clearinghouse can be found at *http://www.palmettogba.com.*

B. Application Requirements

To be considered for approval of deeming authority for Medicare requirements under § 424.58, an independent accreditation organization must furnish to CMS all of the following information:

(1) A list of the types of DMEPOS suppliers, and a list of products and services for which the organization is requesting approval.

(2) A description of the duration of accreditation.

(3) A detailed comparison of the organization's accreditation requirements and standards with the applicable Medicare DMEPOS quality standard requirements such as a crosswalk.

(4) A detailed description of the organization's survey process, including—

- Frequency of the surveys performed.
- Procedures for performing unannounced surveys.
- Copies of the organization's survey forms, guidelines and instructions to surveyors.
- A description of the accreditation survey review process and the accreditation status decision-making process, including the process for addressing deficiencies identified with the accreditation requirements, and the procedures used to monitor the correction of deficiencies found during an accreditation survey.
- Policies and procedures used when an organization has a dispute regarding survey findings or an adverse decision.
- Procedures for coordinating surveys with another accrediting organization if the organization does not accredit all products the supplier provides.

(5) Detailed information about the individuals who perform surveys for the accreditation organization including—

- The size and composition of accreditation teams for each type of provider and supplier accredited.
- The education and experience requirements surveyors must meet.
- The content and frequency of the in-service training provided to survey personnel.
- The evaluation systems used to monitor the performance of individual surveyors and survey teams.
- Policies and procedures regarding an individual's participation in the survey or accreditation decision process of any organization with which the individual is professionally or financially affiliated.

(6) A description of the organization's data management and analysis system for its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

(7) The organization's procedures for responding to and for the investigation of complaints against accredited facilities, including policies and procedures regarding coordination of these activities with appropriate licensing bodies (that is, National Supplier Clearinghouse, CMS, and ombudsman programs).

(8) The organization's policies and procedures for the withholding or removal of accreditation status for facilities that fail to meet the accreditation organization's standards or requirements, and other actions taken by the organization in response to noncompliance with its standards and requirements. These policies and procedures must include notifying CMS of facilities that fail to meet the requirements of the accrediting organization.

(9) A description of all types and categories of accreditation offered by the organization, the duration of each type and category of accreditation, and a statement specifying the types and categories of accreditation for which approval of deeming authority is sought.

(10) A list of all currently accredited suppliers, the type and category of accreditation currently held by each supplier, and the expiration date of each supplier's current accreditation.

(11) A list of all accreditation surveys scheduled to be performed by the organization.

(12) A plan for reducing the burden and cost of accreditation to small suppliers.

The accreditation organization must also submit the following supporting documentation:

(1) A written presentation that demonstrates the organization's ability to furnish CMS with electronic data in ASCII comparable code.

(2) A resource analysis that demonstrates that the organization's staffing, funding, and other resources are adequate to perform the required surveys and related activities.

(3) A statement acknowledging that, as a condition for approval of deeming authority, the organization will agree to—

- Prioritize surveys for those suppliers in the 10 Metropolitan Statistical Areas (MSAs) that need to bid in late 2007.
- Prioritize surveys for those suppliers in the 80 MSAs that need to bid in early 2008.
- Consider any previous accreditation, certification, and/or licensure findings that indicate that

DMPOS quality standards are being met at the time the accreditation organization surveys the supplier.

- Use a streamlined process that considers only compliance with CMS' DME quality standards.
- Notify CMS, in writing, of any supplier that had its accreditation revoked, withdrawn, revised, or any other remedial or adverse action taken against it by the accreditation organization within 30 calendar days of any such action taken.
- Notify all accredited suppliers within 10 calendar days of CMS' withdrawal of the organization's approval of deeming authority.
- Notify CMS, in writing, at least 30 calendar days in advance of the effective date of any proposed changes in accreditation requirements.
- Submit to CMS, within 30 calendar days of a change in CMS requirements, an acknowledgement of CMS' notification of the change, as well as a revised crosswalk reflecting the new requirements, and inform CMS about how the organization plans to alter its requirements to conform to CMS' new requirements.
- Permit its surveyors to serve as witnesses if CMS takes an adverse action based on accreditation findings.
- Notify CMS, in writing, within 2 calendar days of a deficiency identified in any accreditation entity where the deficiency poses an immediate jeopardy to the entity's beneficiaries or a hazard to the general public.
- Provide, on an annual basis, summary data specified by CMS that relates to the past years' accreditations and trends.
- Attest that the organization will not perform any DMEPOS accreditation surveys of Medicare participating suppliers with which it has a financial relationship with or interest.
- Conform accreditation requirements to changes in Medicare requirements.

If CMS determines that additional information is necessary to make a determination for approval or denial of the accreditation organization's application for deeming authority, the organization will be notified and afforded an opportunity to provide the additional information. CMS may visit the organization's offices to verify representations made by the organization in its application, including, but not limited to, review of documents and interviews with the organization's staff. The accreditation organization will receive a formal notice from CMS stating whether the request for deeming authority has been approved or denied, the rationale for any denial and reconsideration, and reapplication procedures. CMS will make every effort to issue a final decision no more than 30 days from the time the completed application is received by CMS.

An accreditation organization may withdraw its application for approval of deeming authority at any time before the formal notice of approval is received. An accreditation organization that has been notified that its request for deeming authority has been denied may request reconsideration in accordance with § 488.201 through § 488.211 in Subpart D. Any accreditation organization whose request for approval of deeming authority has been denied may resubmit its application if the organization: (1) Revises its accreditation program to address the rationale for denial of its previous request; (2) provides reasonable assurance that its accredited companies meet applicable Medicare requirements; and (3) resubmits the application in its entirety. If an accreditation organization has requested a reconsideration of CMS's determination that its request for deeming approval is denied, it may not submit a new application for deeming authority for the type of provider or supplier that is at issue in the reconsideration until the reconsideration is final.

C. Evaluation of Proposals

A panel consisting of subject matter experts will evaluate the proposals using criteria already established by CMS in the survey and certification process. The deadline for the submission of proposals is October 2, 2006.

III. Collection of Information Requirements

The preamble of this notice discusses the information collection requirements associated with DMEPOS supplier accreditation from independent accrediting bodies. An independent accreditation organization must furnish to CMS all of information in the 12 items listed in section II.B. of this notice. In addition, each organization must also submit all of the necessary supporting documentation. This information is necessary to give the independent accreditation organizations the opportunity to submit proposals to implement and operate the DMEPOS accreditation programs. DMEPOS accreditation is required for DMEPOS suppliers that wish to bill Part B. The information supplied by the independent accreditation organizations will be used to evaluate the accreditation organizations ability to meet CMS' regulations.

The burden associated with this information collection requirement is the time and effort required to document, compile, and submit the necessary application information to CMS. We estimate that 10 entities will submit the application information to CMS in order to be deemed independent accrediting bodies. We also estimate that it will take each of the entities approximately 20 hours to comply with this requirement for an annual total of 200 burden hours.

The aforementioned information collection requirements have been submitted to the Office of Management and Budget (OMB) for emergency approval with a 10-day public comment period. In the August 4, 2006 **Federal Register** (71 FR 44300), we published a notice announcing the request for emergency approval of the information collection requirements. These requirements are not effective until they have been approved by OMB.

Authority: Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 25, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 06–6933 Filed 8–10–06; 4:01 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Scholarships for Disadvantaged Students Program (OMB No. 0915–0149 Extension)

The Health Resources and Services Administration's (HRSA's) Scholarships for Disadvantaged Students (SDS) Program has as its purpose the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the PHS Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who are enrolled and graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the PHS Act).

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
SDS	500	1	500	30	15,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 10, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–13385 Filed 8–15–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Travel Request Worksheet (OMB No. 0915–0278): Extension

Clinicians participating in the Health Resources and Services Administration (HRSA) National Health Service Corps (NHSC) Scholarship Program use the Travel Request Worksheet to receive travel funds from the Federal Government to perform pre-employment interviews at sites on the Approved Practice List. The travel approval process is initiated when a scholar notifies the NHSC's In-Service Support Branch of an impending interview at one or more NHSC approved practice sites.

The Travel Request Worksheet is also used to initiate the relocation process after an NHSC scholar has successfully been matched to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the NHSC contractor regarding authorization of the funding for the relocation.

The burden estimate for this project is as follows:

Form	Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
Travel Request Worksheet	250	2	500	.06	30

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: August 10, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–13390 Filed 8–15–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Mental Health and Community Safety Initiative for American Indian and Alaska Native Children, Youth and Families

Announcement Type: Grant.

Funding Opportunity Number: HHS–2006–IHS–MHC–001.

Catalog of Federal Domestic Assistance Number: 93.228.

Key Dates: Application Deadline Date: September 11, 2006.

Review Date: September 14, 2006.

Award Announcement Date: September 26, 2006.

Earliest Anticipated Start Date: September 29, 2006.

I. Funding Opportunity Description

The Indian Health Service (IHS) has developed the Mental Health and Community Safety Initiative (MHCSI) for American Indian/Alaska Native (AI/AN) Children, Youth and Families. The IHS announces the availability of Fiscal Year (FY) 2006 funds for limited competition for MHCSI Grants to implement innovative strategies that focus on mental health, behavioral, substance abuse, and community safety needs of AI/AN young people and their families who are involved or at risk of involvement with the juvenile justice system. This effort was first initiated through the White House Domestic Policy Council to provide federally recognized Tribes and eligible Tribal organizations with assistance to plan, design and assess the feasibility of implementing a culturally appropriate system of care for AI/ANs. The planning phase which was under a cooperative agreement focused on integrating traditional healing methods indigenous to the communities with conventional treatment methodologies. This grant announcement will focus on implementation of services utilizing the planning phase accomplishments as a foundation. Applicants should have completed a four-year planning process in the development of the implementation plan which has been developed collaboratively with participation of the service population and the various resource provider agencies in the community to be served.

This program is authorized under the Snyder Act, 1921 and under authority 25 U.S.C. 1621h(m), Indian Health Care Improvement Act (IHCIA). This program is described at 93.228 in the Catalog of Federal Domestic Assistance. This grant will be awarded and administered in accordance with:

1. This announcement.
2. 42 CFR Part 136.101, *et seq.*
3. 45 CFR Part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or 45 CFR, Part 74, ''Administration of Grants to Non-Profit Recipients''.
4. The Public Health Service (PHS) Grants Policy Statement, Revised April, 1994.
5. Applicable Office of Management and Budget (OMB) Circulars.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount of funds available for FY 2006 is $350,000. The award is for 12 months in duration with a maximum award amount of $125,000 for two grantees and $100,000 for one grantee. Competitive awards depend on the availability of funds and successful completion of the planning phase.

Anticipated Number of Awards: Three awards will be issued under the Program.

Project Period: September 29, 2006 through September 29, 2007.

Award Amount: $100,000–$125,000 per year. Maximum award will be $125,000. Funds exceeding $125,000 will not be considered.

Note: This announcement applies to existing grantees who have successfully completed the planning process.

III. Eligibility Information

1. Eligible Applicants

Eligibility will be limited to American Indian/Alaska Native grantees who have successfully completed the planning phase under the Mental Health and Community Safety Initiative Grants.

2. Cost Sharing or Matching

The Mental Health and Community Safety Initiative Program does not require matching funds or cost sharing.

IV. Application and Submission Information

1. Applicant package may be found at http://www.grants.gov

Information regarding the electronic process may be directed to Michelle Bulls, Grants Policy Officer, at (301) 443–6528. Information regarding the general grant information may be directed to:

Program Contact: Ramona Williams, Office of Clinical and Preventive Services, Division of Behavioral Health, Indian Health Service, 801 Thompson Ave, Suite 300, Rockville, Maryland 20852; (301) 433–2038. *Grants Specialist Contact:* Martha Redhouse, Division of Grants Operations, Indian Health Service, 801 Thompson Ave, TMP, Suite 360, Rockville, Maryland 20852; (301) 433–5204.

2. Content and Form of Application Submission

- Be single-spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 7 typed pages and that includes:
- program goals and objectives, and background need for assistance and capacity. Key personnel; budget justification; evaluation; table of contents and appendices should not be included in the narrative section.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of Lobbying and Discrimination.

A pre-application or Letter of Intent is not required.

For applicants previously funded under the planning phase grant, proof of non-profit status will not be required.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 5 p.m. ET on September 11, 2006. If technical issues arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Grants Policy Staff fifteen days prior to the application deadline. The Grants Policy Staff will determine whether you may submit a paper application (original and 2 copies). The grantee must obtain prior approval, in writing, from the Grants Policy Staff allowing the paper submission. As appropriate, paper applications are due by the date referenced above. Paper applications (original and 2 copies) shall be considered as meeting the deadline if

received by the due date or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

Late applications will not be accepted. All late applications will be returned to the applicant without review.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

A. Obtain prior approval from Program Official for pre-award costs.

B. The available funds are inclusive of direct and indirect costs.

C. Only one grant will be awarded per applicant.

6. Other Submission Requirements

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical problems arise regarding the submission, please contact Grants.gov Customer Support at 1-800-518-4726 or *support&grants.gov.* The Contact Center hours of operations are Monday-Friday from 7 a.m. to 9 p.m. Eastern Standard Time (EST). If you require additional assistance please contact IHS Grants Policy Staff at (301) 443-6528 at least *fifteen days* prior to the application deadline. To submit an application electronically, please use the *http://www.Grants.gov* Web site. Download a copy of the application package, on the Grants.gov Web site, complete it off-line and then upload and submit the application via the Grants.gov Web site. You may not E-mail an electronic copy of a grant application to us.

Please be reminded of the following:

- Under the new IHS requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.* If you are still unable to successfully submit your application on-line, please contact Grants Policy Staff fifteen days prior to the application deadline and advise them of the difficulties you have having submitting your application on-line. At that time, it will be determined whether you may submit a paper application. At that point you are to download the application package from Grants.gov, and send it directly to the Division of Grants Operations, 801 Thompson Avenue, TMP, Suite 300, Rockville, MD 20852 by September 11, 2006, 5 p.m. ET.
- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the Web site, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of ten days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The IHS will retire your application from Grants.gov.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by CFDA number.
- To receive an application package, the applicant must provide the Funding Opportunity Number: HHS–2006–IHS–MHC–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number: Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Central Contractor Registry: Applications submitted electronically must also be registered with the Central Contractor Registry (CCR). A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above t investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR ''Registration Worksheet'' located on *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

1. Criteria

A. Program Goals and Objectives (30 Points)

The application will be evaluated on the extent to which the applicant:

(1) Includes a clear description of the goals and objectives of the program in measurable terms;

(2) Describes how the accomplishment of the objectives will be measured, including whether or not the program is replicable;

(3) Describes tasks and resources needed to implement and complete the project as well as who will perform the tasks;

(4) Provides milestones or a time chart that indicates the time that the project will begin to accept clients;

(5) Defines the data collection mechanism for the project, how it will be obtained, analyzed, and maintained;

(6) Includes information in the data system that reflects the number and types of people served, services provided, client outcomes, client satisfaction, and associated costs;

(7) Describes how the data collection will support the stated objectives for the program and how it will support the evaluation of the program;

(8) Describes the evaluation methodology and related activities, describes how the effectiveness of the employed interventions will be monitored as well as the acceptance of the program within the community; and

(9) Develops a knowledge base of reliable and valid service system models that define the best outcomes for AI/AN children and their families, respecting the unique features of the culture of the target community (*e.g.* Northern Plains, Pueblo, Alaska Native village).

Further evaluation will be made of how well the applicant:

(1) Discusses the manner that allows the program services to continue after the grant expires;

(2) Expresses willingness to share models of success with other communities and programs;

(3) Develops a cohesive and effective mental health service system that draws on Tribal, Federal, state, local, and

private resources, including traditional healers as determined by the community. The system of care must involve education, primary care, justice, child welfare, as well as behavioral health prevention and treatment; and

(4) Describes how data derived from the program will be used for improving the service system, increasing the quality of service delivery, developing system of care policies in the local community, and sustaining the system of care beyond the additional one-year period of Federal funding.

B. Background, Need for Assistance, and capacity (25 points)

The application will be evaluated based on the extent to which the applicant: (1) Describes and defines the target population at the project location (*e.g.,* Tribal population, number of cases of child abuse and neglect (CAN) and/or seriously mentally ill (SMI) cases reported, number of juvenile cases prosecuted, number of children/families currently receiving treatment, number of children/families determined to be at risk), and identifies the information sources;

(2) Lists the number of CAN cases and/or SMI children and youth who are involved or at risk for becoming involved with the juvenile justice system and specifies the source of information for all data that supports the need for program;

(3) Describes the existing resources and available resources, including the availability of AI/AN healing resources that will provide services to the target population and their families;

(4) Describes the needs of the target population and what efforts have been made in the past to meet the need, as applicable (*e.g.,* number of treatment providers, collaborative efforts and agreements with other treatment programs, availability of program funding from other sources);

(5) Summarizes the applicable standards, laws, regulations, and codes; and

(6) Shows Tribal or organizational support for the proposed program.

C. Management Controls (15 points)

The application will be evaluated on the extent to which the applicant:

(1) Describes the project location, facilities, and available equipment;

(2) Describes the management controls of the recipient over the direction and acceptability of work to be performed;

(3) Describes the personnel and financial mechanisms to be utilized;

(4) Demonstrates that the organization has adequate systems and expertise to manage Federal funds; and

(5) Includes a letter from the accounting firm with the results of the most recent financial audit for the organization.

D. Key Personnel (10 points)

The application will be evaluated based on the extent to which the applicant:

(1) Provides a resume, qualifications, and position description for the program director and key personnel as described on page 22 of the PHS 5161;

(2) Identifies existing personnel and new program staff to be hired;

(3) Lists the qualifications and experience of consultants or contractors where their use is anticipated; and

(4) Identifies who will determine if the contracted work is acceptable and how the determination will be made.

E. Budget (10 points)

The application will be evaluated based on the extent to which the applicant:

(1) Provides an itemized estimate of costs and a justification for the proposed program on SF 424A, Budget Information Non-Construction Programs;

(2) Allows for a narrative justification that describes the expenditures and the justification for the expenditures;

(3) Indicates special start-up costs;

(4) Includes a brief program narrative and budget for the additional year of funding requested; and

(5) Provides a statement that grant funding may not be used to supplant existing public and private resources.

F. Evaluation (10 points)

The application will be critiqued to the extent to which the applicant implements an evaluation protocol. Collaboration and coordination with outside institutions and/or consultant expertise may be used. The application will be evaluated on the extent to which, the applicant:

(1) Describes how the evaluation plan will measure the accomplishments of the goals and objectives of the project;

(2) Describes how outcomes will be measured and analyzed; and

(3) Describes the data collection methods and types of data to be used in measuring outcomes of the goals and objectives.

2. Reviewed and Selection Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by an Ad Hoc Objective Review Committee (ORD) appointed by the IHS to review and make recommendations on the applications. The review will be conducted in accordance with the PHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a limited competition for limited funding. Applications will be evaluated and rated on the basis of the six evaluation criteria listed above for the type of project submitted. These criteria are used to evaluate the quality of a proposed project, to assign a numerical score to each application, and to determine the likelihood of success. Applications scoring below 60 points will be disapproved. The scoring of approved applications will assist the IHS in determining which proposals will be funded.

3. Anticipated Announcement and Award Dates

Applications received by the closing date of September 11, 2006 or verified by the postmark will undergo a review to determine that the:

A. Applicant is eligible in accordance with the Eligibility and Documentation section of this announcement;

B. Application narrative, forms, and materials submitted meet the requirements of the announcement and allow the review panel to undertake an in-depth evaluation; the application is not a duplication of a previously funded project and the application complies with this announcement; otherwise, the application will be returned to the applicant. The Award Date is September 26, 2006.

VI. Award Administration Information

1. Award Notices

The program officer will notify the contact person identified on each proposal of the results in writing via postal mail. Applicants whose applications are declared ineligible will receive written notification of the ineligibility determination and their original grant application will be returned via postal mail. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Applicants who are approved and funded will be notified through the Financial Assistance Award (FAA) document signed by the Grants Management Officer. The FAA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of

the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Applicant's Project Director that an application was recommended for approval is not an authorization to begin performance.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents: A. 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments'', or 45 CFR Part 74, ''Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations''.

B. Public Health Service Grants Policy Statement, Revised April 1994.

C. Appropriate Cost Principles: OMB Circular A–87, ''State, Local, and Indian Tribal Governments,'' or OMB Circular A–122, ''Non-Profit Organizations''.

D. OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''.

E. Other Applicable OMB Circulars.

3. Reporting

A. *Progress Report:* Program progress reports are required quarterly. These reports will include a brief comparison of actual accomplishment to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

Financial Status Report: Semi-annual financial status reports (FSR) must be submitted within 30 days of the end of the half year. Final FSR are due within 90 days of expiration of the budget/project period. Standard Form 269 can be downloaded from *http://www.whitehouse.gov/omb/grants/sf269.pdf* for financial reporting.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which must be verified by the grantee. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization of the individual responsible for preparation of reports.

VII. Agency Contact(s)

Interested parties may obtain MHCSI programmatic information from Ms. Ramona Williams, Program Officer, through the information listed under Section IV of this program announcement. Grant-related and business management information may be obtained from Ms. Martha Redhouse, Grants Management Specialist through the information listed under Section IV of this program announcement. Please note that the telephone numbers provided are not toll-free.

VIII. Other Information

The Department of Health and Human Services (HHS) is committed to achieving the health promotion and disease prevention objectives *Healthy People 2010*, and HHS-led activity for setting priority areas. Potential applicants may obtain a printed copy of *Healthy People 2010*, (Summary Report No, 017–001–00549–5) or CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA, 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *http://www.healthypeople.gov/Publications.*

The U.S. Census Bureau website contains AI/AN specific data at the Tribal census tract level. Data is provided at *http://factfinder.census.gov/home/aian/index.html* by Tribe and language; reservations and other AI/AN areas; county and Tribal census tract level; and economic category.

The HHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 10, 2006.

Mary Lou Stanton,

Deputy Director for Indian Health Policy, Indian Health Service.

[FR Doc. 06–6936 Filed 8–15–06; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Disaster Recovery Survey of Businesses

AGENCY: Office of Policy, Private Sector Office, DHS.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Homeland Security, Office of the Secretary, Private Sector Office has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Gary Becker, 202–282–9013 (this is not a toll free number).

DATES: Comments are encouraged and will be accepted until October 16, 2006. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Gary Becker 202–282–9073 (this is not a toll free number).

Analysis

Agency: Department of Homeland Security, Office of the Secretary, Private Sector Office.

Title: Disaster Recovery Survey of Businesses.

OMB Number: 1601–NEW.

Frequency: One-time collection.

Affected Public: Business owners and managers in region impacted by a disaster.

Number of Respondents: 2000 per year.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Description: The Department of Homeland Security (DHS), Office of Policy, Private Sector Office will distribute a written survey instrument to business owners and managers impacted by a natural or man-made disaster. Distribution and collection will occur within two months of the event. The survey contains general questions about losses incurred by the business as a result of the disaster, as well as progress made in the initial recovery. All information will be compiled for analysis and reported only at the aggregate level. Results of the analysis will be used to gauge the economic impact of the disaster as well as the effectiveness of recovery efforts. Participation will be voluntary and also provide an opportunity for the private sector to inform the Department of Homeland Security about major issues and concerns with the recovery process.

Scott Charbo,

Chief Information Officer.

[FR Doc. E6–13444 Filed 8–15–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22541]

Merchant Mariner Credentials: Temporary Procedures

AGENCY: Coast Guard, DHS.

ACTION: Notice of extension of validity for merchant mariner credentials.

SUMMARY: On August 29, 2005, Hurricane Katrina devastated the coastlines of Alabama, Mississippi, and Louisiana. The Regional Examination Center (REC) at New Orleans, which provided credentialing services to approximately 29,000 mariners in those three states and 14 percent of mariners nationwide, was completely flooded, destroying vital records and equipment and rendering the facility inoperable for a considerable period of time. As a result, many mariners in the area are in possession of merchant mariner's documents, licenses and/or certificates of registry (collectively referred to as ''credentials'') that either have expired or may expire before the Coast Guard will be able to process these mariners' applications for renewal or upgraded credentials. With the authority Congress has granted, the Coast Guard is temporarily extending the expiration dates for credentials of eligible mariners for up to one year.

DATES: This notice is effective August 16, 2006.

FOR FURTHER INFORMATION CONTACT: If you have any questions related to this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), Arlington, VA, (202) 493–1006.

SUPPLEMENTARY INFORMATION: Pursuant to section 702 of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241, the Coast Guard is initiating temporary credentialing measures for merchant mariner's documents, licenses, and certificates of registry for individuals who meet the following conditions:

(1) If the individual is a resident of Alabama, Mississippi, or Louisiana, as confirmed by the Coast Guard's Merchant Mariner Licensing and Documentation system, or

(2) If the individual is a resident of any other State or Territory of the United States, and the records of the individual were—

(A) Located at the Coast Guard REC facility in New Orleans that was damaged by Hurricane Katrina; or

(B) Damaged or lost as a result of Hurricane Katrina.

A credential that shows that it was issued in New Orleans, LA, will be sufficient proof that the mariner's records were located at the Coast Guard REC facility in New Orleans for category (2)(A) above.

Because of its international treaty obligations under the International Convention on Standards of Training, Certification and Watchkeeping (STCW) for Seafarers, 1978, as amended, the United States may not extend STCW endorsements in this same manner. Mariners who require such an endorsement must obtain it through the normal procedures as provided in 46 CFR part 10 and 12.

The following measures are applicable to all eligible mariners whose credentials, including Coast Guard-issued duplicates of lost or damaged credentials, have expired, or will expire, during the period indicated within this Notice.

If a credential in a mariner's possession has expired or will expire between August 29, 2005, and April 1, 2007, and the credential indicates that either the mariner's home of record is in Alabama, Mississippi, or Louisiana, or that the credential was issued at New Orleans, LA, then that credential, together with a copy of this Notice, will serve as a valid credential until the Coast Guard issues the mariner a renewal or upgraded credential, or for one year from the original expiration date indicated on the credential in the mariner's possession, whichever occurs first.

A mariner who is a resident of any other State or Territory of the United States, and whose credential was issued at a location other than REC New Orleans and has expired or will expire between August 29, 2005, and April 1, 2007, and whose records were damaged or lost as a result of Hurricane Katrina, should contact any REC for the procedures to obtain official correspondence confirming that the mariner's credential remains valid until the Coast Guard issues the mariner a renewal or upgraded credential, or for one year from the original expiration date indicated on the credential in the mariner's possession, whichever occurs first.

In determining their eligibility for an extension of their credentials under this Notice, mariners are encouraged to seek assistance at REC New Orleans, or at any of the other REC's around the country, a list of which is available through the Internet at *http://www.uscg.mil/hq/g-m/nmc/web/*, and at 46 CFR 10.105 and 12.01–7.

Due to the amount of time it currently takes the Coast Guard to process applications, early application for renewal or upgrade will help ensure that mariners receive their renewal or upgraded credential prior to the expiration of the authorized extension. Mariners who visit an REC to obtain official correspondence confirming that the mariner's credential remains valid, or to conduct any other transaction involving a credential that is within one year of expiration, should apply for a

renewal or upgraded credential at the same time.

Authority: Coast Guard and Maritime Transportation Act of 2006, Section 702, Public Law 109–241, 2006 H.R.889, 46 U.S.C. secs. 2103, 7101, 7106, 7107, 7302, 7501, and 7502, and Department of Homeland Security Delegation No. 0170.1.

Dated: August 11, 2006.

C.E. Bone,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

[FR Doc. 06–6978 Filed 8–14–06; 11:11 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1657–DR]

Alaska; 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 State of Alaska (FEMA–1657–DR), dated August 4, 2006, and related determinations.

DATES: *Effective Date:* August 4, 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 August 4, 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 State of Alaska resulting from snow melt and ice jam flooding during the period of May 13–30, 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 State of Alaska.

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 State, 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 requested and 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, Lee Champagne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

The Lower Kuskokwim Regional Education Attendance Area, the Lower Yukon Regional Education Attendance Area, and the Yukon-Koyukuk Regional Education Attendance Area for Public Assistance.

All boroughs and Regional Education Attendance Areas in the State of Alaska 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. E6–13436 Filed 8–15–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1656–DR]

Ohio; 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 Ohio (FEMA–1656–DR), dated August 1, 2006, and related determinations.

DATES: *Effective Date:* August 4, 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 August 4, 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. E6–13438 Filed 8–15–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Dockets Nos. FR–4800–FA–05, FR–4900–FA–07, and FR–4950–FA–02]

Announcement of Funding Awards for the Brownfields Economic Development Initiative (BEDI) Fiscal Years 2003, 2004, and 2005

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of past funding decisions made by the Department in competitions for funding under the Notice of Funding Availability (NOFA) for the Brownfields Economic Development Initiative (BEDI). This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Robert Duncan, Associate Deputy Assistant Secretary, Office of Economic Development, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7140, Washington, DC 20410–7000; telephone

(202) 708–3773 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Brownfields Economic Development Initiative (BEDI) is administered by the Office of Economic Development under the Assistant Secretary for Community Planning and Development. The Office of Economic Development administers HUD's ongoing grant programs to assist local governments, nonprofit organizations and the private sector in economic development efforts.

BEDI was enacted in section 108(q) of the Housing and Community Development Act of 1974, as amended. Eligible applicants include units of general local government eligible for assistance under the Community Development Block Grant (CDBG) program, as well as urban counties that are eligible under the CDBG program. Each unit of general local government or CDBG-eligible urban county must use its BEDI award to enhance the security of a loan guaranteed by HUD under section 108 of the Housing and Community Development Act of 1974, as amended, for the same project, or to improve the viability of a project financed with the section 108-guaranteed loan. The BEDI program provides each grantee up to $2,000,000 for the redevelopment of abandoned, idled or underutilized industrial or commercial facilities where expansion or redevelopment is complicated by environmental contamination as defined by the NOFA in each fiscal year.

On April 25, 2003 (67 FR 14135) HUD published a Super Notice of Funding Availability (SuperNOFA) announcing the availability of approximately $29,500,000 in FY 2003 funds for the BEDI program. On May 14, 2004 (69 FR 27331) HUD published a SuperNOFA announcing the availability of approximately $25,352,500 in FY 2004 funds for the BEDI program. On March 21, 2005 (70 FR 13950) HUD published a SuperNOFA announcing the availability of approximately $24,458,130 for the BEDI program, an amount subsequently reduced by $10,000,000 in the Congressional appropriation for BEDI in FY 2006. The Department reviewed, evaluated and scored the applications received based on the criteria in the SuperNOFA. As a result, HUD funded the applications announced below, and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

Dated: August 3, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

FISCAL YEAR 2003 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Recipient	State	Amount
Anchorage	AK	$2,000,000
Tempe	AZ	1,000,000
El Monte	CA	1,300,000
Los Angeles	CA	750,000
Montebello	CA	2,000,000
Sacramento	CA	2,000,000
San Diego	CA	700,000
Stockton	CA	2,000,000
Whittier	CA	750,000
Lawrence	MA	2,000,000
Springfield	MO	1,200,000
Greensboro	NC	2,000,000
Perth Amboy	NJ	1,374,285
Geneva	NY	500,000
New York	NY	1,670,000
Syracuse	NY	750,000
Pittsburgh	PA	900,000
Pittsburgh	PA	1,100,000
Burrillville	RI	910,000
Memphis	TN	2,000,000
Danville	VA	500,000
Milwaukee	WI	2,000,000
Total		29,404,285

FISCAL YEAR 2004 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Recipient	State	Amount
Alameda	CA	$800,000
Los Angeles	CA	1,050,000
San Diego	CA	225,000
Sacramento	CA	2,000,000
San Jose	CA	2,000,000
Berkeley	CA	2,000,000
Alameda County	CA	300,000
Attleboro	MA	1,900,000
Dutchess County	NY	300,000
Cuyahoga County	OH	2,000,000
Portland	OR	2,000,000

FISCAL YEAR 2004 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM—Continued

Recipient	State	Amount
Chester County (Coatesville)	PA	1,000,000
Harrisburg	PA	1,500,000
Montgomery County	PA	1,500,000
Allentown	PA	2,000,000
Chester County (E. Whiteland)	PA	2,000,000
Seattle	WA	2,000,000
Total		24,575,000

FISCAL YEAR 2005 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INTIATIVE PROGRAM

Recipient	State	Amount
Bakersfield	CA	$750,000
Los Angeles	CA	950,000
Berkeley	CA	1,767,630
Denver	CO	937,130
Denver	CO	1,062,870
Cocoa	FL	347,500
Hillsborough County (Tampa)	FL	1,500,000
Concord	NC	1,000,000
Camden	NJ	2,000,000
Eugene	OR	2,000,000
Reading	PA	1,000,000
Charleston County (N. Charleston)	SC	1,430,000
Total		14,745,130

[FR Doc. E6–13381 Filed 8–15–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–FA–20]

Announcement of Funding Awards for the Community Development Technical Assistance Programs Fiscal Year 2003

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Community Development Technical Assistance programs. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mark A. Horwath, Director, Office of Technical Assistance and Management, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410–7000; telephone (202) 708–3176 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Fiscal Year 2003 Community Development Technical Assistance program is designed to increase the effectiveness of HUD's HOME Investment Partnerships Program (HOME), McKinney-Vento Homeless Assistance programs (Homeless), and Housing Opportunities for Persons with AIDS (HOPWA) program through the selection of technical assistance (TA) providers for these three programs.

The competition was announced in the SuperNOFA published April 25, 2003 (68 FR 21085). The NOFA allowed for approximately $22,900,000 for CD–TA grants. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

For the Fiscal Year 2003 competition, a total of $9,870,481 was awarded to 51 technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: August 3, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

FISCAL YEAR 2003 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

Recipient	State	Amount
State of Alaska, Alaska Housing Finance Corporation	AK	$50,000.00
Rural Community Assistance Corporation	CA	142,100.00
Dennison Associates, Inc.	DC	329,670.00

FISCAL YEAR 2003 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

Recipient	State	Amount
National Affordable Housing Training Institute	DC	500,000.00
Tonya, Inc.	DC	1,111,607.00
Florida Planning Group, Inc.	FL	29,800.00
Chicago Rehab Network	IL	78,500.00
Abt Associates, Inc.	MA	45,000.00
The Enterprise Foundation	MD	105,966.00
Coastal Enterprises, Inc.	ME	25,000.00
State of Michigan Dept. of Consumer & Industry Services	MI	119,800.00
Minnesota Housing Partnership	MN	50,000.00
Training and Development Associates, Inc.	NC	232,800.00
Supportive Housing Network of New York	NY	20,312.00
Ohio CDC Association	OH	67,130.00
Neighborhood Partnership Fund	OR	30,300.00
Capital Access, Inc.	PA	50,000.00
Puerto Rico Community Foundation	PR	61,400.00
Community Development Services	TN	20,000.00
ICF, Inc.	VA	1,759,677.00
Common Ground	WA	58,300.00
Northwest Regional Facilitators	WA	25,000.00
Urban Economic Development Association of Wisconsin, Inc.	WI	40,932.00
Wisconsin Partnership for Housing Development, Inc.	WI	20,468.00
Home Total		4,973,762.00
State of Alaska, Alaska Housing Finance Corporation	AL	40,000.00
HomeBase/The Center for Common Concerns	CA	142,000.00
Colorado Coalition for the Homeless	CO	40,000.00
National Puerto Rican Coalition, Inc.	DC	12,000.00
Tonya, Inc.	DC	1,019,193.00
Florida Planning Group, Inc.	FL	20,000.00
Iowa Coalition for Housing and the Homeless	IA	20,676.00
Chicago Health Outreach	IL	46,922.00
Illinois Community Action Association	IL	30,000.00
Technical Assistance Collaborative, Inc.	MA	222,000.00
The Enterprise Foundation	MD	128,000.00
Minnesota Housing Partnership	MN	52,000.00
Training and Development Associates, Inc.	NC	119,928.00
New Mexico Coalition to End Homelessness	NM	40,000.00
Corporation for Supportive Housing	NY	218,000.00
Nassau Suffolk Coalition for the Homeless	NY	99,949.00
New York State Rural Housing Coalition, Inc.	NY	57,000.00
Supportive Housing Network of New York	NY	139,051.00
Coalition on Homelessness and Housing in Ohio	OH	104,000.00
Diana T. Myers and Associates, Inc.	PA	57,000.00
Homeless Network of Texas dba Texas Homeless Network	TX	128,000.00
AIDS Housing of Washington	WA	50,000.00
John Epler and Associates	WA	40,000.00
Low Income Housing Institute	WA	67,000.00
Urban Economic Development Association of Wisconsin, Inc.	WI	54,000.00
Homeless Total		2,946,719.00
The Enterprise Foundation	MD	200,000.00
AIDS Housing of Washington	WA	1,750,000.00
HOPWA Total		1,950,000.00
Total		9,870,481.00

[FR Doc. E6–13380 Filed 8–15–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before September 15, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for survival and enhancement permits to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

Permit No. TE–043638

Applicant: Directorate of Public Works, Schofield Barracks, Hawaii.

The permittee requests a permit amendment to take (capture, mark, release, and salvage) the Oahu tree snail (*Achatinella* spp.) in conjunction with population monitoring on the island of Oahu, Hawaii, for the purpose of enhancing its survival.

Permit No. TE–014497

Applicant: Haleakala National Park, Makawao, Hawaii.

The permittee requests a permit amendment to take (apply radio-transmitters to) the Hawaiian petrel (*Pterodroma sandwichensis*) in conjunction with scientific research in Haleakala National Park, Hawaii, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: August 2, 2006.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–13443 Filed 8–15–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.''

DATES: Submit written comments by October 16, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0006 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0006 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0006.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0006'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, ''Leasing of Sulphur or Oil and Gas in the OCS.''

Form(s): MMS–150, MMS–151, MMS–152, MMS–2028, MMS–2028A.

OMB Control Number: 1010–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*, 43 U.S.C. 1801 *et seq.*, and 31 U.S.C. 9701), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify the filing fees for these transfer applications.

These authorities and responsibilities are among those delegated to the MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. This information collection request addresses the regulations at 30 CFR part 256, Leasing of Sulphur or Oil and Gas in the OCS,

and the associated supplementary notices to lessees and operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

The MMS uses the information required to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

• Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.

• Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.

• Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.

• Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.

• Document that a leasehold or geographical subdivision has been surrendered by the record title holder.

• Verify that lessees submit accurate leasing and adjudication documents. Respondents submit their forms: Assignment of Record Title Interest in Federal OCS Oil and Gas leases (Form MMS–150), Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease (Form MMS–151), and Relinquishment of Federal OCS Oil and Gas Lease. MMS uses these documents to: Track ownership in pipeline ROW; track ownership of leases; and to determine active vs. non-active leases so that those leases that are relinquished by a company are recycled into a lease sale.

• Verify that lessees have adequate bonding coverage. Respondents must submit their bonds certification forms: Form MMS–2028, Outer Continental Shelf Mineral Lessee's and Operator's Bond, and Form MMS–2028A, Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond. MMS uses these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. MMS will protect specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act and § 256.10(d). No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 oil and gas and sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 21,080 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR Part 256	Reporting requirement	Hour burden
Subparts A, C, E, H, L, M	None	Not applicable.
Subparts G, H, I, J: 37; 53; 68; 70; 71; 72; 73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 250 (1010–0114, 1010–0141, 1010–0142, 1010–0149, 1010–0151).
Subpart B: All sections	Submit suggestions and relevant information in response to request for comments on proposed 5-year leasing program, including information from States/local governments.	4.
Subpart D: All sections	Submit response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.	4.
Subpart F: 31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4.
Subpart G: 35; 46(d), (e)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	2.
41; 43; 46(g)	Submit qualification of bidders for joint bids and statement or report of production/appeal.	2.
44; 46	Submit bids and required information	5.
47(c)	File agreement to accept joint lease on tie bids	3½.
47(e)(1), (e)(3)	Request for reconsideration of bid rejection	Exempt as defined in 5 CFR 1320.3(h)(9).
47(f), (i); 50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	1.
Subpart I:		
52(f)(2), (g)(2)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2.
53(a), 53(b); 54	OCS Mineral Lessee's and Operator's Bond (form MMS–2028)	¼.
53(c), (d), (f); 54(d), 54(e)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3½.
54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (form MMS–2028A).	¼.
55	Notify MMS of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1.

Citation 30 CFR Part 256	Reporting requirement	Hour burden
56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12.
57	Provide third-party guarantee, indemnity agreement, financial information, related notices, reports, and annual update; notify MMS if guarantor becomes unqualified.	19.
57(d)(3); 58	Notice of and request approval to terminate period of liability, cancel bond, or other security.	½.
59(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16.
Subpart J:		
62; 64; 65; 67	File application and required information for assignment or transfer for approval/comment on filing fee (forms MMS–150 and MMS–151).	1.
64(a)(7);	File required instruments creating or transferring working interests, etc., for record purposes.	1.
64(a)(8)	Submit non-required documents, for record purposes, which respondents want MMS to file with the lease document.	Accepted on behalf of lessees as a service, MMS does not require nor need the filings.
Subpart K:		
76	File written request for relinquishment (form MMS–152)	1.
77(c)	Comment on lease cancellation (MMS expects 1 in 10 years)	1.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved ''non-hour cost'' burden for this information collection is a total of $537,000. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($170 per application) or to file non-required documents for record purposes ($25 per filing).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: August 8, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–13383 Filed 8–15–06; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–541]

In the Matter of Certain Power Supply Controllers and Products Containing Same; Issuance of a Limited Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has issued a limited exclusion order in the above-captioned investigation directed against products of respondent System General Corporation (''SG'') of Taipei, Taiwan. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 13, 2005, the Commission instituted this investigation, based on a complaint filed by Power Integrations, Inc. (''PI'') of San Jose, California. 70 FR 34149 (June 13, 2005). The complaint, as amended and supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supply controllers and products containing the same. The Commission determined that SG violated section 337 by reason of infringement of claims 1, 3, 5, and 6 of United States Patent No. 6,351,398 (''the '398 patent'') and claims 26 and 27 of United States Patent No. 6,538,908 (''the '908 patent''). The Commission requested written submissions from the parties relating to the appropriate remedy, whether the statutory public interest factors preclude issuance of that remedy, and the amount of bond to be imposed during the Presidential review period. All parties filed written submissions.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of power supply controllers that infringe one or more of claims 1, 3, 5, and 6 of the '398 patent or claims 26 and 27 of the '908 patent and that are manufactured by or on behalf of SG, its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns. The Commission has also determined to prohibit the unlicensed entry of LCD computer monitors, AC printer adapters, and sample/demonstration boards containing such infringing power supply controllers.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. 1337(j)) shall be in the amount of thirty-eight (38) cents per power supply controller circuit or LCD computer monitor, AC printer adapter, or sample/demonstration board containing the same that are subject to the order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

By order of the Commission.

Issued: August 11, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–13512 Filed 8–15–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting by Teleconference Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency will hold a public meeting on September 13, 2006 at 10 a.m. by teleconference. The subject of the meeting will be implementation of the provisions of the seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999 (*United States* v. *Caterpillar,* Case No. 1:98CV02544; *United States* v. *Navistar International Transportation Corporation,* Case No. 1:98CV02545; *United States* v. *Cummins Engine Company,* Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation,* Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation,* Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.,* Case No. 1:98CV01495; and *United States* v. *Renault Vehicles Industries, S.A.,* Case No. 1:98CV02543). In supporting entry by the court of the decrees, the United States committed to meet periodically with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. Future meetings will be announced here and on EPA's Diesel Engine Settlement Web site at: *http://www.epa.gov/compliance/resources/cases/civil/caa/diesel/index.html.*

Interested parties should contact the Environmental Protection Agency at the address listed below prior to the meeting to reserve a telephone line and receive instructions for the call.

Agenda

1. Panel Remarks—10 a.m.

Remarks by DOJ and EPA regarding implementation of the provisions of the diesel engine consent decrees.

2. Public comments and questions.

FOR FURTHER INFORMATION CONTACT: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; e-mail: *wick.anne@epa.gov.*

Karen S. Dworkin,

Assistant Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 06–6943 Filed 8–15–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Amendment to Consent Decree Involving Point Ruston, LLC and Asarco LLC Under the Comprehensive Environmental Response Compensation, and Liability Act

Notice is hereby given that on July 27, 2006, a proposed amendment to the existing consent decree (the ''Second Amendment'') in *United States* v. *Asarco Inc.,* Civil Action No. C91–5528B was lodged with the United States District Court for the Western District of Washington.

This Second Amendment involves the potential sales of property owned by

ASARCO LLC to Point Ruston LLC, which property is part of the Commencement Bay Nearshore/Tideflats Superfund Site. Under the terms of the Second Amendment should Point Ruston LLC, complete its proposed purchase of the Purchased Property, Point Ruston shall (a) assume the clean-up obligations on the property it is purchasing from Asarco and (b) assume certain clean-up obligations at the Site on property not owned by Asarco that is adjacent to the Purchased Property. The Second Amendment is also conditioned upon approval of a lien resolution agreement. Under the Lien Agreement, the United States will release its existing CERCLA lien in return for a payment of $1,500,000 at closing and contingent payments that could total $4,000,000 based on revenue from the development of the property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Amendment. Comments should be addressed to the Assistance Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer *United States* v. *Asarco Inc.,* Civil Action No. C91–5528B, D.J. Ref. 90–11–2–698A. Public meeting will be held in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d) at the following times: Tuesday, August 22, 2006, 2 to 4 p.m. and 6 to 8 p.m. The location of the meetings shall be: the Asarco Information Center (old Ruston school), 5219 North Shirley, Ruston, WA.

The Second Amendment may be examined at the Office of the United States Attorney, Western District of Washington, 700 Stewart St., Suite 5220, Seattle, WA, and at U.S. EPA Region 10, 1200 6th Ave., Seattle, WA. During the public comment period, the Second Amendment, may also be examined on the following Department of Justice, Web site, *http://www.usdoj.gov/enrd/Consent__Decrees.html.* A copy of the Second Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost—not including the voluminous attachments) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6945 Filed 8–15–06; 8:45am]

BILLING CODE 4410–15–M]

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

Notice is hereby given that on August 2, 2006, a proposed consent decree in *United States, et al.* v. *City of Brockton, Massachusetts*, Civil Action No. 06–11334–NMG, was lodged with the United States District Court for the District of Massachusetts.

The proposed consent decree will settle the United States' and Commonwealth of Massachusetts' claims for violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, and the Massachusetts Clean Waters Act, Mass. Gen. Laws c. 21, §§ 26, *et seq.*, related to the City's alleged failure to comply with its discharge permit relating to the City's publically-owned treatment works (POTW). Pursuant to the proposed consent decree, the City will pay $120,000 as civil penalty for such violations, perform three supplemental environmental projects at a cost of $180,000, as well as institute necessary improvements at the POTW at an estimated cost of $95 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.*, v. *City of Brockton, Massachusetts*, Civil Action No. 06–11334–NMG, D.J. Ref. 90–5–1–1–08161.

The proposed consent decree may also be examined at the Office of the United States Attorney, District of Massachusetts, 1550 Main Street, U.S. Courthouse, Room 310, Springfield, MA. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree, please so note and enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6937 Filed 8–15–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act and the Federal Water Pollution Control Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 2006, a proposed Consent Decree (''Decree'') in *United States* v. *ConocoPhillips Company,* Civil Action No. 06–CV–195–J was lodged with the United States District Court for the District of Wyoming.

The Decree resolves the United States' claims against ConocoPhillips Company (''Conoco'') under Section 1002 of the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2702, and Section 311 of the Federal Water Pollution Control Act, more commonly known as the Clean Water Act (''CWA''), 33 U.S.C. 1321, for past response costs incurred at the Glenrock Oil Seep Site outside Glenrock, Wyoming. The Decree requires Conoco to pay the United States $1,037,500 and to release any claims it might have (1) against the Oil Spill Liability Trust Fund relating to the Site or (2) arising out of response actions at the Site for which past costs were incurred.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *ConocoPhillips Company*, D.J. Ref. 90–5–1–1–08459.

The Decree may be examined at the Office of the United States Attorney, 2120 Capitol Ave., 4th Floor, Cheyenne, Wyoming 82001. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://*

www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6944 Filed 8–15–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on July 26, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BiODE, Inc., Westbrook, ME; Cor-Met Inc., Brighton, MI; Decagon Devices, Inc., Pullman, WA; The Euclid Chemical Company, Cleveland, OH; Freudenberg-NOK General Partnership, Plymouth, MI; GKN Aerospace, Tallassee, AL; Midwest Thermal Spray, Farmington Hills, MI; and Smiths Detection-Danbury, Danbury, CT have been added as parties to this venture. Also, CGTech, Irvine, CA; Detroit Tool & Engineering Division, Vernon Hills, IL; DIT–MCO International, Kansas City, MO; ESSIbuy.com, Inc., St. Louis, MO; and Materials & Manufacturing Ontario, Mississauga, Ontario, Canada have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department of Justice on May 3, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 31, 2006 (71 FR 30960).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–6956 Filed 8–15–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 20, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HDL Design House, Belgrade, Serbia and Montenegro; Mitre Corp., Bedford, MA; chip Estimate Corp., Cupertino, CA; and IP Servicing Centre, Hong Kong Science Park, Shatin, Hong Kong-China have been added as parties to this venture.

Also, Samsung Electronics Co., LTD., Yongin City, Republic of Korea; Beach Solutions, Reading, United Kingdom; Taiwan SoC Consortium, Chutung Hsinchu, Taiwan; and Artec Design Group, Tallinn, Estonia have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on February 28, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 2006 (71 FR 14721).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–6955 Filed 8–15–06; 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 9, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Authorization for Release of Medical Information (Black Lung Benefits).

OMB Number: 1215–0057.

Form Number: CM–936.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 1,200.

Annual Reponses: 1,200.

Average Response Time: 5 minutes.

Total Annual Burden Hours: 100.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Black Lung Benefits Act, as amended 30 U.S.C. 901 *et seq.*, and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information required by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–13466 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,470]

ABN AMRO Mortgage Group, Ann Arbor, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at ABN AMRO Mortgage Group, Ann Arbor, Michigan. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,470; ABN AMRO Mortgage Group, Ann Arbor, Michigan (August 7, 2006)

Signed at Washington, DC, this 9th day of August 2006.

Erica R. Cantor,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13516 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,552]

Admiral Foundry, Formerly The Admiral Machine Company, Wadsworth, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 1, 2006, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Region 2–B (Union), requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of Admiral Foundry, formerly the Admiral Machine Company, Wadsworth, Ohio (subject firm). The Department's determination was issued on June 28, 2006, and was published in the **Federal Register** on July 17, 2006 (71 FR 40551).

In the request for reconsideration, the Union states that the subject firm produced both castings and molds used in the tire industry. The determination states that the subject firm produces cast aluminum tire molds.

The petition (dated June 9, 2006) filed by the Union on behalf of workers at the subject firm states that the subject facility produces ''castings & molds for tire industry.''

The Department has carefully reviewed the Union's request for reconsideration and has determined that the Department will conduct further investigation based on new information provided.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 9th day of August 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13514 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,761]

Carm Newsome Hosiery, Inc., Fort Payne, Alabama; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,761, which was published in the **Federal Register** on March 24, 2006 (71 FR 14953–14955) in FR Document E6–4308, Billing Code 4510–30–P.

This rescinds the certification of eligibility for workers of TA–W–58,761, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 14954 in the first column, the twelveth TA–W–number listed.

The Department appropriately published in the **Federal Register** March 24, 2006, page 14955, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,761. The notice appears on page 14955 in the first column, the ninth TA–W–number listed.

Signed in Washington, DC, this 10th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13522 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,326]

Dura Art Stone, Inc., Fontana, CA; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

By application dated July 18, 2006, a representative of the United Electrical,

Radio, and Machine Workers of America (UE), Local 1031, requested administrative reconsideration regarding Alternative Trade Adjustment Assistance. The certification for Trade Adjustment Assistance was signed on May 23, 2006. The Department's Notice of determination was published in the **Federal Register** on June 22, 2006 (71 FR 35952).

The initial investigation determined that the subject worker group possesses skills that are easily transferable.

The subject firm provided new information to show that the workers possess skills that are not easily transferable.

At least five percent of the workforce at the subject firm is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Dura Art Stone, Inc., Fontana, California, who became totally or partially separated from employment on or after May 3, 2005 through May 23, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 9th day of August 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13517 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,397]

J.S. McCarthy Co., Augusta, ME; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,397, which was published in the **Federal Register** on May 10, 2006 (71 FR 27290–27292) in FR Document E6–7123, Billing Code 4510–30–P.

This rescinds the certification of eligibility for workers of TA–W–58,397, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 27291 in the first column, the eleventh TA–W–number listed.

The Department appropriately published in the **Federal Register** May 10, 2006, page 27292, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,397. The notice appears on page 27292 in the first column, the twelfth TA–W–number listed.

Signed in Washington, DC, this 10th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13521 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,635]

Minnesota Rubber, a Quadion Company, Mason City, IA; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

By letter dated August 1, 2006, a duly authorized representative of the State of Iowa requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance (TAA) was signed on July 21, 2006. The Notice of determination will soon be published in the **Federal Register**.

Workers' eligibility to apply for ATAA was denied based on the Department's finding in the initial investigation that the workers at Minnesota Rubber, A Quadion Company, Mason City, Iowa (subject firm) possess skills that are easily transferable.

New information provided by the Iowa Workforce Development supports the subject firm's statement that the workers separated from the subject firm are having difficulty finding jobs.

More than five percent of the workforce at the subject from is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Minnesota Rubber, A Quadion Company, Mason City, Iowa who became totally or partially separated from employment on or after June 23, 2005 through July 21, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 4th day of August 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13519 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,683]

Morse Automotive Corporation, Arkadelphia, AR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Morse Automotive Corporation, Arkadelphia, Arkansas. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,683; Morse Automotive Corporation Arkadelphia, Arkansas (August 7, 2006)

Signed at Washington, DC, this 9th day of August 2006.

Erica R. Cantor,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13515 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,894A]

Russell Corporation, Atlanta, GA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,894A, which was published in the **Federal Register** on May 10, 2006 (71 FR Document E6–7123, Billing Code 4510–30–P.

This rescinds the certification of eligibility for workers of TA–W–58,894A, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 27291 in the first column, the seventeenth TA–W–number listed.

The Department appropriately published in the **Federal Register** May 10, 2006, page 27292, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,894A. The notice appears on page 27292 in the first column, the thirteenth TA–W–number listed.

Signed in Washington, DC, this 10th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13520 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 28, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

Appendix—TAA Petitions Instituted Between 7/31/06 and 8/4/06

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59818	Sun Chemical, Inc. (Wkrs)	Winston-Salem, NC	07/31/06	07/21/06
59819	Klaussner Furniture of California (Comp)	Mentone, CA	07/31/06	07/18/06
59820	Airfoil Technologies International-Ohio (USW)	Mentor, OH	07/31/06	07/21/06
59821	Boico Engineering Corp. (Comp)	Sterling Heights, MI	07/31/06	07/19/06
59822	AmerisourceBerge (Wkrs)	Orange, CA	07/31/06	07/19/06
59823	Ericsson, Inc. (Comp)	Brea, CA	07/31/06	07/28/06
59824	Jim Jam Sportswear (UNITE)	Bethlehem, PA	07/31/06	07/28/06
59825	High Country Forest Products (Comp)	Wellington, UT	07/31/06	07/28/06
59826	International Textile Group (Comp)	Hurt, VA	07/31/06	07/28/06
59827	Ansell Protective Clothing (Comp)	Thomasville, NC	07/31/06	07/28/06
59828	Pfizer, Inc. (Wkrs)	Kalamazoo, MI	07/31/06	07/27/06
59829	AEG Photoconductor Corporation (Comp)	Hamilton, OH	07/31/06	07/31/06
59830	Phoenix Salmon (Wkrs)	Eastport, ME	07/31/06	07/20/06
59831	GTI International (Wkrs)	Wixom, MI	08/01/06	07/13/06
59832	Rosemount Analytical, Inc. (Comp)	Irvine, CA	08/01/06	08/01/06
59833	Baxter Corporation (The) (Wrks)	Shelby, NC	08/01/06	08/01/06
59834	Hamrick's Inc. (COMP)	Asheboro, NC	08/02/06	08/01/06
59835	Heritage American Homes (Wkrs)	Sikeston, MO	08/02/06	08/01/06
59836	McGraw-Hill Companies (Wkrs)	Hightstown, NJ	08/02/06	07/21/06
59837	Stapleton Inc. (State)	Van Buren, AR	08/03/06	08/02/06
59838	Sara Lee Intimates (Comp)	Statesville, NC	08/04/06	08/01/06
59839	JDS Uniphase, Inc. (Wkrs)	Allentown, PA	08/04/06	08/01/06
59840	Cooper Hand Tools (Wkrs)	Sumter, SC	08/04/06	08/02/06
59841	Argo Technology, Inc. (State)	Berlin, CT	08/04/06	08/03/06
59842	Aon Consulting (Wkrs)	Winston-Salem, NC	08/04/06	08/03/06
59843	Royal Home Fashions (Comp)	Henderson, NC	08/04/06	08/01/06
59844	Kimberly-Clark (Comp)	Neenah, WI	08/04/06	08/03/06
59845	Airtex Products (State)	Marked Tree, AR	08/04/06	08/03/06
59846	Coville, Inc. (Comp)	Winston-Salem, NC	08/04/06	08/04/06
59847	Label World (Comp)	Rochester, NY	08/04/06	07/26/06
59848	Cooper Tools (Comp)	Cullman, AL	08/04/06	08/04/06
59849	QuicKutz Inc. (Comp)	Orem, UT	08/04/06	08/03/06

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59850	W–D Imports (State)	Anaheim, CA	08/04/06	08/04/06

[FR Doc. E6–13513 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of July 31 through August 4, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–59,660; Tower Automotive, Buffton, OH: June 30, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,586; Klaussner Furniture Industries, Inc., Asheboro, NC: June 16, 2005.

TA–W–59,586B; Klaussner Furniture Industries, Inc., Asheboro, NC: June 16, 2005.

TA–W–59,586D; Klaussner Furniture of California, Inc., A Division of Klaussner Furniture, Inc., Mentone, CA: June 16, 2005.

TA–W–59,620; Desa Heating, LLC, On Site Leased Workers From Manpower, Bowling Green, KY: June 16, 2005.

TA–W–59,733; Maverick C&P, Inc., Maverick Tube Corporation, Ferndale, MI: June 30, 2005.

TA–W–59,544; Osram Sylvania, Wellsboro-PMC, Wellsboro, PA: June 9, 2005.

TA–W–59,578; Wells Manufacturing Corp., Plastics Department, Fond Du Lac, WI: June 15, 2005.

TA–W–59,731; Parino Fashions LLC, West New York, NJ: June 29, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,633; Dancin' Cowboy, Inc., dba Evening Star Boot Co., Gonzales, TX: June 22, 2005.

TA–W–59,714; Jakel, Inc., A Subsidiary of Sub-Fractional Motors, Murray, KY: June 26, 2005.

TA–W–59,726; Johnson Controls, Building Efficiency Division, Albany, MO: July 13, 2005.

TA–W–59,560; Thermo IEC, Inc., aka Thermo Electron Corp., Milford, MA: June 9, 2005.

TA–W–59,673; Lending Textile Co., Williamsport, PA: July 6, 2005.

TA–W–59,754; Artesyn Technologies, A Subsidiary of Emerson Network Power, Redwood Falls, MN: March 12, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,638; Schweitzer-Mauduit International, Inc., Lee, MA: June 26, 2005.

TA–W–59,722; Joan Fabrics Corp., Dutton Yarn Division, Lowell, MA: July 13, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–59,660; Tower Automotive, Buffton, OH.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–59,586A; Klaussner Furniture Industries, Inc., Asheboro, NC.

TA–W–59,586C; Klaussner Furniture Industries, Inc., Candor, NC.

TA–W–59,586E; Klaussner Furniture Industries, Inc., Star, NC.

TA–W–59,586F; Golden Oaks Upholstery, Inc., A Division of Klaussner Furniture Industries, La Mirada, CA.

TA–W–59,674; Bosch Sumter Plant, Automotive Technology Chassis Division, Sumter, SC.

TA–W–59,699; Excell Data, Workers Leased to Microsoft Corp., Redmond, WA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,516; Delta Consolidated Industries, Division of Advanced Plastics, Jonesboro, AR.

TA–W–59,533; Yakima Resources, LLC, Yakima, WA.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,724; Centris Information Services, Longview, TX.

TA–W–59,745; Jantzen, LLC, Perry Ellis International, Seneca, SC.

TA–W–59,762; United Autoworkers Local 137, Greenville, MI.

TA–W–59,768; Lenovo, Inc., Durham, NC.

The investigation revealed that the criteria of Section 222(b)(2) have not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of July 31 through August 4, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 9, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13523 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0183(2006)]

Standard on 4,4′-Methylenedianiline in Construction; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information collection requirements specified by the Standard on 4,4′-Methylenedianiline (MDA) in Construction (29 CFR 1926.60). The Standard protects employees from the adverse health effects that may result from occupational exposure to MDA, including cancer, and liver and skin disease.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comment must be submitted (postmarked or received) by October 16, 2006.

Facsimile and electronic transmission: Your comments must be received by October 16, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0183(2006), by any of the following methods:

I. Submission of Comments

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.*

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments, and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jamaa Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements specified in he 4,4′-Methylenedianiline Standard for Construction (the ''MDA Standard'') protect employees from the adverse health effects that may result from their exposure to MDA, including cancer, and liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; notify each employee in writing of their results as soon as possible, but no longer than 5 days after receiving exposure-monitoring results; and routinely inspect the hands, face, and forearms of each employee potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: Establish a written compliance program; institute a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an emergency (i.e., an unexpected and potentially hazardous release of MDA).

Employers are to label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or access ways to regulated areas, as well as train employees who may be exposed to MDA both at the time of their initial assignment and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide employees with medical examinations, including initial, periodic, emergency, and follow-up examinations. As part of the medical surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the employee's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure-monitoring and medical surveillance records for each employee who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure-monitoring and medical surveillance records to employees and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure-monitoring and medical surveillance records, and who have no successor employer, must notify NIOSH at least 90 days before disposing of the records and transmit the records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect employees, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Standard

on 4,4′-Methylenedianiline in Construction (29 CFR 1926.60), and to decrease the total burden hour estimates by two hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of a currently-approved information collection requirement.

Title: 4,4′-Methylenedianiline Standard for Construction (29 CFR 1926.60).

OMB Number: 1218–0183.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Governments.

Number of Respondents: 66.

Frequency of Recordkeeping: On occasion; quarterly; semi-annually; annually.

Average Time per Response: Varies from five minutes (.08 hour) to provide information to the physician to 2 hours for initial monitoring.

Total Annual Hours Requested: 1,607.

Estimated Cost (Operation and Maintenance): $80,412.

IV. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 9, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–6946 Filed 8–15–06; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–052]

Centennial Challenges 2006 Tether Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges 2006 Tether Challenge.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314)(d). The 2006 Tether Challenge is now scheduled and teams that wish to compete may now register. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2006 Tether Challenge is a prize contest designed to develop very strong tether material for use in various structural applications. The 2006 Tether Challenge is being administered for NASA by the Spaceward Foundation. Their Web site is: *http://www.spaceward.org*. The Centennial Challenges Web site is *centennialchallenges.nasa.gov*.

DATES: The 2006 Tether Challenge will be held October 20–21, 2006 as part of the X Prize Cup event in Las Cruces, NM.

ADDRESSES: The 2006 Tether Challenge will be held at the X Prize Cup at the Las Cruces International Airport, 8990 Zia Blvd., Las Cruces, NM 88007. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov*.

To register for and get additional information regarding the 2006 Tether Challenge, visit: *http://www.elevator2010.org/site/competitionTether2006.html*.

SUPPLEMENTARY INFORMATION:

Summary

The purpose of the 2006 Tether Challenge is to develop very strong tether material for use in various structural applications. The competition requires a 50% improvement in breaking force from year to year, starting with a commercially available tether in 2005. Additional requirements (such as operating temperature range, vacuum compatibility, and controlled electrical conductivity) will be added in future years.

I. Challenge Basis and Prize Amount

The complete 2006 Tether Challenge purse is $250,000. The 2006 Tether Challenge will be conducted in two rounds. The first round will pit tethers from two teams directly against each other to determine the team with the strongest tether. The second round will determine if the first-round winner is at least 50% stronger than a house tether that represents off-the-shelf materials. If it is, that team will win the competition.

II. Eligibility

The Centennial Challenges Program has established the following language in the Challenge Team Agreements governing eligibility. For this section, Challenge is the 2006 Tether Challenge.

Team is defined as an individual, organization or corporation, or a group of individuals, organizations or corporations that register to participate in Challenge. Team is comprised of a Team Leader and Team Members.

Team Leader is defined as a single individual, organization, or corporation, which is the sole agent representing Team regarding its participation in Challenge. Team Leaders that are individuals must be U.S. citizens. Team Leaders that are organizations or corporations must be incorporated in the U.S. and majority-owned and controlled by U.S. citizens. Corporate or other organizational Team Leaders must appoint an individual who is an officer of the Corporation or organization to represent the Team Leader.

Team Members are defined as the participants on the Team that are not the Team Leader. If a Team consists of a single individual, then in this case the Team Member is also the Team Leader. Individuals and corporate entities that are other than U.S. citizens or entities may be Team Members, subject to written request to and approval by Spaceward. All Team Members will apply to register for the Challenge through Team Leader and must receive written concurrence by Spaceward.

All Team Members must execute an ''Adoption of Agreement'' committing to all terms of this Agreement. By signing below, Team Leader represents that all Team Members have executed the Adoption of Agreement and that no one else will become a member of the Team or participate in the Challenge until such new Team Member has signed this Agreement. Spaceward may disqualify any Team if it discovers that a person is acting as a Team Member who has not signed this Agreement. Team Leader will provide Spaceward with a copy of the ''Adoption of Agreement'' signed by each team member.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a Team Leader or Team Member. U.S. Government employees may not participate in the Challenge as Team Leader or Team Member.

Team Members may participate in Challenge on more than one Team.

Rules

The rules for the 2006 Tether Challenge can be found at: *http://www.elevator2010.org/site/competitionTether2006.html.*

Dated: August 8, 2006.

Scott J. Horowitz,

Associate Administrator, Exploration Systems Mission Directorate.

[FR Doc. E6–13496 Filed 8–15–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–053)]

Centennial Challenges 2006 Beam Power Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314) (d). The 2006 Beam Power Challenge is now scheduled and teams that wish to compete may now register. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2006 Beam Power Challenge is a prize contest designed to promote the development of new power distribution technologies.

The 2006 Beam Power Challenge is being administered for NASA by the Spaceward Foundation. Their Web site is: *http://www.spaceward.org.* The Centennial Challenges Web site is *http://centennialchallenges.nasa.gov.*

DATES: The 2006 Beam Power Challenge will be held October 20–21, 2006 as part of the X PRIZE Cup event in Las Cruces, NM.

ADDRESSES: The 2006 Beam Power Challenge will be held at the X PRIZE Cup at the Las Cruces International Airport, 8990 Zia Blvd., Las Cruces, NM 88007. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the NASA Centennial Challenges Program should be directed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov.* To register for and get additional information regarding the 2006 Beam Power Challenge, visit: *http://www.elevator2010.org/site/competitionClimber2006.html.*

SUPPLEMENTARY INFORMATION:

Summary

The 2006 Beam Power Challenge is designed to promote the development of new power distribution technologies. These technologies can be applied to many aspects of space exploration, including surface- or space-based point-to-point power transmission or delivery for robotic and/or human expeditions to planetary surfaces. This challenge may also support the development of far-term space infrastructure concepts such as space elevators and solar power satellites.

This challenge requires teams to design and build a climber (a machine that can go up and down a tether ribbon) while carrying a payload. Power will be beamed from a transmitter to a receiver on the climber.

I. Challenge Basis and Prize Amount

The 2006 Beam Power Challenge total purse is $200,000. Each climber must climb to a height of 50 meters traveling at a minimum speed of 1 meter per second. The team with the highest score (the product of average velocity and payload mass normalized by the climber mass) will win the competition.

II. Eligibility

The Centennial Challenges Program has established the following language in the CHALLENGE Team Agreements governing eligibility. CHALLENGE is the 2006 Beam Power Challenge.

TEAM is defined as an individual, organization or corporation, or a group of individuals, organizations or corporations that register to participate in CHALLENGE. TEAM is comprised of a TEAM LEADER and TEAM MEMBERS.

TEAM LEADER is defined as a single individual, organization, or corporation, which is the sole agent representing TEAM regarding its participation in CHALLENGE. TEAM LEADERS that are individuals must be U.S. citizens. TEAM LEADERS that are organizations or corporations must be incorporated in the U.S. and majority-owned and controlled by U.S. citizens. Corporate or other organizational TEAM LEADERS must appoint an individual who is an officer of the Corporation or organization to represent the TEAM LEADER.

TEAM MEMBERS is defined as the participants on the TEAM that are not the TEAM LEADER. If a TEAM consists of a single individual, then in this case the TEAM MEMBER is also the TEAM LEADER. Individuals and corporate entities that are other than U.S. citizens or entities may be TEAM MEMBERS, subject to written request to and approval by SPACEWARD.

All TEAM MEMBERS will apply to register for the CHALLENGE through TEAM LEADER and must receive written concurrence by SPACEWARD.

All TEAM MEMBERS must execute an ''Adoption of AGREEMENT'' committing to all terms of this AGREEMENT. By signing below, TEAM LEADER represents that all Team Members have executed the Adoption of Agreement and that no one else will become a member of the TEAM or participate in the CHALLENGE until such new TEAM MEMBER has signed this Agreement. SPACEWARD may disqualify any TEAM if it discovers that a person is acting as a TEAM MEMBER who has not signed this Agreement. TEAM LEADER will provide SPACEWARD with a copy of the ''Adoption of Agreement'' signed by each team member.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a TEAM LEADER or TEAM MEMBER.

U.S. Government employees may not participate in the CHALLENGE as TEAM LEADER or TEAM MEMBER.

TEAM MEMBERS may participate in CHALLENGE on more than one TEAM.

III. Rules

The rules for the 2006 Beam Power Challenge can be found at: *http://www.elevator2010.org/site/documents/climber_rulebook_2006.current.pdf.*

Dated: August 8, 2006.

Scott J. Horowitz,

Associate Administrator, Exploration Systems Mission Directorate.

[FR Doc. E6–13497 Filed 8–15–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–054)]

Centennial Challenges 2007 Astronaut Glove Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314) (d). The 2007 Astronaut Glove Challenge registration is open for teams that wish to compete. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2007 Astronaut Glove Challenge is a prize contest designed to promote the development of glove joint technology, resulting in a highly dexterous and flexible glove that can be used by astronauts over long periods of time for space or planetary surface excursions. The 2007 Astronaut Glove Challenge is being administered for NASA by Volanz Aerospace/Spaceflight America in a format that brings all competitors to a single location for a ''head to head'' competition. Each team will be required to perform a variety of tasks with their gloves and will be scored on the glove performance. The 2007 Astronaut Glove Challenge Web site is *http://www.astronaut-glove.us.* The Centennial Challenges Web site is *http://centennialchallenges.nasa.gov.*

DATES: The 2007 Astronaut Glove Challenge will be held in April, 2007. The specific dates and location will be listed on *http://www.astronaut-glove.us.*

ADDRESSES: Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the NASA Centennial Challenges Program should be directed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov.* To register for and to get additional information regarding the 2007 Astronaut Glove Challenge, visit *http://www.astronaut-glove.us.*

SUPPLEMENTARY INFORMATION:

Summary

The 2007 Astronaut Glove Challenge prizes will go to the teams that can design and manufacture the best performing glove within competition parameters. Current astronaut gloves contain a bladder and bladder restraint. Mechanical Counter Pressure (MCP) gloves, which have not yet been used by astronauts in space, typically do not. A separate 2007 MCP Glove Demonstration will be held in order to include diverse technologies.

Challenge Basis and Prize Amount

The $250,000 total purse will be awarded at a competition scheduled for April 2007, when competing teams test their glove designs against each other. The prizes are $200,000 for the 2007 Astronaut Glove Challenge winner and $50,000 for the MCP Glove Demonstration winner. MCP glove designers may participate in either the 2007 Astronaut Glove Challenge or 2007 MCP Glove Demonstration. They may not participate in both. Bladder and bladder-restraint gloves may only participate in the 2007 Astronaut Glove Challenge. Hybrid gloves that meet the requirements of both Challenges, may participate in either the Challenge or Demonstration, but not both.

Eligibility

The Centennial Challenges Program has established the following language in the CHALLENGE Team Agreements governing eligibility. CHALLENGE is the 2007 Astronaut Glove Challenge.

TEAM is defined as an individual, organization or corporation, or a group of individuals, organizations or corporations that register to participate in CHALLENGE. TEAM is comprised of a TEAM LEADER and TEAM MEMBERS.

TEAM LEADER is defined as a single individual, organization, or corporation, which is the sole agent representing TEAM regarding its participation in CHALLENGE. TEAM LEADERS that are individuals must be U.S. citizens. TEAM LEADERS that are organizations or corporations must be incorporated in the U.S. and majority-owned and controlled by U.S. citizens. Corporate or other organizational TEAM LEADERS must appoint an individual who is an officer of the Corporation or organization to represent the TEAM LEADER.

TEAM MEMBERS are defined as those participants on the TEAM that are not the TEAM LEADER. If a TEAM consists of a single individual, then in this case the TEAM MEMBER is also the TEAM LEADER. Individuals and corporate entities that are other than U.S. citizens or entities may be TEAM MEMBERS, subject to written request to and approval by VOLANZ.

All TEAM MEMBERS will apply to register for the CHALLENGE through TEAM LEADER and must receive written concurrence by VOLANZ.

All TEAM MEMBERS must execute an ''Adoption of Agreement'' committing to all terms of this AGREEMENT. By signing below, TEAM LEADER represents that all TEAM MEMBERS have executed the Adoption of Agreement and that no one else will become a member of the TEAM or participate in the CHALLENGE until such new TEAM MEMBER has signed this Agreement. VOLANZ may disqualify any TEAM if it discovers that a person is acting as a TEAM MEMBER who has not signed this AGREEMENT. TEAM LEADER will provide VOLANZ with a copy of the ''Adoption of Agreement'' signed by each TEAM MEMBER.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a TEAM LEADER or TEAM MEMBER.

U.S. Government employees may not participate in the CHALLENGE as TEAM LEADER or TEAM MEMBER.

TEAM MEMBERS may not participate in CHALLENGE on more than one TEAM.

Rules

The 2007 Astronaut Glove Challenge Rules and Team Agreement can be found at: *http://www.astronaut-glove.us.*

Dated: August 8, 2006.

Scott J. Horowitz,

Associate Administrator, Exploration Systems Mission Directorate.

[FR Doc. E6–13498 Filed 8–15–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–055]

Centennial Challenges 2007 Lunar Regolith Excavation Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges 2007 Lunar Regolith Excavation Challenge.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314)(d). The 2007 Lunar Regolith Excavation Challenge is now scheduled and teams that wish to compete may now register. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2007 Lunar Regolith Excavation Challenge is a prize contest designed to promote the development of new

technologies to excavate lunar regolith. The 2007 Lunar Regolith Excavation Challenge is being administered for NASA by the California Space Education & Workforce Institute (CSEWI). Their Web site is: *www.californiaspaceauthority.org/html/level-one/institute.html.* The Centennial Challenges Web site is *centennialchallenges.nasa.gov.*

DATES: The 2007 Lunar Regolith Excavation Challenge will be held May 12, 2007.

ADDRESSES: The 2007 Lunar Regolith Excavation Challenge will be held at the Santa Maria Fair Park, Santa Maria, California. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the NASA Centennial Challenges Program should be directed to Mr. Ken Davidian, Suite 2M14, Centennial Challenges Program, Exploration Systems Mission Directorate, NASA, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov.* To register for and get additional information regarding the 2007 Lunar Regolith Excavation Challenge, visit: *www.californiaspaceauthority.org/regolith.*

SUPPLEMENTARY INFORMATION:

I. Summary

The 2007 Lunar Regolith Excavation Challenge promotes the development of new technologies to excavate lunar regolith. Excavation is a necessary first step towards lunar resource utilization, and the unique physical properties of lunar regolith make excavation a difficult technical challenge. Advances in lunar regolith extraction have the potential to contribute significantly to the nation's space exploration operations. Teams competing in the 2007 Lunar Regolith Excavation Challenge will build autonomously operating systems to excavate lunar regolith and deliver it to a collector. This Challenge will be conducted in a ''head-to-head'' competition format. Teams will be challenged to excavate and deliver as much regolith as possible in 30 minutes.

II. Challenge Basis and Prize Amount

The 2007 Lunar Regolith Excavation Challenge total purse of $250,000 will go the winning teams excavating the most regolith above 150 kilograms.

III. Eligibility

The Centennial Challenges Program has established the following language in the Challenge Team Agreements governing eligibility. Challenge is the 2007 Lunar Regolith Excavation Challenge.

Team is defined as an individual, organization or corporation, or a group of individuals, organizations or corporations that register to participate in Challenge. Team is comprised of a Team Leader and Team Members.

Team Leader is defined as a single individual, organization, or corporation, which is the sole agent representing Team regarding its participation in Challenge. Team Leaders that are individuals must be U.S. citizens. Team Leaders that are organizations or corporations must be incorporated in the U.S. and majority-owned and controlled by U.S. citizens. Corporate or other organizational Team Leaders must appoint an individual who is an officer of the Corporation or organization to represent the Team Leader.

Team Members are defined as the participants on the Team that are not the Team Leader. If a Team consists of a single individual, then in this case the Team Member is also the Team Leader. Individuals and corporate entities that are other than U.S. citizens or entities may be Team Members, subject to written request to and approval by CSEWI.

All Team Members will apply to register for the Challenge through Team Leader and must receive written concurrence by CSEWI.

All Team Members must execute an ''Adoption of Agreement'' committing to all terms of this Agreement. By signing below, Team Leader represents that all Team Members have executed the Adoption of Agreement and that no one else will become a member of the Team or participate in the Challenge until such new Team Member has signed this Agreement. CSEWI may disqualify any Team if it discovers that a person is acting as a Team Member who has not signed this Agreement. Team Leader will provide CSEWI with a copy of the ''Adoption of Agreement'' signed by each Team Member.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a Team Leader or Team Member.

U.S. Government employees may not participate in the Challenge as Team Leader or Team Member.

Team Members may participate in Challenge on more than one Team.

IV. Rules

The rules for the 2007 Lunar Regolith Excavation Challenge can be found at: *www.californiaspaceauthority.org/regolith.*

Dated: August 8, 2006.

Scott J. Horowitz,

Associate Administrator, Exploration Systems Mission Directorate.

[FR Doc. E6–13499 Filed 8–15–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to Section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (P.L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

Name of committee: Public Interest Declassification Board (PIDB).

Date of meeting: Saturday, September 9, 2006.

Time of meeting: 9 a.m. to 12 p.m.

Place of meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington Room, Washington, DC 20408.

Purpose: To discuss declassification program issues.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Tuesday, September 5, 2006. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Washington, DC 20408, telephone number (202) 357–5250.

Dated: August 8, 2006.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E6–13393 Filed 8–15–06; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of patient advocate on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before October 16, 2006.

ADDRESSES: Submit 4 copies of your resume or curriculum vitae to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop: T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad S. Saba, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: (301) 415–7608; E-mail: *mss@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State representative; and (k) health care administrator.

NRC is inviting nominations for the patient advocate position that is currently vacant. Committee members currently serve a 4-year term. Committee members may be considered for reappointment to one additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: Nominees will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACMUI members. This check will include a requirement to complete financial disclosure statements to avoid conflict-of-interest issues. The security background check will involve the completion and submission of paperwork to NRC, and take approximately 4 weeks to complete.

Dated at Rockville, Maryland this 10th day of August, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–13433 Filed 8–15–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVES

United States-Chile Free Trade Agreement: 2005 Annual Product Review and Tariff Determinations

AGENCY: Office of the United States Trade Representative.

ACTION: Tariff implementation.

SUMMARY: This notice announces the results of the 2005 annual product review and tariff determinations, regarding Chilean imports of certain fruits, vegetables and juices, set forth by the U.S.-Chile Free Trade Agreement (FTA). This review determines whether these tariff free products, imported during calendar year 2005, have exceeded conditions elaborated in the FTA thus requiring the U.S. to impose duties predetermined by its tariff phase-out schedule. The effective date for the resulting change in tariff treatment is October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew Stephens, Director of Bilateral Affairs at the Office of the United States Trade Representatives (USTR), 1724 F Street, NW., Washington, DC 20508, (202) 395–6127 or *Andrew_Stephens@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The U.S.-Chile FTA authorizes the duty-free importation of designated products provided that import values do not meet or exceed conditions elaborated in Chapter 3, Annex 3.3 of the U.S. General Notes under Note 17 and 18. The conditions are met when products exceed fifty percent of total U.S imports for that specific tariff line or the value of imports from Chile for a specific tariff line exceeds $110 million. If either condition is met, the applied preferential rate shall revert to duties set forth according to the staging categories in the Chapter 3, Annex 3.3 of the FTA Text. The specific products for which these conditions apply and the location of the tariff can be found in Chapter 99, Note 19 and 20 of the 2006 U.S. Harmonized Tariff Schedule. These products include cucumbers, gherkins, strawberries, blackberries, mulberries, currants, peppers, vegetable mixes, certain parts of plants, apple puree, quince puree and pear puree, apricot pulp and certain fruit and vegetable juices.

Since implementation of the U.S.-Chile FTA in 2004, the U.S. Trade Representative's Office has monitored Chilean imports to ensure that the provisions of the FTA have been implemented correctly. The review of imports made during the calendar year 2005 found that total U.S. imports of apple, quince and pear pastes and purees (HTS 2007.99.4800) equaled $2.2 million and imports from Chile accounted for more than $1.2 million of that total. Thus total Chilean imports accounted for 54 percent of the total, exceeding the aforementioned conditions allowed for immediate duty-free imports under U.S.-Chile FTA provisions.

Accordingly, the tariff treatment set forth in subheading 9911.77.11 for goods of Chile, under the terms of general note 26 to the HTS, is deleted, effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after October 1, 2006, and the rate of duty set forth in subheading 9911.77.12, together with scheduled staged reductions thereof, shall apply to eligible entries of the subject goods as of October 1, 2006.

Product	Column A HTS	Column B HTS
Apple, quince and pear pastes and purees	2007.99.48	9911.77.11

Product	Column A HTS	Column B HTS
This now becomes:		9911.77.12
And the applicable duty becomes: 7.5%		

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E6–13500 Filed 8–15–06; 8:45 am]

BILLING CODE 3190–W6–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2006. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2006 is 4.36 percent (*i.e.*, 85 percent of the 5.13 percent Treasury Securities Rate for July 2006).

The Pension Funding Equity Act of 2004 (''PFEA'')—under which the required interest rate is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid—applies only for premium payment years beginning in 2004 or 2005. Congress has passed legislation that would extend the PFEA rate for two more years. When that legislation is signed into law, the PBGC will promptly publish a **Federal Register** notice with the rate for August 2006, as well as the rates for January through July 2006.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 2005 and August 2006.

For premium payment years beginning in:	The required interest rate is:
September 2005	4.61
October 2005	4.62
November 2005	4.83
December 2005	4.91
January 2006	3.95
February 2006	3.90
March 2006	3.89
April 2006	4.02
May 2006	4.30
June 2006	4.42
July 2006	4.39
August 2006	4.36

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of August 2006.

Vincent K. Snowbarger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–6959 Filed 8–15–06; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 38a–1, SEC File No. 270–522, OMB Control No. 3235–0586.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 38a–1 (17 CFR 270.38a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'') is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company (''fund'') to: (i) Adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws, (ii) obtain the fund board of director's approval of those policies and procedures, (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund and the effectiveness of their implementation, (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures, and (v) maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a–1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's ''master'' compliance program to assemble appropriate compliance policies and procedures. Many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number or outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4966 funds subject to Rule 38a–1. Among these funds, 149 were newly registered in the past year. These 149 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance program. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 69 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 10,281 hours.

The remaining 4817 funds would have adopted Rule 38a–1 compliance policies and procedures in previous years, and are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since the date of the last report. The staff estimates that each fund spends 60 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the aggregate annual burden hours associated with the annual review and annual report requirement is 289,020 hours.

Finally, the staff estimates that each fund spends 8 hours annually, on average, maintaining the records required by proposed Rule 38a–1. Thus, the aggregate annual burden hours associated with the recordkeeping requirement is 39,728 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a–1 is 339,029 hours. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. 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 control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 1, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–13418 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54290; File No. SR–Amex–2006–40]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Relating to Direct Registration System Eligibility Requirements

August 8, 2006.

I. Introduction

On April 28, 2006, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–Amex–2006–40 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 7, 2006.[2] Two comment letters were received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.[4]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[5] DRS, therefore, enables an investor to have securities registered in her name without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

In order to reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates and thereby reduce the risks, costs, and delays associated with the physical delivery of securities certificates, Amex is amending its listing requirements to add new Rule 778 to its Rules and new Section 135 to its Company Guide.[6] These provisions will require certain listed companies to make their securities eligible for a DRS operated by a securities depository.[7] Specifically, Amex's rule change will require (i) all securities (other than the securities identified below) initially listing on Amex on or after January 1, 2007, to be eligible for a DRS and (ii) all securities (other than the securities identified below) listed on Amex on and after January 1, 2008, to be eligible for a DRS. The initial listing requirement set forth in (i) above will not apply to securities of issuers that already have securities listed on the Amex, securities of issuers that immediately prior to such initial Amex listing had securities listed on another national securities exchange, derivative products,[8] or securities (other than stocks) which are book-entry-only. The ongoing listing requirement set forth in (ii) above will not apply to derivative products or securities (other than stocks) which are book-entry-only.

III. Comment Letters

The Commission received two comment letters in support of the proposed rule change.[9] The SIA Operations Committee (''SIA''), an industry organization representing broker-dealers, stated that the effect of the proposed rule change will be to reduce significantly the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates thereby reducing costs, risks, and delays associated with physical settlement. The SIA also contended that by increasing the number of DRS-eligible securities, the proposed rule change is an important step in reducing the number physical certificates, a goal the SIA has long supported in its efforts to promote immobilization and dematerialization.

Computershare, a registered transfer agent, stated that the proposed rule change will help immobilize and eventually dematerialize certificates in the U.S. market, which it believes will result in benefits such as cost savings, increased efficiency, more accurate and timely trade settlements, and reduced risk of loss for investors. Computershare noted however that some challenges remain to be overcome in the broker-dealer community before these benefits can be realized. For example, Computershare contended, among other things, that broker-dealers are not sufficiently educating their employees or their customers about the inherent risks associated with owning certificates or the benefits of owning in DRS. In addition, Computershare stated that certain current industry processing practices also need to be changed. Specifically, it believes that the industry should ''default to DRS,'' a process whereby customers of broker-dealers would obtain only a statement of their positions held on the issuer's records rather than a certificate unless the customer contacted the issuer's transfer agent directly to obtain a certificate. Computershare urged the Commission to review and modify current regulation to address these issues.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53911 (May 31, 2006), 71 FR 33009 (June 7, 2006) [File No. SR–Amex–2006–40].

[3] Letters from Noland Cheng, Chairman, SIA Operations Committee, Securities Industry Association (June 27, 2006) and Paul Conn, President, Global Capital Markets, Computershare Limited, and Charlie Rossi, Executive Vice President, Computershare Investor Services (July 28, 2006).

[4] Concurrent with the Commission's approval of NYSE's rule change, the Commission is also approving in separate orders similar rule changes proposed by the New York Stock Exchange LLC (''NYSE'') and The NASDAQ Stock Market LLC (''Nasdaq''). Securities Exchange Act Release Nos. 54289 (August 8, 2006) [File No. SR–NYSE–2006–29] and 54288 (August 8, 2006) [File No. SR–NASDAQ–2006–008]. The Commission has also published notice of a similar rule changed proposed by NYSE Arca, Inc. Securities Exchange Act Release No. 54126 (July 11, 2006), 71 FR 40768 (July 18, 2006) [File No. SR–NYSEArca–2006–31].

[5] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[6] The exact text of the Amex proposed rule change is set forth in its filing, which can be found at *http://www.amex.com.*

[7] The term ''securities depository'' is defined as a securities depository registered as a clearing agency under Section 17A(b)(2) of the Act. *See* note 5.

[8] As defined in Article 1, Section 3(d) of Amex's Constitution, the term ''derivative products'' includes in addition to standardized options, other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust and which are based solely on the performance of an index or portfolio of other publicly traded securities. The term ''derivative products'' does not include warrants of any type or closed-end management investment companies.

[9] *Supra* note 3. The SIA and Computershare's comment letters were written in support of the three similar proposed rule changes filed by Amex, Nasdaq, and NYSE. *Supra* note 4. The NYSE Arca's proposed rule change was noticed by the Commission subsequent to the date the commenters submitted their comment letters.

exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] For the reasons described below, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[11] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and present the risk of certificates being lost, stolen, or forged. Many of these costs and risks are ultimately borne by investors.[12] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission responsibility and authority to address these issues.[13]

Consistent with its Congressional directives, in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[14] and that require any security listed for trading must be depository eligible if possible.[15] More recently the Commission has approved the implementation and expansion of DRS.[16]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (mostly by retail customers of broker-dealers) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to address this issue, Amex's rule change, along with those of the NYSE and Nasdaq, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the physical delivery of securities certificates should be reduced, and the perfection of the national market system should be promoted. Additionally, those investors holding securities in listed securities covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make a security DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participants.[17] In order to make an issue DRS-eligible, issuers may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers sufficient time to make any necessary changes to comply with the rule change.

While the propose rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates after the settlement of securities transactions provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with Amex's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Amex–2006–40) be and hereby is approved.

[10] 15 U.S.C. 78f(b)(5).

[11] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[12] *Id.*

[13] 15 U.S.C. 78q-1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[14] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993)(order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[15] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[16] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or is included in DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[17] For a description of DTC's rules relating to DRS Limited Participants, *see* Securities Exchange Act Release Nos. 37931 and 41862. *Supra* note 5.

[18] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13401 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54291; File No. SR–BSE–2006–30]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Implementation of the Second Phase of the Boston Equities Exchange (''BeX'') Trading System

August 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2006, the Boston Stock Exchange (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In previous rule filings, BSE proposed to establish the governance framework for a new electronic trading facility, as that term is defined in Section 3(a)(2) of the Act,[3] which is to be called BeX,[4] and to propose rules that pertain to the first phase of BeX.[5] The first phase of the BeX trading system involves a fully automated electronic book for the display and execution of orders in securities listed otherwise than on The Nasdaq Stock Market for which the BSE obtains unlisted trading privileges (''UTP'') after June 30, 2006.

The proposed rules set forth below are being filed in connection with the implementation of the second phase of the BeX trading system. As of January 1, 2007, there will no longer be any specialist participation in any transactions on the BSE or otherwise. Additionally, in connection with satisfying the requirements of Regulation NMS, the BSE is proposing eight new order types; rules to prevent locked or crossed quotations; a new order routing system; and an order protection rule. The text of the proposed rule change is available on Exchange's Web site (*https://www.bostonstock.com)*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

The text of the proposed rule change also appears below. Proposed new language is italicized; deleted language is in [brackets].[6]

Rules of the Boston Stock Exchange

Chapter XXXVII—Boston Equities Exchange (''BeX'') Trading System

The Boston Equities Exchange (''BeX'') trading system is a fully-automated facility of the Exchange, which allows eligible orders in eligible securities to electronically match and execute against one another.

Section 1. BeX Eligible Securities

(a) Eligible Securities. All securities eligible for trading on the Exchange [that are listed otherwise than on The Nasdaq Stock Market for which the BSE obtains unlisted trading privileges (''UTP'') after June 30, 2006] shall be eligible for trading through BeX. Any specialist request to remove a security from BeX shall be considered by the appropriate Board Committee.

Section 2. Eligible Orders

Subsections (a) through (b)—no change.

(c) Eligible order types:

(i) Orders eligible for execution in BeX may be designated as one of the following existing BSE order types as defined in Chapter I, Section 3 except that any reference in the existing BSE Rules to the execution of Orders as soon as ''represented at the specialist's post'' shall for purposes of this Section be understood to mean ''entered in BeX'':

(A) At the Opening or At the Opening Only Order.
(B) Day Order.
(C) Do Not Increase (DNI).
(D) Do Not Reduce (DNR).
(E) Fill or Kill.
(F) Good 'Till Cancel Order.
(G) Immediate or Cancel.
(H) Limit, Limited Order or Limited Price Order.
(I) At the Close.
(J) Market Order.
(K) Stop Limit Order.
(L) Stop Order.

With the exception of Fill or Kill and Immediate or Cancel Orders, a customer may append to an Order an instruction that the Order be routed to the market(s) displaying the National Best Bid or Offer if the Order would trade through the National Best Bid or Offer if executed on the BeX. *Absent such an instruction, the order will be cancelled.*

(ii) Orders eligible for execution in BeX may also be designated as one of the following additional order types:

(A) ''Cross'': An order to buy and sell the same security at a specific price better than the best bid and offer displayed in BeX and equal to or better than the National Best Bid and Offer. A Cross Order may represent interest of one or more BSE Members.

(B) ''Cross with Size'': A Cross Order to buy and sell at least 5,000 shares of the same security with a market value of at least $100,000.00 (i) at a price equal to or better than the best bid or offer displayed in BeX and the National Best Bid or Offer and (ii) where the size of the order is larger than the *largest order* [aggregate size of all interest] displayed in BeX at that price.[; and (iii) where neither side of the order is for the account of the BSE Member sending the order to BeX.]

(C) ''Good 'Till Date (GTD)'': An order to buy or sell that, if not executed, expires at the end of date specified in the order.

(D) ''Good 'Till Time (GTT)'': An order to buy or sell that, if not executed, expires at the time specified in the order.

(E) ''Limit or Close'': A limit order to buy or sell that if not executed prior to the Market on Close cutoff time of 3:40 p.m., pursuant to Chapter II, Section 22, will automatically convert to an At the Close Order for inclusion in the closing process and if not so executed, at the close, will be cancelled.

(F) ''Mid-Point Cross '': A two-sided order with both a buy and sell component combined that executes at the midpoint of the National Best Bid or Offer. A Mid-point Cross Order will be rejected when a locked or crossed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under the Act, the ''term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' *See* 15 U.S.C. 78c(a)(2).

[4] *See* Securities Exchange Act Release No. 54035 (June 22, 2006), 71 FR 37135 (June 29, 2006) (SR–BSE–2006–20) (''BeX Governance Filing'').

[5] *See* Securities Exchange Act Release No. 54034 (June 22, 2006), 71 FR 37140 (June 29, 2006) (SR–BSE–2006–22) (''BeX Facility Filing'').

[6] For clarity, the rule text below treats the rule text proposed in the BeX Facility Filing as existing rule text even though that filing has not been approved by the Commission.

market exists in that security at the time the Order is received. Midpoint Cross Orders may be entered, quoted, executed and reported in increments as small as one-half of the Minimum Price Variation.

(G) ''Reserve'': A Limit Order with a portion of the size displayed and with a reserve portion of the size that is not displayed. A Reserve Order cannot be an IOC Order or Market Order.

(H) ''Minimum Quantity'': A Minimum Quantity Order is an order subject to the provisions of Chapter XXXVII, Section 6, that, upon entry, must be executed at least at its minimum quantity or it will be cancelled. If executed in part, the remaining quantity remains in the book and follows the execution rule of the order type. A Stop Limit Order can be a Minimum Quantity Order and, at the election of the order, will be handled pursuant to subsection (j) of Section 3.

(I) ''Preferred Price Cross'': A Two-Sided Cross Order with a preferred limit price and an optional preferred tick, both set by the Member. A preferred limit price is the limit price the two-sided cross order will be executed at if it is equal to or better than the National Best Bid or National Best Offer (''Preferred Limit Price''). The optional preferred tick is the amount of ticks beyond the preferred limit price at which the two-sided cross order may be executed (''Optional Preferred Tick''). The Preferred Price Cross order cannot be executed at a price that is more than the preferred limit price plus the amount of optional preferred ticks or less than the preferred limit price minus the amount of optional preferred ticks. If the Preferred Price Cross cannot be executed at the Preferred Limit Price the execution price of the Cross will be determined by the Trading System to be the closest price to the Preferred Limit Price, respecting the Optional Preferred Tick and the National Best Bid or National Best Offer.

(J) Best Price Intermarket Sweep Order (''BPISO''): A Best Price Intermarket Sweep Order (BPISO) is an order marked as required by SEC Rule 600(b)(30) that is to be executed against any orders at the Exchange's Best Bid or Best Offer (including any undisplayed orders at that price) as soon as the order is received by BSE, with any unexecuted balance of the order to be immediately cancelled. BSE, in executing the BPISO, shall not take any of the actions described in Chapter XXXVIII, Section 4 to prevent an improper trade through.

(K) Automated Immediate or Cancel (''AIOC''): An automated immediate or cancel order received on BSE will execute immediately and automatically, either in whole or in part, at or better than its limit price, with any unexecuted balance of the order to be immediately cancelled. The unexecuted portion of the order will not be routed to another Trading Center.

(L) ''Price-Penetrating ISO'': An order marked as required by SEC Rule 600(b)(30) that is to be executed at or better than its limit price as soon as the order is received by BSE, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders in BSE (including any undisplayed orders, through multiple price points). BSE, in executing these orders, shall not take any of the actions described in Chapter XXXVIII, Section 4 to prevent an improper trade-through.

(M) ISO Cross Order: A two sided order that, upon receipt, will be executed without any action on the part of the Exchange to prevent an improper trade through. The Member submitting an ISO Cross is responsible for checking all protected quotes and must send one or more ISO orders to other Trading Centers displaying a price better than the cross price.

(N) Cancel on Corporate Action: In the event of a dividend, distribution or stock split (''Corporate Action''), the order in the limit book will be cancelled.

Subsection (d)—no change.

* * * Interpretations and Policies

.01 The terms ''Best Bid'' and ''Best Offer'' shall mean, respectively, the highest and lowest priced order to buy and sell an eligible security in BeX.

.02 The terms ''National Best Bid'' and ''National Best Offer'' shall mean, respectively, the highest and lowest priced order or quote to buy and sell a BeX eligible security displayed in the consolidated quotation system for the security.

Section 3. Operation of BeX

Subsections (a)–(f)—no change.

(g) Post-Primary Trading Session (PPS). The BeX PPS will operate from the time when the primary market disseminates its closing price until [4:30] 6:30 p.m. During the BeX PPS only cross orders at a specific price may be submitted.

Subsection (h)—no change.

(i) Ranking and Display of Orders

(i)–(ii)—no change

(iii) The displayed portion of Reserve Orders (not the reserve portion) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented such that fewer than 100 shares are displayed, the displayed portion of the Reserve Order shall be replenished for: a) The displayed amount; or b) the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount. Upon replenishment the reserve portion shall be submitted and ranked at the specified limit price and time of replenishment.

(iv) Except as otherwise permitted by Section 3, paragraphs (v)–(vi) below, all orders at all price levels on BeX shall be displayed to all Members on an anonymous basis and transactions executed on BeX will be processed anonymously. The transaction reports will indicate the details of the transaction, but will not reveal contra party identities.

(v) *BeX will reveal the identity of a Member in the following circumstances:*

(A) For regulatory purposes or to comply with an order of a court or arbitrator;

(B) When the National Securities Clearing Corporation (''NSCC'') ceases to act for a Member or the Member's clearing firm, and NSCC determines not to guarantee the settlement of the Member's trades; or

(C) On risk management reports provided to the contra party of the Member or Member's clearing firm each day by 4 p.m. (E.S.T.) which disclose trading activity on the aggregate dollar value basis.

(vi) In order to satisfy Members' record keeping obligations under SEC Rules 17a–3(a)(1) and 17a–4(a), BSE shall retain for the period specified in Rule 17a–4(a) the identity of each Member that executes an anonymous transaction described in paragraph (i)(iii) of this rule. The information shall be retained by BeX in its original form or a form approved under Rule 17a–6. Members shall retain the obligation to comply with SEC Rule 17a–3(a)(1) and 17a–4(a) whenever they possess the identity of their contra party.

Interpretations and Policies:

.01 No Member having the right to trade through the facilities of BeX and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

.02 Except as required by paragraphs (v)–(vi), no Member shall transmit through the facilities of BeX any information regarding a bid, offer, other indication of an order, or the Member's identity, to another Member until permission to disclose and transmit such bid, offer, other indication of an order, or the Member 's identity has been obtained from the originating

Member or the originating Member affirmatively elects to disclose its identity.

Subsections (j) through (k)—no change.

Section 4. Cancellation of Transactions

Subsection (a)—no change.

Section 5. Handling of Clearly Erroneous Transactions

Subsection (a)—no change.

Section 6. Orders To Be Reduced and Increased on Ex-Date

Subsections (a) through (d)—no change.

Section 7. Application of BSE Rules

Subsection (a)—no change.

Section 8. Approval of Market Makers

(a) No Member shall act as a Market Maker in any security unless such Member has been approved as a Market Maker in such security by the Exchange pursuant to this Section and the Exchange has not suspended or canceled such approval. Approved Market Makers are designated as dealers on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) An applicant shall file an application for Market Maker status on such form as the Exchange may prescribe. Applications shall be reviewed by the Exchange, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history.

(c) An applicant's Market Maker status shall become effective upon receipt by the Member of notice of an approval by the Exchange. In the event that an application is disapproved by the Exchange, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of Chapter XXX of the BSE Rules.

(d) A Market Maker may be suspended or terminated by the Exchange upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Section 10, below.

(e) Any Market Maker may withdraw its Market Maker status by giving written notice to the Exchange. Such withdrawal shall become effective on the tenth business day following the Exchange's receipt of the notice. A Market Maker who fails to give a ten-day written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to Chapter XXX. Subsequent to withdrawal, the Member shall not be permitted to re-apply as a Market Maker for a period of six months.

Section 9. Assignments of Market Maker in a Security

(a) A Market Maker may be assigned a newly authorized security or in a security already admitted to dealings on the BeX by filing an assignment request form with the Exchange. Assignment of the security shall become effective on the first business day following the Exchange's approval of the assignment. In considering the approval of the assignment of the Market Maker in a security, the Exchange may consider:

(1) the financial resources available to the Market Maker;

(2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;

(3) the Market Maker's operational capability;

(4) the maintenance and enhancement of competition among Market Makers in each security in which they are assigned;

(5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;

(6) the character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) A Market Maker's assignment in a security may be terminated by the Exchange if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's assignment in the security becomes effective.

(c) The Exchange may limit the number of Market Makers in a security upon prior written notice to Members.

(d) Market Makers shall be selected by the Exchange. Such selection shall be based on, but is not limited to, the following: experience with making markets in equities; adequacy of capital; willingness to promote the BeX as a marketplace; issuer preference; operational capacity; support personnel; and history of adherence to Exchange rules and securities laws.

(e) Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its assignment in a security by providing the Exchange with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to Chapter XXX.

(f) The Exchange may suspend or terminate any assignment of a Market Maker in a security or securities under this Section whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.

(g) A Member may seek review of any action taken by the Exchange pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's assignment in a security or securities, in accordance with Chapter XXX.

Section 10. Obligations of Market Makers

(a) General. Members who are assigned as Market Makers in one or more securities traded on the BeX must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the BeX in accordance with this Section. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

(1) Maintain continuous, two-sided quotes in those securities in which the Market Maker is assigned to trade;

(2) Maintain adequate minimum capital in accordance with Rule 15(c)3–1 promulgated under the Securities Exchange Act of 1934;

(3) Remain in good standing with the Exchange;

(4) Inform the Exchange of any material change in financial or operational condition or in personnel; and

(5) Clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another Member that clears trades through such agency.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Section during the Primary Trading Session on all days in which the Exchange is open for business.

(c) If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the assignment by the Exchange in one or more of the securities in which the Market Maker is assigned. Nothing in this Section will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Exchange with respect to the Market Maker's Membership status or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Chapter XXX, a

Member may seek review of actions taken by the Exchange pursuant to this Section.

(d) Temporary Withdrawal. A Market Maker may apply to the Exchange to withdraw temporarily from its Market Maker status in the securities in which it is assigned. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the securities to another Market Maker.

(e) Market Makers will be required to maintain minimum performance standards the levels of which may be determined from time to time by the Exchange. Such levels will vary depending on the price, liquidity, and volatility of the security in which the Market Maker is assigned. The performance measurements will include (i) percent of time at the National Best Bid or National Best Offer; (ii) percent of executions better than the National Best Bid or National Best Offer; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the Market Maker to transact in underlying markets.

Section 11. Limitations on Dealings

(a) General. A Market Maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier (also commonly referred to as ''Chinese Wall'') between the market making activities and the Other Business Activities. ''Other Business Activities'' mean:

(1) conducting an investment banking or public securities business; or

(2) making markets in the options overlying the security in which it makes markets.

(b) Information Barrier. For the purposes of this rule, an Information Barrier is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between persons engaged in the market making functions and persons conducting the Other Business Activities. However, upon request and not on his/her own initiative, a person engaged in the market making functions may furnish to persons at the same firm or an affiliated firm (''affiliated persons''), the same sort of market information that the person engaged in the market making function would make available in the normal course of its market making activity to any other person. The person engaged in the market making function must provide such information to affiliated persons in the same manner that he/she would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier.

These procedures, at a minimum, must provide that:

(A) the person performing the function of a Market Maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(B) all information pertaining to the Market Maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier.

(3) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:

(A) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the Market Maker's responsibilities under the Rules of the Exchange.

(c) Documenting and Reporting of Information Barrier Procedures. A Member implementing an Information Barrier pursuant to this Section shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Section, and the compliance and audit procedures it proposes to implement to ensure that the Information Barrier is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Section or the Member's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Section, and that it recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a Market Maker, in the event of such a violation;

(5) Whether the Member or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Member's Information Barrier, which procedures, at a minimum, must be the same as those used by the Member or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b–5 and 14e–3 under the Exchange Act or one or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Exchange, and that the Exchange intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(d) Approval of Information Barrier Procedures. The written statement required by paragraph (c) of this Section must detail the internal controls that the Member will implement to satisfy each of the conditions stated in that Section, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Member are acceptable under this Section, the Exchange shall so inform the Member, in writing. Absent the Exchange finding a Member's Information Barrier procedures acceptable, a Market Maker may not conduct Other Business Activities.

(e) Clearing Arrangements. Subparagraph (c)(5) permits a Member or an affiliate of the Member to clear the Member's Market Maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:

(1) The procedures must provide that any information pertaining to Market Maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically

authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any Market Maker to meet market making or other obligations under the Exchange's Rules.

Chapter XXXVIII—Regulation NMS

Section 1. Definitions

(a) ''Automated Quotation'' means a quotation displayed by a trading center that:

(i) Permits an incoming order to be marked as immediate-or-cancel;

(ii) Immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size;

(iii) Immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(iv) Immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and

(v) Immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

(b) ''Manual Quotation'' means any quotation other than an automated quotation.

(c) ''Protected Bid'' or ''Protected Offer'' means a quotation in an NMS stock that:

(i) Is displayed by an automated trading center;

(ii) Is disseminated pursuant to an effective national market system plan; and

(iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.

(d) ''Protected Quotation'' means a Protected Bid or a Protected Offer.

(e) ''Regular Way'' means bids, offers, and transactions that embody the standard terms and conditions of a market.

(f) ''Trading Center'' means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

Section 2. Locking or Crossing Quotations in NMS Stocks.

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in SEC Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(ii) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(iii) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, members of the Exchange shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(i) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(ii) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(iii) The locking or crossing quotation was an automated quotation, and the member of the Exchange displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(iv) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

Section 3. Order Routing

(a) Eligible Orders are any orders that are designated by the customer to execute or route. IOC, AIOC, all ISO order types and FOK orders shall not be designated to execute or route.

(b) If any Eligible Order requiring routing to another Trading Center has not been executed in its entirety and the terms of the order require that it be routed to another Trading Center for execution it shall be routed as follows:

(i) Limit Orders shall be routed either in their entirety or as component orders to an away Trading Center(s) as limit orders. Limit Orders will be routed to the Trading Center(s) publishing the best Protected Bid or Protected Offer and will execute against the best Protected Bid or Protected Offer superior or equal to the limit price for the full number of available shares at the away Trading Center(s). The remaining portion of the order, if any, shall be ranked and displayed on the BSE book in accordance with the terms of such order. Market Orders shall be routed in their entirety or as component orders to an away Trading Center(s) as IOC Market Orders. If the Market Order routed to an away Trading Center is not executed in its entirety at the away Trading Center, the BSE would attempt to match the residual or declined Market Order against then available trading interest on the BSE book. Any remaining unmatched trading interest would then be handled in the manner described in Chapter XXXVIII, Section 3 of these proposed rules.

(ii) If the BSE system cannot execute or book an Eligible Order it will route the Eligible Order to another Trading

Center on behalf of the Member who submitted the Eligible Order if that Member is a member or subscriber of the away Trading Center, or in the case where the Member is not a member or subscriber of the away Trading Center the order will be routed on behalf of that Member through a third-party broker dealer, or ''give up,'' that is a member or subscriber of the away Trading Center and, if not executed in its entirety at the away Trading Center, would be handled in the manner described in subsection (b)(i), above.

Commentary:

As described above, the Exchange will route orders to other trading centers under certain circumstances (''Routing Services''). The Exchange will provide its Routing Services pursuant to the terms of three separate agreements: (1) An agreement between the Exchange and each Member on whose behalf orders will be routed (''Member-Exchange Agreement''); (2) an agreement between the Exchange and each third-party broker-dealer that will serve as a ''give-up'' on an away Trading Center when the Member on whose behalf an order is routed is not also a member or subscriber of the away Trading Center (''Give-Up Agreement''); and (3) an agreement between the Exchange and a third-party service provider (''Technology Provider'') pursuant to which the Exchange licenses the routing technology used by the Exchange for its Routing Services (''Exchange-Technology Provider Agreement'').

.01 (a) The Exchange will provide its Routing Services in compliance with these rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(b) As provider of the Routing Services, the Exchange will license the necessary routing technology for use within its own systems and accordingly will control the logic that determines when, how, and where orders are routed away to other Trading Centers.

(c) The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Technology Provider, and, to the extent the Technology Provider reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Technology Provider to legitimate business purposes necessary for the licensing of routing technology.

(d) The Exchange-Technology Provider Agreement will include terms and conditions that enable the Exchange to comply with this Commentary .01.

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(iii) The order that is routed away shall remain outside the BSE for a prescribed period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant Trading Center. While an order remains outside the Exchange, it shall have no time standing, relative to other orders received from BSE Members at the same price which may be executed against orders in the BSE book. Requests from Members to cancel their orders while the order is routed away to another Trading Center and remains outside the Exchange shall be processed, subject to the applicable trading rules of the relevant Trading Center.

(iv) Where an order or portion of an order is routed away and is not executed either in whole or in part at the other Trading Center (i.e., all attempts at the fill are declined or timed out), the order shall be ranked, displayed and eligible for execution on the BSE book in accordance with the terms of such order.

Section 4. Order Protection Requirements

(a) An order is not eligible for execution on the BSE if its execution is at a price that is lower than a Protected Bid or higher than a Protected Offer (''Trade-Through''), or if its execution would be improper under SEC Rule 611 of Regulation NMS (together an ''improper trade-through''). If the execution of an order on the Exchange would cause an improper trade-through, that order shall be routed to another appropriate market or, if not designated to route, automatically cancelled.

(b) Exceptions. Purchases and sales of NMS stocks will be excepted from Section 4, paragraph (a) above, and an appropriate modifier approved by the operating committee of the relevant national market system plan for an NMS stock will be attached to the trade before it is publicly reported, in the following circumstances that are exceptions under Rule 611 of Regulation NMS:

(i) Crossed markets. If a trade is executed on the BSE while the National Best Bid or National Best Offer is crossed;

(ii) Other exceptions.

(1) a non-regular way cross, (2) a single-price opening, reopening or closing trade;

(3) an inbound ISO; or

(4) a benchmark order is executed at the BSE.

(c) In any transaction for or with a customer, a Member and persons associated with a Member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. In all customer transactions, a Member and persons associated with a Member shall comply with all applicable best execution requirements.

(d) Trade-through policies and procedures. In determining whether a trade on the BSE would create an improper trade-through, the BSE will adhere to the terms of the ITS Plan (so long as it is in effect and is applicable to the BSE) and the applicable provisions of Reg NMS (when it takes effect), as well as to the following policies and procedures to the extent the policies and procedures are consistent with the terms of the ITS Plan and Reg NMS:

(i) Clock synchronization and timing of the determination of improper trade-throughs. The BSE's systems shall routinely, throughout the trading day, use processes that capture the time reflected on the atomic clock operated by the National Institute of Standards and Technology and shall automatically make adjustments to the time recorded in the BSE to ensure that the period between the two times will not exceed 500 milliseconds. The BSE shall determine whether a trade would create an improper trade-through based on the most recent National Best Bid and National Best Offer that has been received and processed by the BSE's systems.

(ii) Manual quotations of other markets. The BSE shall disregard another Trading Center's bid or offer if it is identified by the other Trading Center as a manual quotation.

(iii) Self-help exception. The BSE will apply the self-help exception to SEC Rule 611, and the BSE will disregard a Trading Center's bid and offer, if:

(A) The other Trading Center has publicly announced that it is not disseminating automated quotations;

(B) The other Trading Center has repeatedly failed to respond within one second to an incoming AIOC or ISO

order (after adjusting for order transmission time);

(C) The BSE will notify the other Trading Center immediately after having made use of the self-help exception by using an appropriate mechanism for communicating with other Trading Centers. The BSE will continue to apply the self-help exception until the other Trading Center has provided reasonable assurance to the BSE or, more generally, to the public that the problems have been corrected.

(e) The BSE is designed, under the rules set out in this Chapter, to display bids and offers that qualify as automated quotations under the definition set out in SEC Rule 600(b)(3). The BSE shall use the following procedures for determining whether the quotes should be identified as ''manual'':

(i) Periodic testing. The Market Operations Center (''MOC'') will have a real time monitoring tool, which will check the elapsed time between receipt of every AIOC order (any order type) and the corresponding response to each AIOC order by the trading system. A predetermined threshold will be set to generate an alert for any instances where the elapsed time between order receipt and response exceeds the preset limit.

(ii) Adding the ''manual'' identifier. Immediately upon receiving an alert from the processes described above in subparagraph (e)(i) that the Exchange's trading system has not accepted and properly handled two or more AIOC orders in a symbol sent as sequential messages the MOC shall append a ''manual'' identifier to the bids and offers it makes publicly available in that symbol.

(iii) Returning to automated quotations. Once the Exchange has made any required systems changes, or has otherwise determined that its quotations satisfy the requirements of SEC Rule 600(b)(3), and has conducted the applicable test(s) set out above to confirm that the Exchange's quotes qualify as ''automated quotations,'' the Exchange shall remove the ''manual'' identifier from the bids and offers that are made publicly available. The Exchange also shall notify other Trading Centers that its quotations are automated by announcing that fact over the squawk box or other similar functionality available for communications with other Trading Centers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the BeX Facility Filing, the BSE proposed rules to implement the first phase of a new electronic trading facility, called BeX. BeX, which was developed by and is owned and operated by BSX Group, LLC (''BSX''), is an electronic securities communications and trading facility intended for the use of BSE Members, including Electronic Access Members, and their customers.[7] In this rule filing, the Exchange proposes to implement the second phase of the BeX as a fully-automated electronic book for the display and execution of orders in securities listed on any Exchange through the introduction of new rules as well as by amending certain existing rules (''BeX Phase II''). All such issues would not be assigned to a specialist. The new rules will be located in Chapter XXXVII of the Exchange's Rules of the Board of Governors (''BSE Rules''). The BSE also proposes to implement rules to satisfy the requirements of Regulation NMS. These rules will be located in Chapter XXXVIII of the BSE Rules.

The Exchange previously proposed to institute rules governing BeX as a new fully-automated electronic book that would display and match eligible orders in these securities, without the participation of a specialist.[8] As of January 1, 2007, there will no longer be any specialist participation in any transactions on the BSE or otherwise. For competitive reasons, the Exchange considered that proposal to be vitally important to its ability to attract and retain order flow to the BSE and continues in that belief.[9]

Prior to implementation of the first phase of the BeX, BSE Specialists would quote and trade approximately 300 securities. The BSE Floor Broker community would routinely receive baskets of securities that contained orders and cross trades in securities which were not quoted by BSE Specialists. As such, the orders and cross trades for securities not traded on the BSE would have to be routed to other trading centers (''Trading Centers'') for execution. Thus, the Exchange was not able to retain order flow that had been directed to the BSE. Moreover, BSE Floor Brokers were hampered in their ability to attract more sources of order flow to the Exchange, because a percentage of the order flow they do attract was eventually routed to other Trading Centers for execution. The other Trading Centers include those that have the capability to post and execute orders in securities that are not continuously quoted or traded by any Member in a market making capacity, including other exchanges that have rules governing the same type of electronic book functionality that the BSE is now seeking to employ.[10] BeX allows Exchange Members, whether or not they are on the Exchange's floor, to enter orders into the BeX for possible execution.

Additionally, in connection with satisfying the requirements of Regulation NMS, the Exchange proposes to offer several execution enhancements, such as eight additional order types, a rule aimed at the prevention of locked or crossed markets, electronic order routing, and an order protection rule as it transitions to a fully electronic trading venue with its proposed BeX facility and in accordance with the implementation of Regulation NMS. Under the BeX facility, the BSE expects that the current trading rules of the BSE will remain largely intact, with the exception of certain rule proposal changes filed with the Commission

[7] *See* BeX Governance Filing, nogte 4, *supra.*

[8] *See* BeX Facility Filing, note 5, *supra.*

[9] The BSE intends to request from the staff of the Commission a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b–10 under the Act on its own behalf and/or on behalf of its Members who execute trades on the BeX. The exemption request will be limited to those trades that BSE Members execute on BeX with other BSE Members when using the anonymous feature of BeX's electronic trading system. The BSE also intends to request assurance that the Commission staff will not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, BSE Members rely on BSE's retention of the identities of the BSE Members that execute anonymous trades through BeX to satisfy the requirements of Rules 10a–3(a)(1) and 17a–4(a) under the Act.

[10] *See, e.g.,* Chicago Stock Exchange (''Chx'') Rules, Article XXA.

regarding the BeX facility and the rule changes contained herein related to the BeX facility and required under Regulation NMS. The additional order types, rule aimed at prevention of locked and crossed markets, electronic order routing, and order protection rule proposed herein would be options available to BSE members in addition to that which is currently available under the Exchange's existing rule set.

Eligible securities and eligible orders. Under the proposed rules submitted in connection with the first phase of the BeX,[11] all securities eligible for trading on the Exchange that are not assigned to a specialist would be traded in the BeX. Orders sent to the BeX would be required to be specifically designated for handling in the BeX. The BeX accepts only round-lot market and limit orders.

Orders eligible for execution in the BeX may be designated as one of the following existing BSE order types: ''at the close,'' ''at the opening or at the opening only,'' ''day,'' ''do not increase (DNI),'' ''do not reduce (DNR),'' ''fill or kill,'' ''good 'till cancel,'' ''immediate or cancel,'' ''limit, limited or limited price,'' ''market,'' ''stop limit,'' or ''stop,'' ''cross,'' ''cross with size,'' ''good 'till date (GTD),'' ''good 'till time (GTT),'' ''limit or close,'' or ''mid-point cross.'' In addition to the existing order types set forth above, orders may also be designated as one of the following new order types: ''reserve order'', ''minimum quantity order,'' ''preferred price cross,'' ''automatic immediate or cancel (''AIOC''), ''best price intermarket sweep'' (''BPISO''), ''ISO cross orders,'' ''price-penetrating orders'' and ''cancel on corporate action orders.'' It should be noted that AIOC, BPISO, ISO cross and price-penetrating orders are being proposed in connection with the proposed rules related to Regulation NMS but will be located in the same chapter as the new order types being proposed in connection with BeX Phase II. Descriptions of the proposed order types are as follows:

''Reserve Order'': A Limit Order with a portion of the size displayed and with a reserve portion of the size that is not displayed. The displayed portion of Reserve Orders (not the reserve portion) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented such that fewer than 100 shares are displayed, the displayed portion of the Reserve Order shall be replenished for: (a) The displayed amount; or (b) the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount. Upon replenishment the reserve portion shall be submitted and ranked at the specified limit price and time of replenishment. A Reserve Order cannot be an IOC Order or Market Order.

''Minimum Quantity'': A Minimum Quantity Order is an Order subject to the provisions of Chapter XXXVII, Section 6, that, upon entry, must be executed at least at its minimum quantity or it will be cancelled. If executed in part, the remaining quantity remains in the book and follows the execution rule of the order price type. A Stop Limit Order can be a minimum quantity and execution possibility will be checked at the election of the Order.

''Preferred Price Cross'': A Cross Order with a preferred limit price and an optional preferred tick, both set by the Member.[12] A preferred limit price is the limit price the cross order will be executed at if it is equal to or better than the National Best Bid or Offer (''Preferred Limit Price''). The optional preferred tick is the amount of ticks beyond the preferred limit price at which the two-sided cross order may be executed (''Optional Preferred Tick''). The Preferred Price Cross order cannot be executed at a price that is more than the preferred limit price plus the amount of optional preferred ticks or less than the preferred limit price minus the amount of optional preferred ticks. If the Preferred Price Cross cannot be executed at the Preferred Limit Price, the execution price of the Cross will be determined by the Trading System to be the closest price to the Preferred Limit Price, respecting the Optional Preferred Tick and the National Best Bid or Offer.

AIOC Order: An automatic immediate or cancel order is an order received on BeX that will execute immediately and automatically, either in whole or in part, at or better than its limit price, with any unexecuted balance of the order to be immediately cancelled. The unexecuted portion of the order will not be routed to another Trading Center.

Best Price ISO: A best price intermarket sweep order is an order marked as required by Rule 600(b)(30) under the Act that is to be executed against any orders at the Exchange's Best Bid or Best Offer (including any undisplayed orders at that price) as soon as the order is received by the BSE, with any unexecuted balance of the order to be immediately cancelled. The BSE, in executing the Best Price ISO, shall not take any of the actions described in Chapter XXXVIII, Section 4 to prevent an improper trade through.

Price-Penetrating ISO: An order marked as required by Rule 600(b)(30) under the Act that is to be executed at or better than its limit price as soon as the order is received by the BSE, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders at the BSE (including any reserve size or other undisplayed orders, through multiple price points). The BSE, in executing these orders, shall not take any of the actions described in Chapter XXXVIII, Section 4 to prevent an improper trade-through.

ISO Cross: A two sided order that, upon receipt, will be executed without any action on the part of the Exchange to prevent an improper trade through. The Member submitting an ISO Cross is responsible for checking all protected quotes and must send one or more ISO orders to other Trading Centers displaying a price better than the cross price.

Cancel on Corporate Action: In the event of a dividend, distribution or stock split (''Corporate Action''), the order in the limit book will be cancelled.

Compliance with Intermarket Trading System (''ITS'') Plan. As set forth in the BeX Facility Filing, to ensure compliance with the ITS Plan (as long as it remains in effect), otherwise eligible orders would be cancelled or routed away in certain circumstances. Specifically, if an order in an ITS eligible security crosses or locks the National Best Bid or National Best Offer at the time that it is received, the order would be immediately cancelled to ensure compliance with the ITS Plan's rules relating to locked markets.[13] Marketable orders that would trade-though the National Best Bid or National Best Offer would either be cancelled or be routed to the market(s) showing the National Best Bid or National Best Offer at the order-entering firm's instructions.[14]

[11] *See* BeX Facility Filing, note 5, *supra.*

[12] The Exchange represents that a Preferred Price Cross Order must satisfy the conditions of either a Cross Order or a Cross with Size Order. Telephone call between Brian D. Donnelly, Assistant Vice President of Regulation & Compliance, and Dan Hamm, Vice President of Trading Systems, BSE, and Nancy Sanow, Assistant Director, and Ira Brandriss, Special Counsel, Division of Market Regulation, Commission on August 4, 2006.

[13] Similarly, if an order in a listed security locks or crosses the Best Bid or Best Offer in BeX at the time it is received, but not the National Best Bid or National Best Offer, the order would be executed according to BeX's matching algorithm, and any remaining portion would be immediately cancelled, if it would lock or cross the National Best Bid or National Best Offer.

[14] *See* BeX Facility Filing, proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (j)(i) and (iii).

Ranking and Display of Orders

Except as otherwise permitted by Section 3, paragraphs (v)–(vi) of the BSE Rules, all orders at all price levels on the BeX shall be displayed to all Members on an anonymous basis and transactions executed on the BeX will be processed anonymously.[15] The transaction reports will indicate the details of the transaction, but will not reveal contra party identities. No Member having the right to trade through the facilities of BeX and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction. Except as otherwise permitted by the supplementary material in Section 3, no Member shall transmit through the facilities of BeX any information regarding a bid, offer, other indication of an order, or the Member's identity, to another Member until permission to disclose and transmit such bid, offer, other indication of an order, or the Member's identity has been obtained from the originating Member or the originating Member affirmatively elects to disclose its identity.

The BeX will reveal the identity of a Member in the following circumstances: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) when the National Securities Clearing Corporation (''NSCC'') ceases to act for a Member or the Member's clearing firm, and NSCC determines not to guarantee the settlement of the Member's trades; or (3) on risk management reports provided to the contra party of the Member or Member's clearing firm each day by 4 p.m. (E.S.T.) which disclose trading activity on the aggregate dollar value basis.

In order to satisfy Members' record keeping obligations under Rules 17a–3(a)(1) and 17a–4(a) under the Act, BSE shall retain for the period specified in Rule 17a–4(a) the identity of each Member that executes an anonymous transaction described in paragraph (i)(iii) of this rule. The information shall be retained by the BeX in its original form or a form approved under Rule 17a–6. Members shall retain the obligation to comply with Rules 17a–3(a)(1) and 17a–4(a) under the Act whenever they possess the identity of their contra party.

Market Makers

BSE Members may apply for Market Maker status. An applicant shall file an application for Market Maker status on such form as the Exchange may prescribe. Applications shall be reviewed by the Exchange, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history. No Member shall act as a Market Maker in any security unless such Member has been approved as a Market Maker in a security by the Exchange pursuant to the BSE Rules and the Exchange has not suspended or canceled such approval. Approved Market Makers are designated as dealers on the Exchange for all purposes under the Act the rules and regulations thereunder.

An applicant's Market Maker status shall become effective upon receipt by the Member of notice of an approval by the Exchange. In the event that an application is disapproved by the Exchange, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of Chapter XXX of the BSE Rules.

Market Maker status may be suspended or terminated by the Exchange upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with the BSE Rules. Likewise, any Market Maker may withdraw its Market Maker status by giving written notice to the Exchange. Such withdrawal shall become effective on the tenth business day following the Exchange's receipt of the notice. A Market Maker who fails to give a ten-day written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to Chapter XXX. Subsequent to withdrawal, the Member shall not be permitted to re-apply as a Market Maker for a period of six months.

A Market Maker may be assigned a newly authorized security or a security already admitted to dealings on the BeX by filing an assignment request form with the Exchange. Assignment of the security shall become effective on the first business day following the Exchange's approval of the assignment. In considering the approval of the assignment of the Market Maker in a security, the Exchange may consider: (1) The financial resources available to the Market Maker; (2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities; (3) the Market Maker's operational capability; (4) the maintenance and enhancement of competition among Market Makers in each security in which they are assigned; (5) the existence of satisfactory arrangements for clearing the Market Maker's transactions; (6) the character of the market for the security, *e.g.*, price, volatility, and relative liquidity. A Market Maker's assignment in a security may be terminated by the Exchange if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's assignment in the security becomes effective. Moreover, the Exchange may limit the number of Market Makers in a security upon prior written notice to Members.

Market Makers shall be selected by the Exchange based on, but is not limited to, the following: Experience with making markets in equities; adequacy of capital; willingness to promote the BeX as a marketplace; issuer preference; operational capacity; support personnel; and history of adherence to Exchange rules and securities laws.

A Market Maker may voluntarily terminate its assignment in a security by providing the Exchange with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to Chapter XXX. Furthermore, the Exchange may suspend or terminate any assignment of a Market Maker in a security or securities under Chapter XXXVII, Section 9 whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action. A Member may seek review of any action taken by the Exchange pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's assignment in a security or securities, in accordance with Chapter XXX.

Members who are assigned as Market Makers in one or more securities traded on the BeX must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the BeX in accordance with this Section. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following: (1) Maintain continuous, two-sided quotes in those securities in which the Market Maker is assigned to trade; (2) maintain adequate minimum capital in accordance with Rule 15(c)3–1 promulgated under Act; (3) remain in good standing with the Exchange; (4) inform the Exchange of any material change in financial or operational condition or in personnel; (5) clear and settle transactions through the facilities of a registered clearing agency. This requirement may be

[15] *See* note 9, *supra*.

satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another Member that clears trades through such agency. A Market Maker must satisfy the responsibilities and duties during the Primary Trading Session on all days in which the Exchange is open for business.

If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in the applicable BSE Rules, such Market Maker will be subject to disciplinary action or suspension or revocation of the assignment by the Exchange in one or more of the securities in which the Market Maker is assigned. Nothing in this Section will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Exchange with respect to the Market Maker's Membership status or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Chapter XXX, a Member may seek review of actions taken by the Exchange pursuant to this Section.

A Market Maker may apply to the Exchange to withdraw temporarily from its Market Maker status in the securities in which it is assigned. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the securities to another Market Maker.

Market Makers will be required to maintain minimum performance standards the levels of which may be determined from time to time by the Exchange. Such levels will vary depending on the price, liquidity, and volatility of the security in which the Market Maker is assigned. The performance measurements will include (i) percent of time at the National Best Bid or National Best Offer; (ii) percent of executions better than the National Best Bid or National Best Offer; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the Market Maker to transact in underlying markets.

A Market Maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier (also commonly referred to as ''Chinese Wall'') between the market making activities and the Other Business Activities. ''Other Business Activities'' mean: (1) Conducting an investment banking or public securities business; or (2) making markets in the options overlying the security in which it makes markets.

A Member or an affiliate of the Member may clear the Member's Market Maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard: (1) The procedures must provide that any information pertaining to Market Maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity; and (2) any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any Market Maker to meet market making or other obligations under the Exchange's Rules.

Locked and Crossed

BSE Members would have an obligation to reasonably avoid displaying, and avoid engaging in a pattern or practice of displaying any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan. This rule would be contained in new Chapter XXXVIII, Section 2 of the BSE Rules.

For purposes of this rule a ''crossing quotation'' would mean the display of a bid for a NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for a NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan. For purposes of this rule, a ''locking quotation'' would mean the display of a bid for a NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for a NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

The rule would provide for four exceptions from the prohibition on locking or crossing protected quotations. First, the rule would except those quotations displayed at a time when the trading customer displaying the locked or crossed quotation was experiencing a failure, material delay or malfunction of its systems or equipment. Second, the rule would also except those quotations displayed at a time when the protected bid was higher than a protected offer in the NMS stock. Third, the rule would except those automated quotations where the BSE member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation. For example, if there is a reserve size behind the displayed size of the previously displayed protected quotation, its price may not change even after execution of the intermarket sweep order. Fourth, the rule would except those manual quotations that locked or crossed another manual quotation, and the BSE member displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

The rule does not specify any procedures for reconciling unintentional locks/crosses when both quotations are automated as trading should continue and market forces will reconcile the lock/cross. Market forces are likely to generate orders that will quickly resolve the lock/cross quotations.

Order Routing

The BSE is proposing a rule, in accordance with Regulation NMS, that would govern the order routing process. The rules on electronic order routing would be contained in new Chapter XXXVIII, Section 3.

The BSE will only route an Eligible Order when the order has not been executed in its entirety and the terms of the order require routing to another Trading Center for execution. The BSE has determined that Eligible Orders are orders that are designated by the customer to execute or route. IOC, AIOC, all ISO order types and FOK orders shall not be designated to execute or route.

Limit Orders shall be routed either in their entirety or as component orders to an away Trading Center(s). Limit Orders will be routed to the Trading Center(s)

publishing the best Protected Bid or Protected Offer and will execute against the best Protected Bid or Protected Offer superior or equal to the limit price for the full number of available shares at the away Trading Center(s). The remaining portion of the order, if any, shall be ranked and displayed on the BSE book in accordance with the terms of such order. Market Orders shall be routed in their entirety or as component orders to an away Trading Center(s) as IOC Market Orders. If a Market Order routed to an away Trading Center is not executed in its entirety at the away Trading Center, the BSE would attempt to match the residual or declined Market Order against then available trading interest on the BSE book. Any remaining unmatched trading interest would then be handled in the manner described in Chapter XXXVIII, Section 3 of these proposed rules.[16]

Eligible Orders will be routed on behalf of the Member who submitted the Eligible Order if that Member is a member or subscriber of the away Trading Center or, in the case where the Member is not a member or subscriber of the away Trading Center, the order will be routed through a third party broker dealer, or ''give up,'' that is a member or subscriber of the away Trading Center pursuant to the terms of an agreement entered into between the BSE and that third party broker dealer which agreement is described below. The Eligible Order would route to another Trading Center as a limit order priced at the quote published by the Trading Center (an ISO).

As stated above, the Exchange will route orders to other trading centers under certain circumstances (''Routing Services''). The Exchange will provide its Routing Services pursuant to the terms of three separate agreements: (1) An agreement between the Exchange and each Member on whose behalf orders will be routed (''Member-Exchange Agreement''); (2) an agreement between the Exchange and each third-party broker-dealer that will serve as a ''give-up'' on an away trading center when the Member on whose behalf an order is routed is not also a member or subscriber of the away trading center (''Give-Up Agreement''); and (3) an agreement between the Exchange and a third-party service provider (''Technology Provider'') pursuant to which the Exchange licenses the routing technology used by the Exchange for its Routing Services (''Exchange-Technology Provider Agreement'').

The Exchange will provide its Routing Services in compliance with these rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As provider of the Routing Services, the Exchange will license the necessary routing technology for use within its own systems and accordingly will control the logic that determines when, how, and where orders are routed away to other trading centers.

The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Technology Provider, and, to the extent the Technology Provider reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Technology Provider to legitimate business purposes necessary for the licensing of routing technology. The Exchange-Technology Provider Agreement will include terms and conditions that enable the Exchange to comply with all of its applicable Rules.

As stated above, if an Eligible Order has not been executed in its entirety on the BSE, the order would route to another Trading Center as a limit order priced at the quote published by the Trading Center (an ISO). ISOs Orders routed to other Trading Centers would remain outside the BSE for a prescribed time period during which such orders could be executed (in whole or in part) or declined. While an order remains outside the BSE, it would have no time standing relative to others received from BSE Members at the same price that could be executed against interest on the BSE book. Requests from BSE Members to cancel their orders while the ISO is routed away to another Trading Center and remains outside the BSE would be processed subject to applicable trading rules of the relevant away Trading Center. When routing an order away to another Trading Center, the BSE would utilize such electronic intermarket linkages and order delivery facilities as could be approved by the BSE Board from time to time, subject to such applicable requirements as could be agreed to with the relevant Trading Center, subject to Commission approval or a proposed rule change submitted in accordance with Rule 19b–4 under the Act.

Where an order or portion of an order is routed away and is not executed either in whole or in part at the other Trading Center (*i.e.*, all attempts at the fill are declined or timed out), the order shall be ranked, displayed and eligible for execution on the BSE book in accordance with the terms of such order. In the event that a marketable order routed from the BSE to another Trading Center is not executed in its entirety at the other Trading Center's quote, the BSE would attempt to match the residual or declined market order against then available trading interest on the BSE book. Any remaining unmatched trading interest would then be handled in the manner described in Chapter XXXVIII, Section 3 of these proposed rules.

Order Protection Rule

The BSE, in accordance with the requirements of Regulation NMS, is proposing an order protection rule that would be contained in new Chapter XXXVIII, Section 4. The proposed rule would prohibit trades from being executed on the BSE if the execution would result in an improper trade-through, *i.e.*, at a price lower than a Protected Bid or higher than a Protected Offer. If the execution of an order on the Exchange would cause an improper trade-through, that order would be routed to another appropriate market or, if designated as ''do not route,'' automatically cancelled. Members, however, would still be subject to all applicable best execution requirements.

The BSE does provide for several exceptions to the trade-through rule. Some of the exceptions include: a crossed markets exception, a non-regular way cross exception, a single priced opening, reopening or closing trade exception, an inbound ISO exception, a stop order exception and a benchmark order executed at the BSE exception. If a purchase or sale of an NMS stock does qualify for an exception to the order protection rule, an appropriate modifier approved by the operating committee of the relevant national market system plan for an NMS stock will be attached to the trade before it is publicly reported.

[16] The Exchange has advised that it intends to file an amendment to the proposed rule change that sets forth more clearly the handling by BeX of the remainder of an order that has been routed to an away Trading Center. Telephone call between Brian D. Donnelly, Assistant Vice President of Regulation & Compliance, and Dan Hamm, Vice President of Trading Systems, BSE, and Nancy Sanow, Assistant Director, and Ira Brandriss, Special Counsel, Division of Market Regulation, Commission on August 4, 2006.

The BSE would be an automated trading system which displays bids and offers that qualify as automated quotations under the definition set out in Rule 600(b)(3) under the Act, with manual capabilities in the event the automated trading feature is not available.

In order to determine whether a trade would constitute an improper trade-through the BSE's systems would routinely, throughout the trading day, synchronize their time clocks and would immediately make adjustments to the time recorded in the BSE to ensure that the period between the two times would not exceed 500 milliseconds.

If another market is displaying a manual quotation, the BSE would be able to disregard that market's bid or offer. The BSE would also be able to disregard another Trading Center's bid and offer if: the other market has publicly announced that it is not disseminating automated quotations and/or the other market has repeatedly failed to respond within one second to an incoming AIOC or ISO order (after adjusting for order transmission time).

If the BSE bypassed another Trading Center's quote it would immediately notify the Trading Center after having used the ''self-help'' exception through an appropriate mechanism for communicating with other Trading Centers. The BSE would be able to avail itself of the self-help exception until the other Trading Center has provided reasonable assurance to the BSE or to the public that the problems have been corrected.

If the BSE has not accepted two or more AIOC orders sent as sequential test messages, the BSE will attach a ''manual'' identifier to its bids and offers it makes publicly available. Additionally, immediately upon receiving an alert from the processes that the Exchange's trading system has taken more than 2 seconds to process any one AIOC order, the MOC shall automatically attach a ''manual'' identifier to the bids and offers it makes publicly available. If for some reason the MOC is unable to attach a manual identifier, the Exchange shall announce that its quotes are manual through an appropriate mechanism for communicating with other Trading Centers.

Once the BSE has made any required systems changes, or has otherwise determined that its quotations satisfy the requirements of Rule 600(b)(3) under the Act, and has conducted applicable tests set out above to confirm that the Exchange's quotes qualify as ''automatic quotations,'' the Exchange would remove the ''manual'' identifier from the bids and offers that are made publicly available. The Exchange would also have to notify other Trading Centers that its quotations are automated by announcing that fact through an appropriate mechanism for communicating with other Trading Centers.

Conclusion

The Exchange represents that it has designed the BeX to be a fully-automated system that would permit eligible orders in eligible securities to match against one another, without the required participation of a specialist. The Exchange believes that this system functionality would provide all Exchange Members with an efficient way to trade securities that would protect investors and the public interest by automatically handling orders in a fair and reasonable manner. Additionally, the BSE believes that the changes proposed herein are designed to enhance competition in the U.S. equities markets, particularly given the electrification of the marketplace and other fundamental changes that are rapidly taking place. The Exchange submits that the changes proposed herein are, among other things, intended to bring the BSE into compliance with the requirements of Regulation NMS.

2. Statutory Basis

The basis for this proposed rule and proposed rule change is that Exchange believes its proposals are consistent with Section 6(b) [17] of the Act and further the objectives of Section 6(b)(5) [18] of the Act in particular, because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2006–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

the principal office of the above-mentioned self-regulatory organization. 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 with to make available publicly. All submissions should refer to the file number in the caption above and should be submitted on or before September 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13400 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54288; File No. SR–NASDAQ–2006–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change Requiring Securities be Eligible To Participate in a Direct Registration System

August 8, 2006.

I. Introduction

On April 27, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NASDAQ–2006–008 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 7, 2006.[2] Two comment letters were received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.[4]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[5] DRS, therefore, enables an investor to have securities registered in her name without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

In order to reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates and thereby reduce the risks, costs, and delays associated with the physical delivery of securities certificates, Nasdaq is proposing to add new Section (l) to its Rule 4350 to require that all listed securities be eligible to participate in DRS.[6] While the rule change requires that issuers' securities be eligible for DRS, it does not require issuers to participate in DRS operated by DTC and would not mandate the elimination of physical certificates. As a result, subject to applicable state law and the company's governing documents, an investor could still elect to receive a certificate if the issuer chose to make certificates available.

Because currently the only DRS operated by a registered clearing agency is the DRS operated by DTC, in order for a security to be eligible to participate in DRS, an issuer will be required to use a transfer agent that meets DTC's DRS transfer agent requirements, including insurance and connectivity requirements. As a result, some transfer agents acting for Nasdaq issuers may have to make changes to comply with these requirements. Certain issuers may also have to make amendments to their governing documents, such as their by-laws, to be eligible to issue securities that are not represented by certificates. To allow sufficient time for any of these changes that need to take place, Nasdaq will implement the proposed rule change January 1, 2008, for the securities of issuers with securities already listed on Nasdaq or another listed marketplace at the time the rule change is approved. Companies listing for the first time should have greater flexibility to adopt any changes required to have their securities DRS eligible, and therefore, the rule change will be applicable to new listings beginning January 1, 2007. The requirement will not apply to non-equity securities that are held in book-entry-only form.

III. Comment Letters

The Commission received two comment letters in support of the proposed rule change.[7] The SIA Operations Committee (''SIA''), an industry organization representing broker-dealers, stated that the effect of the proposed rule change will be to reduce significantly the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates thereby reducing costs, risks, and delays associated with physical settlement. The SIA also contended that by increasing the number of DRS-eligible securities, the proposed rule change is an important step in reducing the number physical certificates, a goal the SIA has long supported in its efforts to promote immobilization and dematerialization.

Computershare, a registered transfer agent, stated that the proposed rule change will help immobilize and eventually dematerialize certificates in the U.S. market, which it believes will result in benefits such as cost savings,

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53913 (May 31, 2006), 71 FR 33024 (June 7, 2006) [File No. SR–NASDAQ–2006–008].

[3] Letters from Noland Cheng, Chairman, SIA Operations Committee, Securities Industry Association (June 27, 2006) and Paul Conn, President, Global Capital Markets, Computershare Limited, and Charlie Rossi, Executive Vice President, Computershare Investor Services (July 28, 2006).

[4] Concurrent with the Commission's approval of Nasdaq's rule change, the Commission is also approving in separate orders similar rule changes proposed by the American Stock Exchange LLC (''Amex'') and the New York Stock Exchange LLC (''NYSE''). Securities Exchange Act Release Nos. 54290 (August 8, 2006) [File No. SR–Amex–2006–40] and 54289 (August 8, 2006) [File No. SR–NYSE–2006–29]. The Commission has also published notice of a similar rule changed proposed by NYSE Arca, Inc. Securities Exchange Act Release No. 54126 (July 11, 2006), 71 FR 40768 (July 18, 2006) [File No. SR–NYSEArca–2006–31].

[5] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[6] The exact text of the Nasdaq proposed rule change is set forth in its filing, which can be found at *http://www.complinet.com/nasdaq/display/display.html?rbid=1705&elementid=26.*

[7] *Supra* note 3. The SIA and Computershare's comment letters were written in support of the three similar proposed rule changes filed by Amex, Nasdaq, and NYSE. *Supra* note 4. The NYSE Arca's proposed rule change was noticed by the Commission subsequent to the date the commenters submitted their comment letters.

increased efficiency, more accurate and timely trade settlements, and reduced risk of loss for investors. Computershare noted however that some challenges remain to be overcome in the broker-dealer community before these benefits can be realized. For example, Computershare contended, among other things, that broker-dealers are not sufficiently educating their employees or their customers about the inherent risks associated with owning certificates or the benefits of owning in DRS. In addition, Computershare stated that certain current industry processing practices also need to be changed. Specifically, it believes that the industry should ''default to DRS,'' a process whereby customers of broker-dealers would obtain only a statement of their positions held on the issuer's records rather than a certificate unless the customer contacted the issuer's transfer agent directly to obtain a certificate. Computershare urged the Commission to review and modify current regulation to address these issues.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[8] For the reasons described below, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[9] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and present the risk of certificates being lost, stolen, or forged. Many of these costs and risks are ultimately borne by investors.[10] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission responsibility and authority to address these issues.[11]

Consistent with its Congressional directives, in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[12] and that require any security listed for trading must be depository eligible if possible.[13] More recently the Commission has approved the implementation and expansion of DRS.[14]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (mostly by retail customers of broker-dealers) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to address this issue, Nasdaq's rule change, along with those of Amex and the NYSE, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the physical delivery of securities certificates should be reduced, and the perfection of the national market system should be promoted. Additionally, those investors holding securities in listed securities covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make a security DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participants.[15] In order to make an issue DRS-eligible, issuers may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers sufficient time to make any necessary changes to comply with the rule change.

While the propose rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates after the settlement of securities transactions provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent,

[8] 15 U.S.C. 78f(b)(5).

[9] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[10] *Id.*

[11] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[12] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[13] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[14] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders, provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or is included in DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[15] For a description of DTC's rules relating to DRS Limited Participants, *see* Securities Exchange Act Release Nos. 37931 and 41862. *Supra* note 5.

either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with Nasdaq's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASDAQ–2006–008) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13416 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54289; File No. SR–NYSE–2006–29]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending the Listed Company Manual To Mandate Listed Companies To Become Eligible To Participate in a Direct Registration System

August 8, 2006.

I. Introduction

On May 6, 2006, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NYSE–2006–29 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 7, 2006.[2] Two comment letters were received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.[4]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[5] DRS, therefore, enables an investor to have securities registered in her name without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

In order to reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates and thereby reduce the risks, costs, and delays associated with the physical delivery of securities certificates, the NYSE will impose its DRS eligibility requirement pursuant to proposed new Section 501.00 of the NYSE Listed Company Manual (''Manual'').[6] Proposed Section 501.00 does not specifically require that securities must be eligible for the DRS operated by DTC. Rather it requires listed companies' securities to be eligible for a direct registration system operated by a clearing agency, as defined in Section 3(a)(23) of the Act,[7] that is registered with the Commission pursuant to Section 17A(b)(2) of the Act.[8] Therefore, while the DRS currently operated by DTC is currently the only DRS facility meeting the definition, Section 501.00 will provide issuers with the option of using another qualified DRS if one should exist in the future.

In order to make a security DRS-eligible in the DRS currently operated by DTC, the issuer must have a transfer agent which is a DTC DRS Limited Participant.[9] While some transfer agents currently acting for NYSE listed companies are already eligible to participate in DRS, other transfer agents may need to take steps to become eligible to participate in DRS. In addition, some issuers may need to amend their certificates of incorporation or by-laws to become DRS eligible.

To allow sufficient time for any such necessary actions, NYSE will impose the DRS eligibility requirement in two steps. Because companies listing for the first time should have greater flexibility to conform to the eligibility requirements, proposed Section 501.00 will require all securities initially listing on NYSE on or after January 1, 2007, to be eligible for DRS at the time of listing. This provision does not extend to securities of companies (i) which already have securities listed on the NYSE, (ii) which immediately prior to such listing had securities listed on another registered securities exchange in the U.S., or (iii) which are specifically permitted under NYSE's rules to be and which are book-entry only.[10] On and after January 1, 2008, all

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53912 (May 31, 2006), 71 FR 33030 (June 7, 2006) [File No. SR–NYSE–2006–29].

[3] Letters from Noland Cheng, Chairman, SIA Operations Committee, Securities Industry Association (June 27, 2006) and Paul Conn, President, Global Capital Markets, Computershare Limited, and Charlie Rossi, Executive Vice President, Computershare Investor Services (July 28, 2006).

[4] Concurrent with the Commission's approval of NYSE's rule change, the Commission is also approving in separate orders similar rule changes proposed by the American Stock Exchange LLC (''Amex'') and The NASDAQ Stock Market LLC (''Nasdaq''). Securities Exchange Act Release Nos. 54290 (August 8, 2006) [File No. SR–Amex–2006–40] and 54288 (August 8, 2006) [File No. SR–NASDAQ–2006–008]. The Commission has also published notice of a similar rule changed proposed by NYSE Arca, Inc. Securities Exchange Act Release No. 54126 (July 11, 2006), 71 FR 40768 (July 18, 2006) [File No. SR–NYSEArca–2006–31].

[5] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[6] The exact text of the NYSE proposed rule change is set forth in its filing, which can be found at *http://www.nyse.com/RegulationFrameset.*

[7] 15 U.S.C. 78c(a)(23)(A).

[8] 15 U.S.C. 78q–1(b)(2).

[9] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[10] Securities which the NYSE permits to be book-entry-only include all debt securities, securities

securities listed on the NYSE will be required to be eligible for DRS, again excepting those securities which are specifically permitted under NYSE rules to be and which are book-entry only.

NYSE is also amending Section 601.01 of the Manual (''Exchange Approval of Transfer Agents and Registrars'') to require that any issuer required to make a listed security eligible for DRS pursuant to proposed Section 501.00 must maintain a transfer agent for that security which is eligible either for DRS operated by DTC or by another registered clearing agency. In addition, the NYSE is amending the transfer agent agreements in Section 906 of the Manual to require transfer agents for securities subject to proposed Section 501.00 to agree that they will at all times be eligible either for the DRS operated by DTC or by another registered clearing agency.

III. Comment Letters

The Commission received two comment letters in support of the proposed rule change.[11] The SIA Operations Committee (''SIA''), an industry organization representing broker-dealers, stated that the effect of the proposed rule change will be to reduce significantly the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, thereby reducing costs, risks, and delays associated with physical settlement. The SIA also contended that by increasing the number of DRS-eligible securities, the proposed rule change is an important step in reducing the number of physical certificates, a goal the SIA has long supported in its efforts to promote immobilization and dematerialization.

Computershare, a registered transfer agent, stated that the proposed rule change will help immobilize and eventually dematerialize certificates in the U.S. market, which it believes will result in benefits such as cost savings, increased efficiency, more accurate and timely trade settlements, and reduced risk of loss for investors. Computershare noted, however, that some challenges remain to be overcome in the broker-dealer community before these benefits can be realized. For example, Computershare contended, among other things, that broker-dealers are not sufficiently educating their employees or their customers about the inherent risks associated with owning certificates or the benefits of owning in DRS. In addition, Computershare stated that certain current industry processing practices also need to be changed. Specifically, it believes that the industry should ''default to DRS,'' a process whereby customers of broker-dealers would obtain only a statement of their positions held on the issuer's records rather than a certificate unless the customer contacted the issuer's transfer agent directly to obtain a certificate. Computershare urged the Commission to review and modify current regulation to address these issues.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12] For the reasons described below, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[13] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and present the risk of certificates being lost, stolen, or forged. Many of these costs and risks are ultimately borne by investors.[14] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission responsibility and authority to address these issues.[15]

Consistent with its Congressional directives, in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[16] and that require any security listed for trading must be depository eligible if possible.[17] More recently the Commission has approved the implementation and expansion of DRS.[18]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (mostly by retail

issued pursuant to Section 703.19 of the Manual and nonconvertible preferred stock.

[11] *Supra* note 3. The SIA and Computershare's comment letters were written in support of the three similar proposed rule changes filed by Amex, Nasdaq, and NYSE. *Supra* note 4. The NYSE Arca's proposed rule change was noticed by the Commission subsequent to the date the commenters submitted their comment letters.

[12] 15 U.S.C. 78f(b)(5).

[13] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[14] *Id.*

[15] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. See S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[16] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993)(order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[17] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[18] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or is included in DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

customers of broker-dealers) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to address this issue, NYSE's rule change, along with those of Amex and Nasdaq, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the physical delivery of securities certificates should be reduced, and the perfection of the national market system should be promoted. Additionally, those investors holding securities in listed securities covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make a security DRS-eligible, issuers of listed companies must have a transfer agent, which is a DRS Limited Participants.[19] In order to make an issue DRS-eligible, issuers may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers sufficient time to make any necessary changes to comply with the rule change.

While the proposed rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates, provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above, the Commission finds that the rule change is consistent with NYSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2006–29) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13421 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

[19] For a description of DTC's rules relating to DRS Limited Participants, *see* Securities Exchange Act Release Nos. 37931 and 41862. *Supra* note 5.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54297; File No. SR–Phlx–2006–47]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Equity Payment for Order Flow Program

August 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to increase its payment for order flow fee from $0.60 per contract to $0.70 per contract for equity options other than options on the Nasdaq-100 Index Tracking Stock SM traded under the symbol QQQQ (''QQQQ''),[5] which would continue to be assessed a payment for order flow fee of $0.75, and options on the iShares FTSE/Xinhua China 25 Index (''FXI Options''), which would continue to not be assessed a payment for order flow fee. The Exchange represents that other than the rate change described above, no other changes to the Exchange's current payment for order flow program are being proposed at this time.

This proposal would become effective for trades settling on or after August 1, 2006.[6]

Below is the text of the proposed rule change. Proposed deletions are in [brackets]. Proposed additions are *italicized.*

SUMMARY OF EQUITY OPTION CHARGES (p. 3/6)

* * * * *

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*

(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.***

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ (NASDAQ–100 Index Tracking Stock SM)—$0.75 per contract.

[5] The Nasdaq-100 ®, Nasdaq-100 Index ®, Nasdaq ®, The Nasdaq Stock Market ®, Nasdaq-100 Shares SM, Nasdaq-100 Trust SM, Nasdaq-100 Index Tracking Stock SM, and QQQ SM are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index ® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust SM, or the beneficial owners of Nasdaq-100 Shares SM. The Exchange states that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] The Exchange's payment for order flow program is currently in effect until May 27, 2007. *See* Securities Exchange Act Release No. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR–Phlx–2006–33).

Remaining Equity Options, except FXI Options—$0.[6]70 per contract.

See Appendix A for additional fees.

*Assessed on transactions resulting from customer orders. This proposal will be in effect for trades settling on or after October 1, 2005 and will remain in effect as a pilot program that is scheduled to expire on May 27, 2007.

***Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or specialist who paid into that pool of funds.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange assesses a payment for order flow fee of $0.60 per contract for equity options other than options on QQQQ and FXI Options. Further, options on QQQQ are assessed $0.75 per contract and no payment for order flow fee is assessed on FXI Options. Specialists,[7] Directed Registered Options Traders (''Directed ROTs'') and Registered Options Traders (''ROTs'') are assessed a payment for order flow fee when a customer order is directed to a specialist unit or Directed ROT who participates in the Exchange's payment for order flow program.[8] Trades resulting from either Directed[9] or non-Directed Orders that are delivered electronically over AUTOM[10] and executed on the Exchange are assessed a payment for order flow fee, while non-electronically-delivered orders (*i.e.*, represented by a floor broker) are not assessed a payment for order flow fee.[11]

The Phlx states that the purpose of the proposal is to remain competitive with other options exchanges. The Phlx notes that the International Securities Exchange, Inc. recently increased its payment for order flow fee to $0.65 per contract and the Chicago Board Options Exchange, Incorporated also assesses a payment for order flow fee of $0.65 per contract.[12]

The Phlx states that the proposal is effective for trades settling on or after August 1, 2006.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Sections 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and Rule 19b–4(f)(2)[16] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[7] The Exchange uses the terms ''specialist'' and ''specialist unit'' interchangeably herein.

[8] The Phlx states that the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and a ROT, a customer and a Directed ROT, or a customer and a specialist when a customer order is directed to a specialist or Directed ROT who participates in the Exchange's payment for order flow program.

[9] The term ''Directed Order'' means any customer order to buy or sell, which has been directed to a particular specialist, Remote Streaming Quote Trader or Streaming Quote Trader by an Order Flow Provider.

[10] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080.

[11] Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[12] *See* Securities Exchange Act Release Nos. 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006) (SR–ISE–2006–36); 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR–CBOE–2006–53); and 53044 (December 30, 2005), 71 FR 957 (January 6, 2006) (SR–CBOE–2005–114). *See also* Securities Exchange Act Release Nos. 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (SR–Amex–2006–15) and 54042 (June 26, 2006), 71 FR 37626 (June 30, 2006) (SR–Amex–2006–59).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–47 and should be submitted on or before September 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13415 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54298; File No. SR–Phlx–2006–41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automatic Execution of a Customer Limit Order Against an Order Entry Firm's Proprietary Order or a Solicited Broker-Dealer Order After a Three Second Exposure Period

August 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)[5] and Automatic Execution System (AUTO–X), by: (1) Rescinding Exchange Rule 1080(b)(ii)(A), which requires Order Entry Firms[6] to comply with certain order marking and exposure requirements when sending a proprietary order along with a customer limit order to the limit order book; (2) adopting Exchange Rule 1080(c)(ii)(C), which would permit a customer limit order to automatically execute against an Order Entry Firm's proprietary order or quote, or solicited orders for the accounts of member and non-member broker-dealers, after a three second exposure period; and (3) deleting Exchange Rule 1080(b)(ii)(B) and re-inserting similar language into proposed Exchange Rule 1080(c)(ii)(C)(3) providing that it shall be a violation of Exchange Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Exchange Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.

Exchange Rule 1080(b)(ii) prohibits Order Entry Firms from interacting on a principal basis with a customer limit order without first marking the customer limit order with a ''K'' indicator and the proprietary order with an ''L'' indicator. The customer limit order must also be exposed to the crowd for at least 30 seconds prior to the manual execution of both orders. The Exchange proposes to permit Order Entry Firms, after exposing the customer limit order for three seconds, to automatically execute such order against a proprietary order, or a solicited order for the account of a member or non-member broker-dealer under proposed Exchange Rule 1080(c)(ii)(C). The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicate new text.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a) No change.
(b) Eligible Orders
(i) No change.
(ii) The Exchange's Options Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.

[(A) In accordance with this sub-paragraph (ii), the Options Committee has determined to allow a customer limit order to be delivered via AUTOM onto the limit order book by an Order Entry Firm (as defined in Rule 1080(c)(ii)). If the Order Entry Firm also sends in a proprietary contraside order for the account of such Order Entry Firm, an affiliated firm, or a solicited party (as defined in Rule 1064(c)(ii)), it must label the customer order with a ''K'' indicator and the proprietary order (which is an immediate-or-cancel order that is not eligible for automatic execution) with an ''L'' indicator. The customer limit order labeled ''K'' may be executed by the specialist or crowd at any time. The customer limit order labeled ''K'' must be exposed to the trading crowd for not less than 30 seconds before it can be executed, in whole or in part, against proprietary orders with a labeled ''L'' indicator.

(B) It shall be a violation of Rule 1080(b)(ii)(A) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(b)(ii)(A) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.]

(iii) No change.

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO–X, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] An Order Entry Firm is a member organization of the Exchange that is able to route orders to AUTOM. *See* Exchange Rule 1080(c)(ii)(A)(1).

(c) No change.

(i) No change.

(ii) Order Entry Firms and Users

(A)—(B) No change.

(C) Order Entry Firms shall comply with the following requirements when interacting with orders on the limit order book which they represent as agent.

(1) Principal Transactions: Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on the limit order book for at least three (3) seconds, (b) the Order Entry Firm has been bidding or offering on the Exchange for at least three (3) seconds prior to receiving an agency order that is executable against such order, or (c) the Order Entry Firm proceeds in accordance with the crossing rules contained in Rule 1064.

(2) Solicitation Orders. Order Entry Firms must expose orders they represent as agent for at least three (3) seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.

(3) It shall be a violation of Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.

(iii)–(vi) No change.

(d)–(l) No change.

Commentary: No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modernize certain Exchange Rules in response to the automated environment of Phlx XL by deleting certain outdated requirements applicable to Order Entry Firms including those related to order marking and order exposure of customer limit orders and proprietary contraside orders under Exchange Rule 1080(b)(ii), as well as the prohibition against automatic execution of the contraside proprietary order. The proposed rule change would allow Order Entry Firms to submit orders (for the accounts of the Order Entry Firm or a solicited member or non-member broker-dealer) along with customer limit orders they represent on an agency basis to the Exchange for automatic execution following the exposure of the customer limit order for a three second period.

The Exchange proposes to establish the requirement that a customer limit order entered onto the limit order book by an Order Entry Firm must be subject to a three-second exposure period before such customer limit order may automatically execute against an Order Entry Firm's proprietary order, or solicited orders for the accounts of member and non-member broker-dealers.[7] According to the Exchange, the proposed three-second exposure period is fully consistent with the electronic nature of the Exchange's electronic options trading platform, Phlx XL.[8] Phlx XL participants have implemented systems that monitor any updates to the Phlx market, including any changes resulting from orders being entered into Phlx XL, and can automatically respond based on pre-set parameters. Thus, an exposure period of three seconds would permit exposure of orders on Phlx in a manner consistent with its electronic market.

By establishing the three-second exposure period, the Phlx believes that members would be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which Phlx XL was developed.

The existing "K" and "L" provisions were adopted before the rollout of Phlx XL.[9] The Exchange proposes to delete the "K" and "L" marking requirement because, as a practical matter, the Exchange is able to identify the Order Entry Firm submitting the customer limit order by way of a firm mnemonic that is submitted with such an order. The firm mnemonic is a code consisting of letters and/or numbers that identify the originating broker-dealer (*i.e.*, the Order Entry Firm) that submits the customer limit order. The Order Entry Firm must identify the order as that of a customer, broker-dealer, or its own proprietary order. The Exchange is also able to identify a contra-side order or quote to a customer order by way of the same information included with a contra-side limit order or electronic quotation submitted through Phlx XL. If the Order Entry Firm were to submit its contra-side proprietary order or quote, or a solicited contra-side order for the account of a member or non-member broker-dealer, prior to the expiration of the three-second exposure period, the transaction would be recorded in reports prepared by the Exchange's Market Surveillance Department and would result in an investigation and possible disciplinary action by the Exchange.

The Phlx XL platform generally protects against trade-throughs because it will not automatically execute a transaction if the execution price is not the NBBO.[10]

The Exchange believes that this proposed rule change would permit the Exchange to competitively respond to

[7] In addition to the "K" and "L" marking requirement, Exchange Rule 1080(b)(ii)(A) currently requires a customer limit order delivered onto the limit order book by an Order Entry Firm to be exposed to the trading crowd for not less than 30 seconds before it may be executed, in whole or in part, against proprietary orders with a labeled "L" indicator. The instant proposed rule change would both eliminate the "K" and "L" marking requirement and reduce the exposure period for the customer limit order from 30 seconds to three seconds.

[8] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[9] The "K" and "L" order types were adopted in September 2003 in conjunction with the Exchange's rules relating to the automatic execution of booked customer limit orders. *See* Securities Exchange Act Release No. 48472 (September 10, 2003), 68 FR 54513 (September 17, 2003) (SR–Phlx–2002–86).

[10] *See* Exchange Rule 1080(c)(iv)(A). Orders on Phlx XL are eligible for automatic execution when the Exchange's disseminated market is crossed or crosses another exchange's market by just one minimum trading increment (and where the Exchange's disseminated market is the NBBO). Exchange Rule 1085 provides an exception from trade-through liability in the event that the trade-through occurred as a result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more than one minimum trading increment. *See* Securities Exchange Act Release No. 53449 (March 8, 2006), 71 FR 13441 (March 15, 2006) (SR–Phlx–2005–45).

similar functionality offered on other exchanges.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting competition among the markets participants and between exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change would allow the Exchange to implement immediately a rule proposal that corresponds to rules currently in place at other exchanges.[18] For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–41 and should be submitted on or before September 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13422 Filed 8–15–06; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Securities Exchange Act Release Nos. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (SR–CBOE–2006–09) (order approving proposed rule change to decrease the exposure period for crossing orders from 10 seconds to three seconds); 53850 (May 23, 2006), 71 FR 30703 (May 30, 2006) (SR–ISE–2006–21) (notice of filing and immediate effectiveness of a proposed rule change to decrease the exposure period for crossing orders from 30 seconds to three seconds); 53854 (May 24, 2006), 71 FR 30975 (May 31, 2006) (SR–BSE–2006–23) (notice of filing and immediate effectiveness of a proposed rule change to decrease the exposure period for crossing orders from 30 seconds to three seconds); and 53609 (April 6, 2006), 71 FR 19224 (April 13, 2006) (SR–NYSEArca–2006–01) (order approving the proposed rule change to shorten the time that a broker must wait prior to executing as principal orders he or she represents as agent from 30 seconds to three seconds).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *Id.*

[18] *See* note 11, *supra*.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5498]

60-Day Notice of Proposed Information Collection: DS–1648, Application for A, G, or NATO Visa, OMB No. 1405–0100

AGENCY: Department of State.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Application for A, G, or NATO Visa.
• *OMB Control Number:* 1405–0100.
• *Type of Request:* Extension of a Currently Approved Collection.
• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
• *Form Number:* DS–1648.
• *Respondents:* All applicants for A, G, or NATO visas reauthorizations.
• *Estimated Number of Respondents:* 20,000.
• *Estimated Number of Responses:* 20,000.
• *Average Hours Per Response:* 30 minutes.
• *Total Estimated Burden:* 10,000 hours.
• *Frequency:* Once per application.
• *Obligation to Respond:* Required to obtain benefit.

DATES: The Department will accept comments from the public up to 60 days from August 16, 2006.

ADDRESSES: You may submit comments by any of the following methods:
• E-mail: *VisaRegs@state.gov* (the subject line of the e-mail must be DS–1648).
• Mail (paper, disk, or CD-ROM submissions): Chief, Legislation and Regulation Division, Visa Services—DS–1648 Reauthorization, 2401 E. Street, NW., Washington DC 20520–30106.
• Fax: (202) 663–3898.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1221 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Department of State uses Form DS–1648 to elicit information necessary to ascertain the applicability of the legal requirements for applicants for a renewal of A, G, or NATO visas. The information requested is limited to that which is necessary to determine the eligibility of applicants who seek renewal of their visas. An estimated 20,000 renewal applications are filed each year.

Methodology: Applicants complete this form using an online application available on the Department's Web site, *http://www.travel.state.gov.* The applicant then prints the application and a bar code is printed at the bottom of the form. The bar code is an electronic capture of the information provided by the applicant. The application is then submitted by mail to the Department. The Department scans the bar code on the application to retrieve the information electronically. Applicants are not allowed to submit handwritten or typed forms with printed bar codes.

Dated: July 28, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–13480 Filed 8–15–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5497]

60-Day Notice of Proposed Information Collection: DS–3032, Choice of Address and Agent for Immigrant Visa Applicants, OMB No. 1405–0126

AGENCY: Department of State.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Choice of Address and Agent for Immigrant Visa Applicants.
• *OMB Control Number:* 1405–0126.
• *Type of Request:* Extension of Currently Approved Collection.
• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
• *Form Number:* DS–3032.
• *Respondents:* All immigrant visa applicants.
• *Estimated Number of Respondents:* 330,000.
• *Estimated Number of Responses:* 330,000.
• *Average Hours Per Response:* 10 minutes.
• *Total Estimated Burden:* 55,000 hours.
• *Frequency:* Once per application.
• *Obligation to Respond:* Required to obtained benefit.

DATES: The Department will accept comments from the public up to 60 days from August 16, 2006.

ADDRESSES: You may submit comments by any of the following methods:
• E-mail: *VisaRegs@state.gov* (Subject line must read DS–3032 Reauthorization).
• Mail (paper, disk, or CD–ROM submissions): Chief, Legislation and Regulation Division, Visa Services—DS–1884 Reauthorization, 2401 E Street, NW., Washington DC 20520–30106.
• Fax: (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1221 or *lageab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: When an approved immigrant visa petition is received at the National Visa Center (NVC) and is determined to be current for processing, NVC will send the petition beneficiary Form DS–3032, which allows the beneficiary to choose an agent to receive mailings from NVC and assist in the paperwork or paying required fees. The applicant is not

required to choose an agent and may have all mailings sent to an address abroad. However, the alien's case will be held at NVC until the signed form is returned. If the form is not returned within one year, NVC will begin the case termination process. DS–3032 is not required if a G–28 (Notice of Entry of Appearance as Attorney or Representative) is received from DHS and the attorney is the agent, the alien is self-petitioning, or a child is being adopted. Once the form has been signed and returned to NVC the applicant process will proceed.

Methodology: DS–3032 will be submitted via mail to the National Visa Center.

Dated: July 28, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–13481 Filed 8–15–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5426]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces a series of International Telecommunication Advisory Committee (ITAC) meetings.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on the U.S. position on ITU budget shortfalls on Friday September 8, 2006 9:30–noon at a location in the Washington, DC Metro Area.

This meeting is open to the public. Particulars on location and conference bridge is available from the secretariat *minardje@state.gov*, telephone 202–647–3234.

Dated: August 8, 2006.

Cecily Holiday,

Director, Radiocommunication Standardization International Communications & Information Policy, Department of State.

[FR Doc. E6–13458 Filed 8–15–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Franklin-Wilkins Airport, Lexington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the release of land at the Franklin-Wilkins Airport in the City of Lexington, Tennessee. This property, approximately 200.3 acres, will change to a non-aeronautical use. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 15, 2006.

ADDRESSES: Documents are available for review at the Tennessee Department of Transportation, Division of Aeronautics, 424 Knapp Blvd, Bldg 4219, Nashville, TN 37217 and the FAA Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Woods, Director, TDOT, Division of Aeronautics, P.O. Box 17326, Nashville, TN 37217.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Program Manager, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Franklin-Wilkins Airport, Lexington, TN. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On August 8, 2006, the FAA determined that the request to release property at Franklin-Wilkins Airport submitted by the airport owner meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than September 15, 2006.

The following is a brief overview of the request: The City of Lexington, TN, owner of the Franklin-Wilkins Airport, is proposing the closure of the airport and release of approximately 200.3 acres of airport property so the property can be converted to use for a public school, city park, city maintenance area, and cemetery expansion.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Tennessee Department of Transportation, Division of Aeronautics.

Issued in Memphis, TN on August 8, 2006.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 06–6950 Filed 8–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before August 31, 2006.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 10, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of special permit	Nature of special permit thereof
11666–M	.....	Alcoa, Inc., Pittsburgh, PA.	49 CFR 173.240(b)	11666	To modify the special permit to authorize the transportation of graphite products, as a Class 9 material, in non UN standard bulk packaging strapped to wooden pallets on flat railcars.
11911–M	RSPA–97–2735	Transfer Flow Inc., Chico, CA.	49 CFR 178.700 thru 178.819.	11911	To modify the special permit to authorize quick connect hoses which would contain hazardous material when disconnected.
12643–M	RSPA–01–9066	Northrop Grumman Space Technology.	49 CFR 173.302 and 175.3.	12643	To modify the special permit to authorize an increase in design volume for the pulse tube cooler up to 980 cc water capacity when shipped inside a strong, foam filled shipping container.

[FR Doc. 06–6947 Filed 8–15–06; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 15, 2006.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://www.dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 10, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14382–N	.....	BOC Gases, Murray Hill, NJ.	49 CFR 173.163, 180.209	To authorize the transportation in commerce of certain DOT Specification 3BN nickle cylinders containing either tungsten hexafluoride and hydrogen fluoride that are used interchangeably without requalifying the cylinder. (Modes 1, 2, 3).

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14383–N		Dairyland Power Cooperative, Genoa, WI.	49 CFR 173.416	To authorize the one-time, one-way transportation in commerce of a Class 7 used reactor pressure vessel in alternative packaging by motor vehicle and rail. (Modes 1, 2).
14384–N		Matheson Tri-Gas, Parsippany, NJ.	49 CFR 173.301(f)(1)	To authorize the transportation in commerce of Propylene in DOT 3AA or 3AL specification cylinders utilizing an unbacked pressure relief device. (Modes 1, 2, 3, 4).
14385–N		Kansas City Southern Railway Company, Kansas City, MO.	49 CFR 174.59	To authorize the one-way transportation in commerce of certain tank cars received in rail interchange from a foreign rail carrier at a Kansas City Southern facility in Laredo, TX to the nearest classification yard (less than 13 miles) for inspection and replacement of any missing placards. (Mode 2).
14387–N		Gayston Corporation, Springboro, OH.	49 CFR 173.302a, 173.304a, 180.209.	To authorize the manufacture, marking sale and use of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for shipment of certain Division 2.2 gases. (Modes 1, 2, 3, 4, 5).
14388–N		ATK Thiokol, Inc., Brigham City, UT.	49 CFR 173.62	To authorize the transportation in commerce of certain desensitized explosives in a non-DOT specification 40 cubic yard metal roll-off box by motor vehicle. (Mode 1).

[FR Doc. 06–6948 Filed 8–15–06; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permit applications in January 2005 to June 2006. The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on August 11, 2006.

R. Ryan Posten,

Chief Special, Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED						
11970–M	RSPA–97–2993	ExxonMobil Chemical Company, Mont Belvieu, TX.	01/27/2005	08/15/2005	49 CFR 172.101; 178.245–1(c).	To modify the exemption to authorize an additional portable tank configuration and dimension drawing for transporting Division 4.2 materials and rail freight as a mode of transportation.
11691–M		PepsiCo International, Valhalla, NY.	01/07/2005	03/15/2005	49 CFR 176.83;(d); 176.331; 176.800(a).	To modify the exemption to update a proper shipping description and authorize the transportation of a Class 9 material with Class 3 and Class 8 materials not subject to the segregation requirements for vessel storage when shipped in the same transport vehicle.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
12643–M	RSPA–01–9066	Northup Grumman Space Technology, Redondo Beach, CA.	01/12/2005	04/18/2005	49 CFR 173.302 and 175.3.	To modify the exemption to authorize an additional design change to the pulse tube cooler with an increased volume to 1100 cc and test pressure to 915 psig shipped inside a strong, foam filled shipping container.
11917–M	RSPA–97–2741	Sexton Can Company, Inc., Decatur, AL.	01/26/2005	03/29/2005	49 CFR 173.304(a)	To modify the exemption to authorize an increased water capacity limit to 40.4 cubic inches and the transportation of an additional Division 2.1 material in non-DOT specification, non-refillable steel cylinders.
13580–M	RSPA–04–18506	Carleton Technologies Inc., Orchard Park, NY.	01/11/2005	09/30/2005	49 CFR 178.65	To modify the exemption to authorize a larger non-DOT specification pressure vessel with increased service, test and burst pressures for the transportation of Division 2.2 materials.
7465–M	.....	State of Alaska Department of Transportation & Public Facilities, Juneau, AK.	02/01/2005	04/11/2005	49 CFR Part 172; 173.220.	To modify the exemption to authorize the addition of a new ferry vessel to the existing passenger ferry fleet.
7928–M	.....	State of Alaska Department of Transportation & Public Facilities, Juneau, AK.	02/01/2005	04/11/2005	49 CFR 172.101; 176.905(L).	To modify the exemption to authorize the addition of a new ferry vessel to the existing passenger ferry fleet.
9830–M	.....	Worthington Cylinder Corporation, Columbus, OH.	02/10/2005	04/08/2005	49 CFR 173.201; 173.202; 173.203; 173.302a(a); 173.304a(a) & (d); 175.3.	To modify the exemption to authorize the transportation of certain Class 8 materials in non-DOT specification steel cylinders by motor vehicle only.
12844–M	RSPA–01–10753	Delphi Automotive Systems, Vandalia, OH.	02/01/2005	06/01/2005	49 CFR 173.301(a)(1); 173.302a(a); 175.3.	To modify the exemption to authorize an increase of the maximum service pressure to 7,200 psig for the non-DOT specification pressure vessels.
12995–M	RSPA–02–12220	Dow Chemical Company, Midland, MI.	02/01/2005	04/18/2005	49 CFR 173.306(a)(3)(v).	To modify the exemption to authorize the use of the DOT 2Q specification container with an increased container pressure not to exceed 180 psig at 55 degrees C.
13322–M	RSPA–03–16595	UXB International Inc., Blacksburg, VA.	02/15/2005	03/29/2005	49 CFR 172.320; 173.54(a); 173.56(b); 173.58.	To modify the exemption to authorize the transportation of liquid explosives.
13996–M	RSPA–04–19660	North American Automotive Hazardous Material Action Committee (NAAHAC), Washington, MI.	02/01/2005	04/12/2005	49 CFR 173.166(e)(4)	To reissue the exemption originally issued on an emergency basis for the transportation of airbag inflators/modules/pyrotechnic seat belt pretensioners in reusable high strength plastic or metal containers or dedicated handling devices.
13229–M	RSPA–03–15235	Matheson Tri-Gas, East Rutherford, NJ.	02/25/2005	03/28/2006	49 CFR 173.304(b)	To modify the exemption to authorize importation of phosphine in non-DOT specification cylinders.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
11606–M		Safety-Kleen Systems, Inc., Humble, TX.	02/24/2005	04/19/2005	49 CFR 173.28(b)(2)	To modify the exemption to authorize the transportation of an additional Division 6.1 and Class 8 material in UN Standard 1A1 and 1A2 drums and non-DOT specification metal drums.
9659–M		Kaiser Compositek Inc., Brea, CA.	02/21/2005	12/14/2005	49 CFR 173.302a(a)(1); 173.304a(a), (d); 175.3; 177.812.	To modify the exemption to authorize a design change of the non-DOT specification fiber reinforced plastic (FRP) full wrapped composite cylinder transporting Division 2.1 and Division 2.2 materials.
11244–M		Supercritical Thermal Systems, Inc. (formerly Aerospace Design & Development, Inc.), Longmont, CO.	03/01/2005	05/03/2005	49 CFR 173.316(c); 178.57.	To modify the exemption to authorize an alternative outer shell material for the non-DOT specification titanium alloy cylinder transporting a Division 2.2 material.
11281–M		E.I. du Pont de Nemours & Company, Wilmington, DE.	03/23/2005	06/07/2005	49 CFR 172.101, Column 7, Special Provisions B14, T38.	To modify the exemption to authorize the use of an additional portable tank specification and the transportation of an additional Class 8 material.
12412–M	RSPA–2000–6827	Hawkins, Inc., Minneapolis, MN.	03/02/2005	02/14/2006	49 CFR 177.834(h); 172.203(a); 172.302(c).	To modify the exemption to allow the transportation and unloading of certain UN IBC and DOT Specification portable tanks containing incompatible materials on the same motor vehicle.
12842–M	RSPA–01–10751	Onyx Environmental Services, L.L.C., Flanders, NJ.	03/10/2005	07/26/2005	49 CFR 173.156(b)	To modify the exemption to authorize a reoffering provision of the package to a non-holder of the exemption and transportation of Division 2.1 and Division 2.2 materials to an alternative disposal facility.
13245–M	RSPA–03–15985	Piper Metal Forming Corporation (Formerly Quanex), New Albany, MS.	03/28/2005	06/01/2005	49 CFR 173.302(a)(1); 175.3.	To modify the exemption to authorize the use of non-refillable, non-DOT specification cylinders for all gases approved for shipment in DOT–3AL Specification cylinders.
13323–M	RSPA–03–16488	U.S. Department of the Interior/U.S. Geological Survey, Woods Hole, MA.	03/11/2005	06/06/2005	49 CFR 173.302a	To modify the exemption to authorize an alternative higher pressure-rated cover for the non-DOT specification cylinders transporting a Division 2.1 material.
13548–M	RSPA–04–17545	Battery Council International (BCI).	03/01/2005	05/17/2005	49 CFR 173.159	To modify the exemption to authorize alternative classifications for the transportation of battery fluid, acid.
13598–M	RSPA–04–18706	Jadoo Power Systems Inc., Folsom, CA.	03/23/2005	05/05/2005	49 CFR 173.301(a)(1), (d) and (f).	To modify the exemption to authorize an increased maximum water capacity to 3.25 pounds for the hydride canister design and the use of UN4G fiberboard boxes.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14145–M	PHMSA–05–20834	T–AKE Naval Sea Systems Command, Washington, DC.	03/29/2005	08/12/2005	49 CFR 176.116	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 1 materials by vessel and provide relief from the general stowage requirements for Class 1 materials.
14165–M	PHMSA–05–20619	Saint Louis University—Center for Vaccine Development, St. Louis, MO.	04/11/2005	04/19/2005	49 CFR 173.196	To modify the exemption to extend the expiration date to complete the one-time, one-way transportation of infectious substances and diagnostic specimens in containers not authorized in the HMR.
9880–M	.....	GE Reuter-Stokes, Inc., Twinsburg, OH.	04/07/2005	08/24/2005	49 CFR 173.302a; 175.3; Part 172 Subpart E and F.	To modify the exemption to authorize an increase in design pressure to 440 psig for the non-DOT specification containers transporting Division 2.2 materials.
10048–M	.....	Epichem, Inc., Haverhill, MA.	04/12/2005	06/07/2005	49 CFR 173.181; 173.187; 173.201, 202, 211, 212, 226, 227.	To modify the exemption to update various proper shipping names and UN numbers for the Division 4.2, 4.3, and 6.1 materials transported in a UN1A2 drum inside a non-DOT specification metal container.
11379–M	.....	TRW Occupant Safety Systems, Washington, MI.	04/16/2005	07/06/2005	49 CFR 173.301(h), 173.302(a); 175.3.	To modify the exemption to increase the maximum service pressure at 70 degrees F for the non-DOT specification pressure vessels for use as components of safety systems.
12920–M	RSPA–02–11638	Epichem, Inc., Haverhill, MA.	04/12/2005	06/07/2005	49 CFR 173.181(c)	To modify the exemption to update the proper shipping name and UN number for a Division 4.2 material transported in combination packagings with inner containers that exceed authorized quantities.
13207–M	RSPA–03–15068	BEI Hawaii, Honolulu, HI.	04/14/2005	06/14/2005	49 CFR 173.32(f)(5) ...	To modify the exemption to authorize the use of additional DOT Specification IM 101 steel portable tanks that do not conform to the filling density requirements for the transportation of a Class 8 material.
13220–M	RSPA–03–14968	Advanced Technology Materials, Inc. (ATMI), Danbury, CT.	04/04/2005	06/07/2005	49 CFR 173.301; 173.302; 173.304; 173.315.	To modify the exemption to authorize the use of alternative manufacturers, cylinder shapes and mixed metal construction for the non-DOT specification welded pressure vessels.
11970–M	RSPA–97–2993	Albermarle Corp., Baton Rouge, LA.	04/27/2005	06/07/2005	49 CFR 172.101; 178.245–1(c).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in a non-DOT specification portable tank.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14170–M	PHMSA–05–20714	General Dynamics Armament & Technical Products, Lincoln, NE.	05/24/2005	08/24/2005	49 CFR 173.301 and 173.306.	To reissue the exemption originally issued on an emergency basis for the transportation of certain compressed gases in non-DOT specification fiberglass reinforced plastic cylinders.
11321–M	.....	E.I. Du Pont, Wilmington, DE.	05/18/2005	02/23/2006	49 CFR 172.101, Column 7, Special Provisions B14, T38.	To modify the exemption to authorize the use of UN specification portable tanks for the transportation of a Class 8 material.
11606–M	.....	Safety-Kleen Systems, Inc., Humble, TX.	05/03/2005	07/12/2005	49 CFR 173.28(b)(2) ..	To modify the exemption to authorize the transportation of an additional Class 3 material in UN Standard 1A1, 1A2 and non-DOT specification steel drums.
11770–M	.....	Gas Cylinder Technologies, Inc., Tecumseh, ON.	05/25/2005	10/25/2006	49 CFR 173.302a; 173.304a.	To modify the exemption to authorize maximum internal capacity of 65 cubic inches for the non-DOT specification cylinders and eliminating the 2.5 inch maximum outside diameter requirement.
11911–M	RSPA–97–2735	Transfer Flow, Inc., Chico, CA.	05/01/2005	09/28/2005	49 CFR 178.700 thru 178.819.	To modify the exemption to authorize the use of a new refueling tank design that is not required to be dismantled during transportation of Class 3 materials.
13616–M	RSPA–2004–18578	U.S. Department of Commerce, Anchorage, AK.	05/01/2005	07/12/2005	49 CFR 172.101, Column 9B.	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in DOT Specification cylinders that are manifolded together and exceed the quantity limitations for cargo aircraft only.
13312–M	RSPA–2004–19656	Air Products & Chemicals, Inc., Allentown, PA.	04/14/2005	06/01/2005	49 CFR 173.301(f)(3); 180.205(c)(4).	To authorize an alternative retesting method for DOT–3, 3A, 3AA cylinders used in transporting Division 2.1 hazardous materials.
11917–M	RSPA–97–2741	ITW Sexton, Decatur, AL.	06/15/2005	03/03/2006	49 CFR 173.304(a)	To modify the exemption to authorize an increase in diameter of the non-DOT specification, non-refillable steel cylinders for the transportation of Division 2.1 materials.
13484–M	RSPA–04–17297	Air Liquide America LP, Houston, TX.	06/28/2005	03/27/2006	49 CFR 172.302(c); 177.834.	To modify the exemption to authorize an increased inspection interval by a designated employee from 15 minutes to 1 hour for on-site loading operations of DOT Specification cargo tanks.
14171–M	PHMSA–05–20832	NASA, Houston, TX.	06/09/2005	08/16/2005	49 CFR 173.301(f)	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in non-DOT specification cylinders without pressure relief devices.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14193–M	PHMSA–05–21763	Honeywell, Morristown, NJ.	06/27/2005	08/16/2005	49 CFR 173.313	To reissue the exemption originally issued on an emergency basis for the transportation of non-DOT specification IMO Type 5 portable tanks, mounted in an ISO frame, containing certain Division 2.2 and 2.3 materials.
14194–M	PHMSA–05–21246	Zippo Manufacturing Corporation, Bradford, PA.	06/01/2005	08/16/2005	49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33.	To reissue the exemption originally issued on an emergency basis for the transportation of Zippo lighters in special travel containers in checked luggage on commercial passenger-carrying aircraft.
11380–M	.....	Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX.	06/28/2005	011/03/2005	49 CFR 173.302a(a); 178.37.	To modify the exemption to authorize a new tank assembly design of the non-DOT specification cylinders transporting Division 2.1 materials.
11321–M	.....	E.I. Du Pont, Wilmington, DE.	06/29/2005	02/23/2006	49 CFR 172.101, Column 7, Special Provisions B14, T38.	To modify the exemption to authorize additional materials of construction and thickness requirements for the cargo and portable tanks transporting a Class 8 material.
13977–M	RSPA–05–20129	Aethra Aviation Technologies, Farmingdale, NY.	06/22/2005	08/04/2005	49 CFR 173.302a; 175.3.	To reissue the exemption previously issued on an emergency basis for the transportation of a Division 2.2 and Class 9 material in certain cylinders that are charged in excess of their marked pressure used as components in aircraft.
10048–M	.....	Epichem, Inc., Haverhill, MA.	07/18/2005	09/20/2005	49 CFR 173.181; 173.187; 173.201, 202, 211, 212, 226, 227.	To modify the exemption to authorize the transportation of additional Division 6.1 materials transported in a UN1A2 drum inside a non-DOT specification metal container.
11318–M	.....	Akzo Nobel Chemicals, Inc., Chicago, IL.	07/13/2005	09/07/2005	49 CFR 172.101 Special Provision B14.	To modify the exemption to authorize the transportation of an additional Division 6.1 material in uninsulated DOT Specification 51 portable tanks.
13179–M	RSPA–02–14020	Clean Harbors Environmental Services, Inc., Columbia, SC.	07/06/2005	09/12/2005	49 CFR 173.21; 173.308.	To modify the exemption to authorize the use of an alternative shipping description and hazard class for the Division 2.1 materials which are being transported to a disposal facility.
10962–M	.....	ICC The Compliance Center, Niagara Falls, NY.	07/01/2005	09/30/2005	49 CFR Part 172, Subparts E, F; Part 177, Subpart C.	To modify the exemption to authorize the use of an alternative specially designed combination packaging for the transportation of numerous hazardous materials by various modes.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
12630–M	RSPA–01–8850	Chemetall GmbH Gesellschaft, 59500 Douai, France.	07/26/2005	09/21/2005	49 CFR 172.102(a)(2) and (c)(7)(ii).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in DOT Specification IM 101 portable tanks.
12475–M	RSPA–00–7484	Chemetall Foote Corporation, Kings Mountain, NC.	07/26/2005	09/21/2005	49 CFR 173.181; 173.28(b)(2).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 and Division 4.3 material transported in UN1A1 drums.
4661–M	.....	Chemtell Foote Corporation, Kings Mountain, NC.	07/06/2005	02/06/2006	49 CFR 180.205	To modify the exemption to authorize an additional proper shipping name for a Division 4.2 and Division 4.3 material transported in 4BA240 and 4BW240 cylinders.
10798–M	.....	Chemetall Foote Corporation, Kings Mountain, NC.	07/26/2005	09/21/2005	49 CFR 174.67(i), (j) ..	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in DOT Specification tank cars.
10695–M	.....	3M Company, St. Paul, MN.	07/25/2005	09/13/2005	49 CFR 172.101; 172.504; 172.505(a); 173.323; 174.81; 176.84; 177.848.	To modify the exemption to authorize a revision to the 3M Steri-Gas Cartridge Return Procedures containing a Division 2.3 material transported in UN4G fiberboard boxes.
5022–M	.....	Boeing Company, The, Anaheim, CA.	08/17/2005	01/10/2006	49 CFR 174.101(L); 174.104(d); 174.112(a); 177.834(l)(1).	To modify the exemption to authorize the transportation of an additional Division 1.3C material in temperature controlled equipment.
7835–M	.....	Air Products & Chemicals, Inc., Allentown, PA.	08/05/2005	02/14/2006	49 CFR 177.848(d)	To modify the exemption to authorize the use of an E track system as an approved method for securing cylinders transporting various hazardous materials.
8495–M	.....	Kidde Aerospace, Wilson, NC.	08/22/2005	03/13/2006	49 CFR 173.304(a)(1); 178.47; 175.3.	To modify the exemption to authorize the transportation of additional Division 2.2 materials and expand use of the non-DOT specification cylinders to include Military Ground vehicles.
13487–M	RSPA–04–17293	University of Colorado at Health Sciences Center, Aurora, CO.	08/22/2005	09/30/2005	49 CFR 173.197; 172.301(a),(b),(c); 173.196(a),(b); 178.609.	To modify the exemption to authorize an additional physical address of a newly acquired laboratory space for the one-way transportation of certain Division 6.2 materials in alternative packaging.
13601–M	RSPA–04–18713	DS Containers, Inc., Lemont, IL.	08/11/2005	02/10/2006	49 CFR 173.306(b)(1); 175.3.	To modify the exemption to authorize the use of an alternative non-DOT specification inner non-refillable container and revised procedures for testing an approved lot.
14096–M	RSPA–05–20125	United States Enrichment Corporation (USEC), Paducah, KY.	08/25/2005	04/27/2006	49 CFR 173.420	To modify the exemption to authorize the one-time, one-way transportation of additional Model 480M and Model 48A cylinders containing a Class 7 material.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
13963–M	RSPA–2004–19299	Duratek Services, Inc., Columbia, SC.	08/03/2005	01/20/2006	49 CFR 173.403; 173.427; 173.465.	To modify the exemption to authorize the use of alternative packaging for the transportation of Class 7 material.
12874–M	RSPA–01–11103	Zomeworks Corporation, Albuquerque, NM.	08/31/2005	03/14/2006	49 CFR 171 to 180	To modify the exemption to authorize an increase in internal volume and length of the refrigerating machine canister and tubing and the transportation of an additional Division 2.2 material.
11215–M	.....	Orbital Sciences Corporation, Mojave, CA.	08/16/2005	12/14/2005	49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109.	To modify the exemption to change the packaging language to reflect current designs and add an additional flight plan launch site.
8915–M	.....	Quimobasicos SA de CV, Monterrey, NL.	09/01/2005	12/09/2005	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the exemption to authorize the transportation of certain manifolded DOT Specification cylinders containing R–22 and R–23 gas mixtures for disposal via incineration.
10427–M	.....	Astrotech Space Operations, Inc., Titusville, FL.	09/07/2005	03/01/2006	49 CFR 173.61(a); 173.301(f); 173.302a; 173.336; 177.848(d).	To modify the exemption to authorize a quantity increase from 700 pounds to 1200 pounds of a Division 2.2 material transported on the same motor vehicle with various hazardous materials.
12783–M	RSPA–01–10309	CryoSurgery, Inc., Nashville, TN.	09/01/2005	02/27/2006	49 CFR 173.304a(a)(1); 173.306(a).	To modify the exemption to authorize an increased fill capacity to 85% for the transportation of ORM–D materials in non-DOT specification nonrefillable containers.
13032–M	RSPA–02–12442	Conax Florida Corporation, St. Petersburg, FL.	09/02/2005	02/02/2006	49 CFR 173.302a(a)(1).	To modify the exemption to authorize shipment of non-DOT specification pressure vessels in temperature controlled environments and without 1.4G pyrotechnic devices.
11967–M	RSPA–97–2991	Savage Services Corporation, Pottstown, PA.	09/20/2005	11/25/2005	49 CFR 174.67(i),(j) ...	To modify the exemption to authorize the unloading of an additional Class 8 and 9 material in DOT Specification tank cars.
13544–M	RSPA–04–17548	Blue Rhino Corporation, Winston-Salem, NC.	09/13/2005	12/15/2005	49 CFR 173.29; 172.301(c); 172.401..	To modify the exemption to provide relief from the marking requirements for the transportation of a Division 2.1 material in DOT Specification 4BA240 cylinders.
5206–M	.....	Nelson Brothers, LLC, Birmingham, AL.	10/04/2005	04/28/2006	49 CFR 173.3(a); 173.3(b); 173.24(c); 173.60.	To modify the special permit by authorizing an additional hazardous material.
7887–M	.....	Estes-Cox Corporation, d/b/a Estes Industries, Penrose, CO.	10/10/2005	04/24/2006	49 CFR 172.101; 175.3.	To modify the special permit to allow igniters, Division 1.4S, to be shipped in the same inner and outer packaging as model rocket motors and with nonhazardous materials needed to construct model rockets.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
10407–M	.....	Thermo Measure Tech, Sugar Land, TX.	10/18/2005	02/10/2006	49 CFR 173.302a(a); 175.3.	To modify the special permit to authorize the use of an alternative radiation detector or ionization chamber for the transportation of Division 2.2 materials.
10878–M	.....	Tankcon FRP, Inc., Boisbriand, QC.	10/20/2005	03/28/2006	49 CFR 172.102(c)(3); 173.242.	To modify the special permit to waive the requirement for shipping papers to bear the DOT–SP number when transporting Class 8 materials in FRP cargo tanks.
11646–M	.....	Barton Solvents, Inc., Des Moines, IA.	10/25/2005	02/16/2006	49 CFR 172.203(a); 172.301(c); 177.834(h).	To modify the special permit to authorize the discharge of Class 8 and an additional Class 3 material from a DOT Specification drum without removing the drum from the vehicle.
13245–M	RSPA–03–15985	Piper Metal Forming Corporation, New Albany, MS.	10/24/2005	02/08/2006	49 CFR 173.302(a)(1); 175.3.	To modify the special permit to authorize a new neck configuration design for the non-refillable, non-DOT specification cylinders transporting Division 2.2 materials.
13599–M	RSPA–04–18712	Air Products & Chemicals, Inc., Allentown, PA.	10/06/2005	04/27/2006	49 CFR 173.304a(a)(2).	To modify the special permit to authorize an increase in fill densities/ratios for the DOT Specification seamless steel cylinders transporting a Division 2.2 material.
13738–M	RSPA–04–18889	Department of Energy, Washington, DC.	10/07/2005	04/05/2006	49 CFR 173.420(a)(4)	To modify the special permit to provide relief from the marking requirements for shipment of cylinders with missing or illegible nameplates containing a Class 7 material.
12561–M	RSPA–00–8305	Rhodia Inc., Cranbury, NJ.	10/25/2005	04/26/2006	49 CFR 172.203(a); 173.31; 179.13.	To modify the special permit to authorize the use of 60 additional DOT Specification tank cars for the transportation of Class 8 materials.
13182–M	RSPA–02–14023	Cytec Industries Inc., West Paterson, NJ.	10/28/2005	06/22/2006	49 CFR 173.192(a); 173.304a(b).	To modify the special permit to the maximum fill density to 45% for the DOT Specification and non-DOT specification cylinders transporting a Division 2.3 material.
10788–M	.....	P.S.I. Plus, Inc., East Hampton, CT.	11/11/2005	04/04/2006	49 CFR 173.302(a)(1); 175.3; 178.65–2; 178.65–5(a)(4).	To modify the special permit to authorize the use of DOT specification 39 cylinders for all Division 2.1 gases.
11281–M	.....	E.I. du Pont de Nemours & Company, Wilmington, DE.	11/15/2005	05/11/2006	49 CFR 172.101, Column 7, Special Provisions B14, T38.	To modify the exemption to authorize the use of an additional portable tank specification and the transportation of an additional Class 8 material.
11513–M	.....	ATK Thiokol, Inc., Brigham City, UT.	11/21/2005	02/10/2006	49 CFR 172.101	To modify the special permit to authorize transportation of aerial flares (flare candles), propellant samples, and wet cut propellant in non-DOT specification containers

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14004–M	RSPA–04–19657	Praxair, Inc., Danbury, CT.	11/18/2005	04/21/2006	49 CFR 173.34(e); 173.302(c), (2), (3), (4); Part 107, Subpart B, Appendix B.	To modify the special permit to allow transportation of certain Division 2.2 gases in DOT specification 105J500W tank cars with a maximum weight on rail greater than 263,000 pounds but not greater than 286,000 pounds.
12706–M	RSPA–01–9731	RAGASCO AS, Raufoss, Norway.	11/15/2005	03/03/2006	49 CFR 173.34; 173.201; 713.301; 173.304.	To modify the special permit to authorize the addition of certain Division 2.2 hazardous materials.
11691–M	.....	Sensient Flavors, Inc., Indianapolis, IN.	12/13/2005	07/26/2006	49 CFR 176.83(d); 176.331; 176.800(a).	To modify the special permit to update a proper shipping description and authorize the transportation of a Class 9 material with Class 3 and Class 8 materials not subject to the segregation requirements for vessel storage when shipped in the same transport vehicle.
14183–M	PHMSA–21128	LND, Inc., Oceanside, NY.	12/09/2005	03/13/2006	49 CFR 173.302a, 172.101(9A).	To modify the special permit to authorize additional design types, reduce the minimum volumetric capacity of certain design types, and authorize titanium as an additional material of construction.
7954–M	.....	Air Products & Chemicals, Inc., Allentown, PA.	12/20/2005	04/24/2006	49 CFR 173.301(d)(2); 173.302(a)(3).	To modify the special permit to authorize the transportation in commerce of certain Division 2.3 gases in 3T cylinders.
12920–M	RSPA–11638	Epichem, Inc., Haverhill, MA.	12/05/2005	06/08/2006	49 CFR 173.181(c)	To modify the special permit to authorize VCR connections and allow both the 10 and 20 liter drums to be made of 304 or 316 stainless steel.
14282–M	.....	Dyno Nobel Transportation, Inc., Salt Lake City, UT.	10/11/2005	02/10/2006	49 CFR 173.835(g)	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain detonators and detonator assemblies on the same motor vehicle with other Class 1 explosives when they are in separate and isolated cargo-carrying compartments powered by the same tractor.
10945–M	.....	Structural Composites Industries, Pomona, CA.	01/26/2006	08/03/2006	49 CFR 173.302(a); 173.304(a); 175.3.	To modify the special permit to raise the load sharing capability percentage of the glass fiber wrapping of low pressure cylinders.
13169–M	RSPA–13894	ConocoPhillips Alaska, Inc., Anchorage, AK.	01/16/2006	04/06/2006	49 CFR 172.101(9B) ..	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 9 materials in UN 31A intermediate bulk containers which exceed quantity limitations when shipped by air.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
12373–M	RSPA–6504	GE Energy Rentals, Inc., Atlanta, GA.	01/03/2006	03/31/2006	49 CFR 173.306(e)(1)	To modify the special permit to authorize an alternative method for testing used refrigerating machines; to eliminate the requirement to maintain a copy of the special permit at each facility where the refrigeration machine is offered, and to eliminate the requirement to carry a copy of the special permit on motor vehicle.
10048–M	.....	Epichem, Inc., Haverhill, MA.	01/12/2006	03/13/2006	49 CFR 173.181; 173.187; 173.201, 202, 211, 212, 226, 227.	To modify the special permit to authorize a non-DOT specification cylinder as an additional packaging.
12412–M	RSPA–6827	ChemStation International, Inc., Dayton, OH.	02/16/2006	05/21/2006	49 CFR 177.834(h); 172.203(a); 172.302(c).	To modify the exemption to allow the transportation and unloading of certain UN IBC and DOT Specification portable tanks containing incompatible materials on the same motor vehicle.
11691–M	.....	Coca-Cola Company, The, Atlanta, GA.	02/09/2006	07/27/2006	49 CFR 176.83(d); 176.331; 176.800(a).	To modify the special permit to provide segregation relief for certain Class 8 corrosive materials in combination with other readily combustible materials as defined in § 176.2 of the Hazardous Materials Regulations.
14292–M	.....	Honeywell International Inc., Morristown, NJ.	02/14/2006	04/12/2006	49 CFR 173.301(d)(2); 173.302(a)(3).	To reissue the special permit originally issued on an emergency basis to authorize the transport of boron trifluoride in DOT Specification 3AAX and 3AA manifolded cylinders.
14205–M	PHMSA–21773	The Clorox Company, Pleasanton, CA.	02/09/2006	04/10/2006	49 CFR 173.306(a)(1) and 173.306(a)(3)(v).	To modify the special permit to authorize alternative testing requirements, increase lot size, eliminate the requirement to carry a copy of the permit on motor vehicles and to change the proper shipping name to Consumer Commodity, ORM–D.
10677–M	.....	Primus AB, SE–171 26 Solna, Sweden.	02/15/2006	04/10/2006	49 CFR 173.304(d)(3)(ii).	To modify the special permit to authorize additional non-DOT specification packaging.
8915–M	.....	MEMC, Pasadena, TX.	03/27/2006	07/31/2006	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the special permit to authorize utilization of acoustic emission and ultrasonic examination as an alternative method for cylinder requalification.
9030–M	.....	LND, Inc., Oceanside, NY.	03/24/2006	05/26/2006	49 CFR 173.302; 175.3.	To modify the special permit to authorize the transportation in commerce of an additional Division 2.2 gas (Xenon).
10529–M	.....	LND, Inc., Oceanside, NY.	03/24/2006	08/01/2006	49 CFR 173.302; 175.3.	To modify the special permit to authorize additional Division 2.1 and 2.2 gases.
11966–M	2990	FMC Corporation, Philadelphia, PA.	04/28/2006	08/04/2006	49 CFR 173.31(b)(6)(i)	To modify the special permit to authorize extending the service life of a select group of tank cars fitted with half head shields.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14327–M	24248	The Colibri Group, Inc., Providence, RI.	05/01/2006	07/24/2006	49 CFR 173.21, 173.308, 175.33.	To modify the special permit to authorize the transportation in commerce of any approved lighter when packaged in special travel containers and transported in checked luggage by passenger aircraft.
13207–M	PHMSA–06–15068	BEI, Honolulu, HI.	05/18/2006	08/09/2006	49 CFR 173.32(f)(5) ...	To modify the exemption to authorize the use of additional DOT Specification IM 101 steel portable tanks that do not conform to the filling density requirements for the transportation of a Class 8 material.
14282–M	.....	R & R Trucking, Incorporated Galt, MO.	05/12/2006	08/07/2006	49 CFR 173.835(g)	To modify the special permit to remove the marking requirements of § 172.203(c).
13235–M	15238	Airgas-SAFECOR, Cheyenne, WY.	05/18/2006	08/04/2006	49 CFR 172.203(a); 177.834(h).	To modify the special permit to authorize filling and discharging of a horizontally mounted DOT specification 4L cylinder with liquid oxygen, refrigerated liquid without removal from the vehicle.
NEW SPECIAL PERMIT GRANTED						
14137–N	RSPA–20346	Mallinckrodt Baker, Inc., Phillipsburg, NJ.	01/24/2005	05/03/2005	49 CFR 172.102(c)(4), Special provision IB2.	To authorize the transportation in commerce of Hydrochloric acid up to 38% concentration in intermediate bulk containers. (Mode 1).
14139–N	RSPA–20344	Commodore Advanced Sciences, Inc., Richland, WA.	01/24/2005	04/27/2005	49 CFR 173.244 in that a non-DOT steel vessel is not an authorized packaging, except under an exemption.	To authorize the one-time, one-way transportation in commerce of solidified sodium metal in a non-DOT specification bulk packaging. (Mode 1).
14141–N	RSPA–05–20341	Nalco Company, Naperville, IL.	01/26/2005	04/28/2006	49 CFR 177.834(i)(3)	To authorize the use of video cameras and monitors to observe the loading operations of certain hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of the cargo tank motor vehicles. (Mode 1).
14144–N	RSPA–20337	Lawrence Livermore National Laboratory, Livermore, CA.	01/19/2005	05/03/2005	49 CFR 173.212	To authorize the one-time transportation in commerce of lithium hydride, fused solid in specially designed non-bulk containers. (Mode 1).
14146–N	RSPA–20419	Brunswick Corporation, Lake Forest, IL.	01/26/2005	08/16/2005	49 CFR 173.220(e)	To authorize the transportation in commerce of certain engines, machinery and apparatus with up to 120 ml (4 ounces) of flammable liquid fuel by vessel. (Mode 3).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14149–N	RSPA–05	Digital Wave Corporation, Englewood, CO.	02/01/2005	11/15/2005	49 CFR 180.205, 180.209.	To authorize the transportation in commerce of certain DOT–3AL seamless aluminum cylinders that have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2, 2.3 materials. (Modes 1, 2, 4).
14150–N	PHMSA–20469	Eli Lilly & Company, Indianapolis, IN.	02/04/2005	11/03/2005	49 CFR 177.834	To authorize the alternative attendance method for cargo tanks during loading and unloading of Class 3 and 8 hazardous materials. (Mode 1).
14151–N	PHMSA–20468	ChevronTexaco, Houston, TX.	02/01/2005	03/01/2006	49 CFR 173.302	To authorize the transportation in commerce of certain non-DOT specification cylinders for obtaining core samples of naturally occurring methane. (Modes 1, 3).
14152–N	PHMSA–20467	Saes Pure Gas, Inc., San Luis Obispo, CA.	02/04/2005	07/08/2005	49 CFR 173.187	To authorize the transportation of certain quantities of metal catalyst, classed as Division 4.2, in non-DOT specification packaging that exceed the maximum net quantity allowed per package. (Mode 4).
14154–N	PHMSA–20610	Carleton Technologies, Inc.	02/01/2005	08/10/2005	49 CFR 173.302a, 173.304a, 180.209.	To authorize the manufacture, marking and sale of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for shipment of certain Division 2.2 gases. (Modes 1, 2, 3, 4, 5).
14155–N	PHMSA–20606	American Promotional Events, Inc., Florence, AL.	02/07/2005	07/01/2005	49 CFR 173.60	To authorize the transportation in commerce of certain fireworks in non-DOT specification packagings when returned to the distributor. (Mode 1).
14157–N	PHMSA–20609	Worthington Cylinders of Canada Corp., Tilbury, Ontario, Canada.	02/14/2005	05/06/2005	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to DOT 3AA for use in transporting certain nonflammable gases. (Modes 1, 4).
14158–N	PHMSA–20611	UTC Fuel Cells, LLC, South Windsor, CT.	02/14/2005	05/03/2005	49 CFR 176.83	To authorize the transportation by vessel of a fuel cell power plant containing hazardous materials that are not segregated as required by 49 CFR 176.83. (Mode 3).
14159–N	PHMSA–20613	ChevronTexaco, Richmond, CA.	02/17/2005	09/30/2005	49 CFR 173.187	To authorize the one-time one-way transportation in commerce of 8 non-DOT specification cylinders containing a Division 4.2 material. (Mode 1).
14162–N	PHMSA–20618	BSCO Incorporated, Forest Hills, MD.	02/08/2005	12/14/2005	49 CFR 173.301(f)	To authorize the manufacture, mark and sale of certain non-DOT specification cylinders, each with an alternative thermal relief device, containing Division 2.2 materials, for use in fire suppression systems. (Modes 1, 3, 5).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14163–N	PHMSA–20615	Air Liquide America L.P., Houston, TX.	02/25/2005	06/12/2006	49 CFR 173.301(g)(1)(ii).	To authorize the transportation in commerce of certain Division 2.2 materials in DOT specification cylinders that are manifolded and are not equipped with an individual shut off valve. (Modes 1, 2, 3).
14164–N	PHMSA–20614	Sigma-Aldrich Corporation, Milwaukee, WI.	02/18/2005	06/01/2005	49 CFR 173.181	To authorize the transporation in commerce of non-DOT specification cylinders, similar to DOT 4BW cylinders, containing Trimethylaluminum. (Modes 1, 2, 3).
14661–N	PHMSA–20668	Presidential Airways, Melbourne, FL.	02/24/2005	08/23/2005	49 CFR 172.101 Column (9B).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (Mode 4).
14167–N	PHMSA–20669	Trinityrail, Dallas, TX.	02/27/2005	04/20/2006	49 CFR 173.26, 173.314(c), 179.13 and 179.100–12(c).	To authorize the manufacture, mark and sell DOT 105J600W specification tank cars having a maximum gross weight on rail of 286,000 in chlorine service. (Mode 2).
14168–N	PHMSA–21796	Matheson Tri-Gas, East Rutherford, NJ.	02/01/2005	04/05/2005	49 CFR 173.3(d)	To authorize the transportation in commerce of salvage cylinders by cargo vessel. (Mode 3).
14172–N	PHMSA–20906	Pacific Bio-Material Management, Inc., Fresno, CA.	03/08/2005	07/14/2005	49 CFR 173.196 and 173.199.	To authorize the transportation in commerce of infectious substances in a large capacity liquid nitrogen freezer. (Mode 1).
14173–N	PHMSA–20905	Dow Chemical Company, Midland, MI.	03/10/2005	08/16/2006	49 CFR 179.13	To authorize the transportation in commerce of ethylene oxide in DOT specification 105J400W tank cars that exceed the maximum allowable gross weight on rail (263,000 lbs.). (Mode 2).
14175–N	PHMSA–20903	Air Products & Chemicals, Inc., Allentown, PA.	03/18/2005	01/05/2006	49 CFR 180.209	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders where the re-test period is extended to 10 years, the cylinders need not be removed from the bundle at each filing and that the hammer test need not be performed. (Modes 1, 2 3).
14176–N	PHMSA–20902	Great Plains Industries, Inc., Wichita, KS.	03/21/2005	09/07/2005	49 CFR 173.242	To authorize the manufacture, mark and sale of refueling tanks of up to 80 gallon capacity for use in transporting various Class 3 hazardous materials. (Mode 1).
14183–N	PHMSA–21128	LND, Inc., Oceanside, NY.	04/11/2005	07/19/2005	49 CFR 173.302a, 172.101(9A).	To authorize the manufacture, marking, sale and use of non-DOT specification sealed electron tube radiation sensors to transport Division 2.1 and 2.2 materials. (Mode 1, 2, 3, 4, 5).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14185–N	PHMSA–21123	U.S. Department of Energy, Washington, DC.	04/07/2005	03/02/2006	49 CFR 173.420	To authorize the transportation in commerce of uranium hexafluoride in non-DOT specification cylinders. (Mode 1).
14186–N	PHMSA–21132	Dow Chemical Company, Midland, MI.	04/02/2005	08/16/2005	49 CFR 179.13	To authorize the transportation in commerce of Class 3 and 8 and Division 2.1 and 6.1 hazardous materials in DOT specification 105J300W tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs). (Mode 2).
14187–N	PHMSA–21127	Space Systems/Loral, Palo Alto, CA.	04/04/2005	10/19/2005	49 CFR 173.302a	To authorize the transportation in commerce of nickel-hydrogen batteries in non-DOT specification packaging. (Mode 1).
14188–N	PHMSA–21126	Interdynamics, Inc., Tarrytown, NY.	04/26/2005	10/19/2005	49 CFR 173.304(d), 173.306(a)(3) and 178.33a.	To authorize the manufacture, marking, sale and use of non-DOT specifications inner nonrefillable metal receptacles similar to DOT specification 2Q containers for certain Division 2.2 materials. (Modes 1, 2, 3, 4).
14189–N	PHMSA–21124	PPG Industries, Inc., Pittsburgh, PA.	04/27/2005	01/06/2006	49 CFR 172.302, 172.326, 172.504, 173.242.	To authorize the transportation in commerce of the residue of certain Class 3 materials in non-DOT specification portable tanks without marking and placarding. (Mode 1).
14190–N	PHMSA–21262	Cordis Corporation, Miami Lakes, FL.	04/28/2005	01/11/2006	49 CFR 172.200, 172.300, 172.400.	To authorize the transportation in commerce of certain Class 3 and 9 materials across a public road without shipping papers, marking or labeling. (Mode 1).
14196–N	PHMSA–21765	Union Pacific Railroad, Omaha, NE.	05/09/2005	08/10/2005	49 CFR 174.67(i) and (j).	To authorize rail cars containing a combustible liquid to remain attached to unloading connectors without the physical presence of an unloader. (Mode 2).
14201–N	PHMSA–21768	Murray Air, Inc. Ypsilanti, MI.	05/13/2005	09/07/2005	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30.	To authorize the transportation in commerce by cargo only aircraft of Class 1 explosives which are forbidden or exceed quantities presently authorized. (Mode 4).
14204–N	PHMSA–21772	Great Lakes Chemical Corporation, Lafayette, IN.	05/27/2005	09/07/2005	49 CFR 173.226(b) and (d).	To authorize the transportation in commerce of bromine in single Monel packagings. (Mode 1).
14205–N	PHMSA–21773	The Clorox Company, Pleasanton, CA.	05/31/2005	01/06/2006	49 CFR 173.306(a)(1) and 173.306(a)(3)(v).	To authorize the transportation in commerce of Division 2.2 aerosols in plastic packagings. (Modes 1, 2).
14206–N	PHMSA–21762	Digital Wave, Corporation, Englewood, Co.	05/01/2005	11/15/2005	49 CFR 180.205	To authorize the transportation in commerce of certain cylinders that have been ultrasonically retested for use in transporting Division 2.1, 2.2, 2.3 materials. (Modes 1, 2, 4).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14207–N	PHMSA–21771	GATX Rail Corporation, Chicago, IL.	05/24/2005	09/30/2005	49 CFR 179.13	To authorize the transportation in commerce of Sodium hydroxide solution in DOT specification 111A100W–1 tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (Mode 2).
14209–N	PHMSA–21801	ABB Power Technologies AB, Alamo, TN.	06/27/2005	05/31/2006	49 CFR 173.302a	To authorize the manufacture, mark, sale and use of a non-DOT specification composite cylinder for the transportation of compressed air. (Modes 1, 2, 3, 4).
14210–N	PHMSA–21803	Arbel-Fauvet-Rail, Paris, France.	06/23/2005	10/24/2005	49 CFR 178.276(b)(1)	To authorize the manufacture, marking, sale and use of certain portable tanks permanently fixed within ISO frames designed in accordance with Section VIII, Division 2 of the ASME Code for use in transporting Division 2.1 and 2.2 hazardous materials. (Modes 1, 2, 3).
14213–N	PHMSA–21807	Greif Bros. Corporation, Delaware, OH.	06/08/2005	09/28/2005	49 CFR 173.158	To authorize the manufacture, marking and sale of 55-gallon UN 1H1 drums for shipment of up to 40% nitric acid. (Modes 1, 2, 3).
14215–N	PHMSA–21809	U.S. Department of Energy, Washington, DC.	06/21/2005	02/24/2006	49 CFR 173.420	To authorize the one-time transportation in commerce of certain DOE-owned uranium hexafluoride cylinders using a UX–30 overpack. (Mode 1).
14219–N	PHMSA–21818	PSEG Nuclear LLC, Hancock's Bridge, NJ.	06/01/2005	10/20/2005	49 CFR 173.403, 173.427, 173.465.	To authorize the one-way transportation in commerce by motor vehicle of two Reactor Vessel Closure Head packages containing Class 7 material. (Modes 1, 3).
14221–N	PHMSA–21820	U.S. Department of Energy, Washington, DC.	06/07/2005	06/13/2006	49 CFR 173.420, and 173.465.	To authorize the one-time exclusive use shipment of approximately 1,000 non-DOT specification uranium hexafluoride cylinders. (Mode 1).
14222–N	PHMSA–21821	Clean Harbors Environmental Services, Inc., Bridgeport, NJ.	06/27/2005	07/27/2005	49 CFR 173.240	To authorize the transportation in commerce of a hazardous waste (boiler stacks) on a flatbed motor vehicle. (Mode 1).
14223–N	PHMSA–21933	Technical Concepts, Mundelein, IL.	06/30/2005	03/16/2006	49 CFR 173.306(a)(1) and 173.306(a)(3)(v).	To authorize the transportation in commerce of Division 2.1 aerosols in plastic packagings. (Mode 1).
14227–N	PHMSA–22064	Aluminum Tank Industries, Inc., Winter Haven, FL.	07/18/2005	03/06/2006	49 CFR 177.834(h), 178.700.	To authorize the manufacture, mark, sale, and use of 50 gallon to 105 gallon refueling tanks containing certain Class 3 liquids which will be discharged without removal from the motor vehicle. (Mode 1).
14228–N	PHMSA–22065	Goodrich Corporation, Colorado Springs, CO.	07/08/2005	05/10/2006	49 CFR 173.301(f)	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders containing compressed oxygen without a pressure relief device. (Modes 1, 4, 5).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14230–N	PHMSA–22112	Epichem, Inc., Haverhill, MA.	07/31/2005	11/15/2005	49 CFR 173.302a	To authorize the one-time transportation in commerce of non-DOT specification cylinders containing Dichlorosilane to an ocean shipment consolidation facility and/or port. (Modes 1, 3).
14234–N	PHMSA–22246	Federal Industries Corporation, Plymouth, MN.	08/15/2005	02/02/2006	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of a UN4G fiberboard box as the outer packaging for lab pack applications. (Modes 1, 2, 3).
14236–N	PHMSA–22388	Sexton Can Company Inc., Decatur, AL.	08/24/2005	01/19/2006	49 CFR 173.304(e)	To authorize the manufacture, mark, sale and use of a DOT Specification 2Q non-refillable cylinder of up to 1 liter for use in transporting engine starting fluid. (Modes 1, 2, 3, 4, 5).
14238–N	PHMSA–22357	DACC Lt., Kungnam-do, South Korea.	08/29/2005	12/12/2005	49 CFR 173.302	To authorize the manufacture, mark, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders. (Modes 1, 2, 3, 4, 5).
14247–N	PHMSA–22603	Great Lakes Chemicals Corporation, West Lafayette, IN.	09/23/2005	12/20/2005	49 CFR 178.605	To authorize the transportation in commerce of certain hazardous materials in DOT Specification 51 portable tanks that are overdue for periodic inspection. (Mode 1).
14249–N	PHMSA–22604	Remington Arms Company, Inc., Lonoke, AR.	09/06/2005	03/03/2006	49 CFR 173.62	To authorize the transportation in commerce of cartridges, small arms in a 20-cubic yard bulk box. (Mode 1).
14251–N	PHMSA–22605	Matheson Tri-Gas, Parsippany, NH.	09/21/2005	03/07/2006	49 CFR 172.400a, 172.301(c).	To authorize the transportation in commerce of overpacked cyclinders containing Class 2 materials with a CGA C–7 neckring labels. (Modes 1, 2, 3, 4, 5).
14253–N	PHMSA–22607	Matheson Tri-Gas, East Rutherford, NJ.	09/15/2005	01/09/2006	49 CFR 173.302a	To authorize the one-way, one-time shipment of a DOT 3AA cylinder containing hydrogen sulfide further packed in a non-DOT specification salvage cylinder. (Mode 1).
14254–N	PHMSA–22608	Pharmaceutical Research and Manufacturers of America, Washington, DC.	09/12/2005	03/31/2006	49 CFR 173.307(a)(5)	To authorize the transportation in commerce of aerosols with a capacity of 50 ml or less containing Division 2.2 material and no other hazardous materials to be transported without certain hazard communication requirements. (Modes 1, 2, 3, 4, 5).
14255–N	PHMSA–22609	BP Amoco Chemical Company, Pasadena, TX.	09/15/2005	01/10/2006	49 CFR 173.240	To authorize the one-way transportation in commerce of certain non-DOT specification pressure vessels containing a Class 3 flammable liquid residue. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14256–N	PHMSA–22610	David E. Bradshaw, Decatur, IL.	09/18/2005	02/24/2006	49 CFR 171.8 Design Certifying Engineer.	To authorize an alternative qualification requirement for meeting the Design Certifying Engineer criteria in 49 CFR 171.8 (Mode 1).
14262–N	PHMSA–23294	GATX Rail, Chicago, IL.	09/01/2005	03/03/2006	49 CFR 173.31	To authorize the transportation in commerce of certain rail cars containing carbon dioxide with a tank head thickness slightly below the minimum required. (Mode 2).
14263–N	PHMSA–23288	U.S. Department of Energy (DOE), Washington, DC.	09/29/2005	05/26/2006	49 CFR 178.356	To authorize the manufacture, marking and sale of DOT Specification 20PF–1, 20PF–2 and 20PF–3 overpacks manufacture in variance with the specification in 49 CFR 178.356, and for their transport when containing uranium hexafluroride, fissile in Type A packagings. (Modes 1, 2, 3, 4).
14267–N	PHMSA–22925	Department of Energy, Washington, DC.	10/13/2005	06/30/2006	49 CFR 173.417(a)(1)	To authorize the transportation in commerce of waste fissile uranium contaminated equipment in a DOT 7A, type A packaging when transported by motor vehicle or rail. (Modes 1, 2).
14272–N	PHMSA–22927	Arrow Tank and Engineering Co., Minneapolis, MN.	10/12/2005	04/28/2006	49 CFR 173.5a	To authorize the transportation in commerce of a non-specification cargo tank (volumetric meter prover) containing the residue of a Division 2.1 material. (Mode 1).
14273–N	PHMSA–22929	Garden State Tobacco d/b/a H.J. Bailey Co., Neptune, NJ.	10/07/2005	02/03/2006	49 CFR 172.102 Special provision N10; 173.308.	To authorize the transportation in commerce of lighters in non-DOT specification packaging without marking the approval number (T number) on the outer package. (Mode 1).
14274–N	PHMSA–22923	Horiba Instruments, Inc., Irvine, CA.	10/10/2005	04/26/2006	49 CFR 177.834(h)	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (Mode 1).
14275–N	PHMSA–22933	Hawk FRP, LLC, Ardmore, OK.	10/10/2005	04/24/2006	49 CFR 178.345	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tanks constructed of glass fiber reinforced plastic for use in transporting various hazardous materials. (Modes 1).
14279–N	PHMSA–23028	Airgas, Inc., Cheyenne, WY.	10/30/2005	01/12/2006	49 CFR 173.40; 173.304.	To authorize the transportation in commerce of hydrogen sulfide in DOT specification cylinders with a service pressure of 480 psig. (Modes 1,3).
14280–N	PHMSA–23029	Albemarle Corporation, Tyrone, PA.	10/26/2005	01/06/2006	49 CFR 173.226(a)	To authorize the one-time transportation in commerce of bromine in DOT-specification 4BW cylinders by motor vehicle. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14281–N	PHMSA–23027	Inflation Systems, Inc., Moses Lake, WA.	10/03/2005	02/21/2006	49 CFR 173.56(b), 173.61(a).	To authorize the transportation in commerce of certain scrap airbag inflators, seat belt pretensioners and/or airbag modules classified as Division 1.3C explosive articles.
14283–N	PHMSA–23246	U.S. Department of Energy (DOE), Washington, DC.	11/14/2005	07/27/2006	49 CFR Part 172, Subparts E, F; 171.15; 171.16; 172.202; 172.203(c)(1)(i)''; 172.203(d)(1); 172.310; 172.316(a)(7); 172.331(b)(2); 172.332; 173.403(c); 173.425(c)(1)(iii); 173.425(c)(5); 173.443(a); 174.24; 174.25; 174.45; 174.59; 174.700; 174.715; 177.807;177.843(a).	To authorize the transportation in commerce of low specific activity radioactive materials (uranium mill tailings) Under special conditions in non-DOT specification packagings without labeling and placarding. (Modes 1, 2).
14286–N	PHMSA–23245	EF Products, Inc., Dallas TX.	11/15/2005	01/31/2006	49 CFR 173.304(d)	To authorize the manufacturer, mark, sale and use of a non-refillable, non-DOT specification inside metal container similar to a DOT 2Q container for the transportation of certain hazardous materials. (Modes 1, 2, 3, 4).
14287–N	PHMSA–23247	Troxler Electronic Laboratories, Inc, Research Triangle Park, NC.	11/04/2005	04/25/2006	49 CFR 173.431	To authorize the transportation in commerce of certain radioactive materials exceeding the quantity that may be transported in a Type A packaging. (Modes 1, 4)
14296–N	PHMSA–23599	Triple S Gas Tanks (PTY) Ltd dba Gas-Con, Elsieriver, South Africa.	12/22/2005	04/07/2006	49 CFR 173.315	To authorize the manufacture, marking, sale and use of certain non-DOT Specification steel portable tanks conforming with Section VIII, Division 2 of the ASME Code for the transportation in commerce of Division 2.1 and 2.2 materials (Modes 1, 2, 3).
14297–N	PHMSA–23585	Transition Packaging Inc., Lawrenceville, GA.	12/14/2005	06/15/2006	49 CFR 173.201, 173.202, 173.203.	To authorize the transportation in commerce of certain hazardous material liquids in a UN5H woven plastic bag. (Modes 1, 3, 4, 5).
14303–N	PHMSA–23643	Constellation Energy, Lusby, MD.	12/15/2005	06/15/2006	49 CFR 173.403, 173.427(b)(1), 173.465(c) and 173.465(d).	To authorize the one-time, one-way transportation in commerce of reactor vessel closure heads in alternative packaging. (Mode 1).
14311–N	PHMSA–23869	The Boeing Company, St. Louis, MO.	01/27/2006	03/28/2006	49 CFR 173.304a; 175.3.	To authorize the transportation in commerce of cylinders manufactured under DOT–E 7945 without a strong outer packaging. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14313–N	PHMSA–23868	Airgas, Inc., Radnor, PA.	01/11/2006	06/16/2006	49 CFR 173.302a(b)(2), (3), (4) and (5), 180.205, 180.209, 172.203(a), 172.301(c).	To authorize the use of ultrasonic inspection as an alternative retest method for certain DOT specification cylinders and certain cylinders manufactured under a DOT special permit. (Modes 1, 2, 3).
14315–N	PHMSA–23858	Safe-T-Tank Corp, Meriden, CT.	01/18/2006	04/21/2006	49 CFR 177.834	To authorize the manufacture, mark, sale and use of non-bulk, non-DOT Specification metal refueling tanks for transportation of certain Class 3 liquids. (Mode 1).
14317–N	PHMSA–23857	GLI Citergaz, St. Pierre D'Exideuil, Civray, France, FR.	01/17/2006	07/18/2006	49 CFR 173.315	To authorize the manufacture, mark, sale and use of certain non-DOT Specification steel portable tanks conforming with Section VIII, Division 2 of the ASME Code for the transportation in commerce of Division 2.1 and 2.2 materials. (Modes 1, 2, 3).
14323–N	PHMSA–24352	Puritan Products, Bethlehem, PA.	02/06/2006	07/24/2006	49 CFR 173.158	To authorize the transportation in commerce of nitric acid, other than red fuming in UN6HA1 composite drums by highway. (Mode 1).
14325–N	PHMSA–24276	Air Transport International LLC (ATI), Little Rock, AR.	02/22/2006	04/25/2006	49 CFR Table § 172.101, Column (9B).	To authorize the transportation in commerce of certain Division 1.1 and 1.2 rockets which exceed quantities authorized for transportation by cargo aircraft only. (Mode 4).
14329–N	PHMSA–24381	Qal-Tek Associates, Idaho Falls, ID.	03/01/2006	07/10/2006	49 CFR 173.431	To authorize the transportation in commerce of certain radioactive materials exceeding the quantity that may be transported in a Type A packaging. (Modes 1, 4).
14332–N	PHMSA–24401	Eagle-Picher Technologies, LLC, Joplin, MO.	03/08/2006	07/27/2006	49 CFR 173.226(c)	To authorize the transportation in commerce of certain Division 6.1 hazardous materials in Hazard Zone A in packaging with a lower hydrostatic test pressure. (Modes 1, 2).
14333–N	PHMSA–24382	The Columbiana Boiler Co., Columbiana, OH.	03/13/2006	07/31/2006	49 CFR 179.300–13(b)	To authorize the transportation in commerce of certain DOT Specification 110A500W containers that have straight threads in the clean-out/inspection port openings instead of National Gas Taper Threads. (Mode 2).
14334–N	PHMSA–24395	Rohm and Haas Chemicals LLC, Philadelphia, PA.	05/01/2006	07/20/2006	49 CFR 177.834(i) (1) and (3).	To authorize the use of video cameras and monitors to observe the loading and unloading operations meeting the definition of "loading incidental to movement" or "unloading incidental to movement" as those terms are defined in § 171.8 of the Hazardous Materials Regulations from a remote control station in place of personnel remaining within 25 feet of a cargo tank motor vehicle. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14335–N	.....	Rinchem Company, Albuquerque, NM.	03/24/2006	08/03/2006	49 CFR 177.848(d)	To authorize the transportation of Division 2.3 Zone A materials in the same transport vehicle as packages containing the residue only of Division 2.1, 2.2, 2.3, 4.3, 5.1 and Class 3 and 8 hazardous materials. (Mode 1).
14336–N	PHMSA–24394	Ecology Control Industries, Torrance, CA.	03/01/2006	06/23/2006	49 CFR 173.244	To authorize the one-way transportation in commerce of sodium metal in non-DOT specification bulk packaging by highway. (Mode 1).
14339–N	PHMSA–24397	Crossfire Composites Company, Kalamazoo, MI.	03/14/2006	07/25/2006	49 CFR 173.302a, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification fully wrapped carbon composite aluminum lined cylinders for the transportation in commerce of certain Division 2.1 and 2.2 hazardous materials. (Modes 1, 2, 3, 4, 5).
14342–N	PHMSA–24536	Tri-Wall, A Weyerhaeuser Business, Butler, IN.	03/29/2006	08/01/2006	49 CFR 173.12(b)	Authorizes the manufacture, mark, sale and use of a corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b).
14349–N	PHMSA–24752	Matheson Tri-Gas, Parsippany, NJ.	04/07/2006	08/02/2006	49 CFR 173.3(d)(2)(ii)	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinders with a water capacity of more than 119 gallons for use in transporting damaged, leaking or improperly filled cylinders containing various hazardous materials. (Modes 1, 2, 3).
EMERGENCY SPECIAL PERMIT GRANTED						
EE 14016–M	RSPA–04–19798	Air Products & Chemicals, Inc., Allentown, PA.	02/07/2005	02/09/2005	49 CFR 106, 107 and 171–180.	To reissue the exemption originally issued as an emergency exemption, to authorize the transportation in commerce of Tungsten hexafluoride in DOT Specification 3 BN cylinders that have been requalified by external visual inspection instead of hydrostatic retesting and internal visual inspection. (Modes 1, 2, 3). To modify the exemption to remove the five-year transportation limitation for completed air bag modules (Modes 1, 2, 3, 4).
EE 11379–M	.....	TRW Occupant Safety Systems, Washington, MI.	02/24/2005	03/08/2005	49 CFR 173.301(h), 173.302.	To modify the exemption to remove the five-year transportation limitation for completed air bag modules. (Modes 1, 2, 3, 4).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14160–M	PHMSA–05–20620	George Mason University, Fairfax, VA.	04/28/2005	05/05/2005	49 CFR 173.336, 173.192 and 173.40.	To reissue the exemption originally issued on an emergency basis for the one time transportation in commerce of two cylinders that are no longer authorized to contain nitrogen dioxide (they were filled in the early 60's.) (Mode 1).
EE 14181–M	PHMSA–05–21089	American Promotional Events, Florence, AL.	05/02/2005	05/04/2005	49 CFR 173.62	To modify the exemption to allow more than 2 bulk packagings per common carrier and to increase the maximum capacity of the packaging. (Mode 1).
EE 13179–M	RSPA–02–14020	Burlington Environmental dba Philip Services Corp., Kent, WA.	04/13/2005	05/17/2005	49 CFR 173.21; 173.308.	To modify the exemption to include the additional modes of air and rail transportation for the transportation in commerce of lighters that have been removed from their approved inner packagings, are partially used, and are being transported for disposal without further approval. (Mode 1).
EE 14005–M	RSPA–04–19585	Scientific Cylinder International, LLC, Castle Rock, CO.	05/10/2005	06/06/2005	49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a).	To modify the exemption to authorize the temporary, emergency authority to test cylinders at locations identified in Scientific Cylinder's application. (Modes 1, 2, 3, 4, 5, 6).
EE 14006–M	RSPA–04–19586	Scientific Cylinder International LLC, Castle Rock, CO.	05/10/2005	06/06/2005	49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a).	To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3AL cylinders containing Division 2.1, 2.2 and 2.3 materials when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. (Modes 1, 2, 3, 4, 5).
EE 14171–M	PHMSA–05–20832	NASA, Houston, TX.	06/08/2005	06/16/2005	49 CFR 173.301(f)	To modify the exemption to allow transportation of a pressurized corrosive material. (Modes 1, 4, 5).
EE 14204–M	PHMSA–21772	Great Lakes Chemicals Corporation, Lafayette, IN.	09/15/2005	11/29/2005	49 CFR 173.226(b) and (d).	To modify the exemption to eliminate the use of a contract carrier in exclusive use of Great Lakes Chemical Corporation and permit shipment by motor carriers meeting the Carrier Profile and Carrier Self Assessment listed in the original application. (Mode 1).
EE 14241–M	PHMSA–25163	EPA Region 4 (Mississippi), Atlanta, GA.	12/15/2005	12/29/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Mississippi under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14243–M	PHMSA–25160	EPA Region 4 (Alabama), Atlanta, GA.	09/16/2005	09/16/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Alabama under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14244–M	PHMSA–25161	EPA Region 4 (Florida), Atlanta, GA.	09/16/2005	09/16/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Florida under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14242–M	PHMSA–25164	EPA Region 6 (Louisiana), Dallas, TX.	09/16/2005	09/16/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 9571–M	.....	U.S. Department of Justice (FBI), Quantico, VA.	11/14/2005	11/14/2005	49 CFR Parts 100–177.	To modify the exemption by adding more information to the proper shipping description of the approved and unapproved explosives authorized under the terms of the exemption. (Modes 1, 2, 3, 4, 5).
EE 14245–M	PHMSA–23856	Airgas, Inc., Cheyenne, WY.	12/01/2005	12/08/2005	49 CFR Part 172, Subparts A, B, C, D, E and F.	To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of certain cylinders that have had hazard communication markings and labels removed as a result of weather conditions related to Hurricane Katrina. (Mode 1).
EE 14242–M	PHMSA–25164	EPA Region 6 (Louisiana), Dallas, TX.	12/15/2005	12/22/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina and Rita disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 11970–M	RSPA–2993	Albemarle Corporation, Baton Rouge, LA.	12/20/2005	12/21/2005	49 CFR 172.101; 178.245–1(c).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in a non-DOT specification portable tank. (Modes 1, 2, 3).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 10885–M	.....	U.S. Department of Energy, Washington, DC.	12/21/2005	07/07/2006	49 CFR 172.101 Col. 9(b); 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3).	To modify the special permit by excepting 49 CFR 175.320(b)(1)(5) and (7) in paragraph 4 of the special permit. (Mode 4).
EE 6293–M	.....	St. Marks Powder, Inc., St. Marks, FL.	02/23/2006	03/20/2006	49 CFR 173.248; 173.51(f).	To modify the exemption to include the ability to utilize a cargo tank for acid products other than spent nitrating acid mixtures. (Mode 1).
EE 14242–M	PHMSA–25164	EPA Region 6 (Louisiana), Dallas, TX.	09/23/2005	09/23/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina and Hurricane Rita disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 14241–M	PHMSA–25163	EPA Region 4 (Mississippi), Atlanta, GA.	09/16/2005	09/16/2005	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Mississippi under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14242–M	PHMSA–25164	EPA Region 6 (Louisiana), Dallas, TX.	03/15/2006	03/31/2006	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina and Hurricane Rita disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 14241–M	PHMSA–25163	EPA Region 4 (Mississippi), Atlanta, GA.	03/28/2006	03/31/2006	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Mississippi under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14241–M	PHMSA–25163	EPA Region 4 (Mississippi), Atlanta, GA.	03/28/2006	03/31/2006	49 CFR 171–180	To reissue the exemption originally issued on an emergency basis to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Mississippi under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 11818–M	.....	Orbital Sciences Corporation, Dulles, VA.	05/26/2006	08/07/2006	49 CFR 173.34(d)	To modify the special permit to authorize the transportation in commerce of certain Class 8, lithium batteries by cargo aircraft only. (Modes 1, 3, 4).
EE 14367–M	PHMSA–25299	Volga Dnepr Airlines, Ulyanovsk, Russia.	06/29/2006	06/29/2006	49 CFR 172.101 Column 9B.	To modify the special permit to change the scheduled flight departure and arrival dates. (Mode 4).
EE 14367–M	PHMSA–25299	Volga Dnepr Airlines, Ulyanovsk.	06/29/2006	06/30/2006	49 CFR 172.101 Column 9B.	To modify the special permit to clarify the authorized hazardous materials payload for transport. (Mode 4).
EE 12628–M	RSPA–8836	Arbel Fauvet Rail (A.F.R.), Douiai.	01/17/2006	07/17/2006	49 CFR 178.245–1(b)	To modify the special permit to authorize a new tank design. (Mode 1).
EE 14116–N	RSPA–05–20123	Green's Blue Flame Gas Co., Inc. Houston, TX.	01/10/2005	01/11/2005	49 CFR 173.315(k)	To authorize the transportation in commerce of a non-DOT specification 500 gallon storage tank containing approximately 350 gallons of propane one-time, one way for remediation. (Mode 1).
EE 14117–N	RSPA–05–20130	MGP Ingredients, Inc., Atchison, KS.	01/11/2005	01/13/2005	49 CFR 180.509(h)(2)	To authorize the transportation in commerce of 65 DOT Specification stainless steel tank cars which are overdue for inspection of the reclosing pressure relief devices. (Mode 2).
EE 14118–N	PHMSA–05–21792	Tooele County Emergency Management, Tooele, UT.	01/05/2005	01/14/2005	49 CFR 172.101 HMT, Column (9B) and 175.5(a)(2).	To authorize the transportation in commerce of Propane in DOT Specification 4B240 cylinders exceeding the weight limitations authorized for shipment by cargo aircraft in Utah. (Mode 4).
EE 14145–N	PHMSA–05–20834	T–AKE Naval Sea Systems Command, Washington, DC.	01/27/2005	03/03/2005	49 CFR 176.116	To authorize the transportation in commerce of certain class 1 materials by vessel in an alternative stowage configuration. (Mode 3).
EE 14147–N	RSPA–05–20420	Clean Harbors Environmental Services, Inc., Greenbrier, TN.	02/10/2005	02/11/2005	49 CFR 173.244	To authorize the one-time shipment of a Division 4.3 material in non-DOT specification bulk packaging by highway. (Mode 1).
EE 14153–N	PHMSA–05–20470	BASF Corporation, Florham Park, NJ.	02/17/2005	02/22/2005	49 CFR 173.227(c)	To authorize the one-time transportation in commerce of toxic liquid, corrosive, organic, N.O.S. in UN drums that do not have the required overpack. (Mode 1).
EE 14160–N	PHMSA–05–20620	George Mason University, Fairfax, VA.	02/23/2005	03/03/2005	49 CFR 173.336, 173.192 and 173.40.	To authorize the one-time transportation in commerce of two cylinders that are no longer authorized to contain nitrogen dioxide. (Mode 1).
EE 14165–N	PHMSA–05–20619	Saint Louis University—Center for Vaccine Development, St. Louis, MO.	02/25/2005	03/03/2005	49 CFR 173.196	To authorize the transportation in commerce of infectious substances and diagnostic specimens in containers that are not authorized in the HMR. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14169–N	PHMSA–05–20670	Allied Universal Corporation, Miami, FL.	03/07/2005	03/08/2005	49 CFR 173.24, 179.300.	To authorize the one-time, one-way transportation in commerce of a leaking tank car tank that has been fitted with an emergency "B" chemical kit. The tank contains chlorine and an emergency exemption is necessary to protect life and the environment. (Mode 1).
EE 14170–N	PHMSA–05–20714	General Dynamics, Lincoln, NE.	03/08/2005	03/21/2005	49 CFR 173.302a	To authorize the transportation in commerce of certain compressed gases in non-DOT specification fiberglass reinforced plastic cylinders. (Modes 1, 2, 4).
EE 14171–N	PHMSA–05–20832	NASA, Houston, TX.	03/23/2005	04/07/2005	49 CFR 173.301(f)	To authorize the transportation in commerce of nitrogen in non-DOT specification cylinders, without pressure relief devices, in support of the space shuttle. (Modes 1, 4, 5).
EE 14181–N	PHMSA–05–21089	American Promotional Events, Florence, AL.	04/20/2005	04/29/2005	49 CFR 173.62	To authorize the transportation in commerce of fireworks in a non-DOT specification bulk container. (Mode 1).
EE 14182–N	PHMSA–05–21125	Chugach Electric Association, Anchorage, AK.	04/22/2005	04/26/2005	49 CFR 172.101 (column 9b).	To authorize the transportation in commerce of certain materials that exceed quantity limitations when shipped by cargo aircraft. (Mode 4).
EE 14192–N	PHMSA–05–21261	Huntsman Corportation, The Woodlands, TX.	05/06/2005	06/02/2005	49 CFR Part 173, subparts A and B.	To authorize the transportation in commerce of seveal low pressure, high temperative reactors containing an oxidizer. (Mode 1).
EE 14193–N	PHMSA–05–21763	Honeywell, Morristown, NJ.	05/04/2005	05/11/2005	49 CFR 173.313	To authorize the emergency transportation in commerce of Liquefied gas, toxic, flammable, inhalation hazard zone B, UN3160 in IMO type 5 portable tanks. (Modes 1, 3).
EE 14194–N	PHMSA–05–21246	Zippo Manufacturing Corporation, Bradford, PA.	05/09/2005	06/22/2005	49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33.	Emergency exemption request to authorize the transportation of Zippo lighters in special travel containers in checked luggage in commercial passenger aircraft. (Mode 5).
EE 14195–N	PHMSA–05–21795	Burlington Environmental Inc. dba Philip Services Corporation, Kent, WA.	04/13/2005	05/16/2005	49 CFR 173.21	To authorize the emergency transportation in commerce of cigarette lighters for disposal in certain non-bulk packagings by cargo-only aircraft within the State of Alaska. (Modes 1, 4).
EE 14203–N	PHMSA–21438	AlliantTechsystems, Inc. (ATK), Plymouth, MN.	05/25/2005	06/01/2005	49 CFR 172.203(a), 172.301(c), 178.3(c) and 178.503(a)(1).	Emergency request to authorize the transportation in commerce of 1.3C propellants contained in UN 1G fiber drums that have partial performance oriented packaging certification markings. (Modes 1, 2, 3, 4, 5, 6).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14208–N	PHMSA–21669	Lockheed Martin Space Systems Company, Sunnyvale, CA.	06/03/2005	07/12/2005	49 CFR 173.226 and 173.336.	To authorize the one-way highway transportation in commerce of a fueled THADD Duvert and Attitude Control System assembly containing separate cylinders of methyl hydrazine and dinitrogen tetroxide. (Mode 1).
EE 14211–N	PHMSA–21775	Airgas, Vancouver, WA.	06/29/2005	06/29/2005	49 CFR 172.301(c), 173.301(f).	Emergency request to authorize the transportation in commerce of anhydrous ammonia in a DOT Specification 4AA480 cylinder that developed a leak and has an Ammonia Emergency Kit applied. (Mode 1).
EE 14224–N	PHMSA–22355	Petroleum Helicopters, Inc., Lafayette, LA.	07/12/2005	07/12/2005	49 CFR 172.101; 172.203(a); 172.301(c); 175.320(a).	To authorize the one time transportation in commerce of certain division 1.1 (1.1D) explosives which are forbidden by cargo aircraft (Mode 4).
EE 14240–N	PHMSA–22436	Mercury Marine, Inc., Fond du Lac, WI.	09/01/2005	09/02/2005	49 CFR 172.301, 173,220, 175.305(a)(1).	To authorize the emergency transportation in commerce of certain hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas not subject to certain requirements of the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 14241–N	PHMSA–25163	EPA Region 4 (Mississippi), Atlanta, GA.	09/02/2005	08/31/2005	49 CFR 171–180	Request for an emergency exemption to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Mississippi under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14242–N	PHMSA–25164	EPA Region 6 (Louisiana), Dallas, TX.	09/02/2005	08/31/2005	49 CFR 171–180	Request for an emergency exemption to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Louisiana under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).
EE 14243–N	PHMSA–25160	EPA Region 4 (Alabama), Atlanta, GA.	09/02/2005	08/31/2005	49 CFR 171–180	Request for an emergency exemption to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Alabama under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14244–N	PHMSA–25161	EPA Region 4 (Florida), Atlanta, GA.	09/02/2005	08/31/2005	49 CFR 171–180	Request for an emergency exemption to transport hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Katrina disaster areas of Florida under conditions that may not meet the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5).
EE 14245–N	PHMSA–23856	Airgas, Inc., Cheyenne, WY.	09/15/2005	09/14/2005	49 CFR Part 172, Subparts A, B, C, D, E, and F.	To authorize the transportation in commerce of certain cylinders that have had hazard communication markings and labels removed as a result of weather conditions related to Hurricane Katrina. (Mode 1).
EE 14246–N	PHMSA–24353	Airgas, Inc., Cheyenne, WY.	09/16/2005	09/21/2005	49 CFR 180.205(c)	To authorize the transportation in commerce of certain cylinders that are out of test by no more than one year. The cylinders are needed as a result of the effects of Hurricane Katrina. (Mode 1).
EE 14248–N	PHMSA–25162	EPA Region 6 (Texas), Dallas TX.	09/23/2005	09/23/2005	49 CFR, Parts 171 through 180.	To authorize the transportation in commerce of hazardous materials used to support the recovery and relief efforts to, from and within the Hurricane Rita disaster areas. (Models 1, 2, 3, 4, 5, 6).
EE 14250–N	PHMSA–25534	Daniels Sharpsmart, Inc., Dandenong, Australia.	09/26/2005	12/21/2005	49 CFR 172.301(a)(1); 172.301(c).	To authorize the emergency transportation in commerce of a Division 6.2 material in packagings marked with an unauthorized proper shipping name. (mode 1).
EE 14265–N	PHMSA–22710	Ecology Control Industries, Montclair, CA.	10/07/2005	10/14/2005	49 CFR 173.244	To authorize the transportation in commerce of Sodium in non-DOT specification packages. (Mode 1).
EE 14282–N	PHMSA–23287	Dyno Nobel Transportation, Inc., Salt Lake City, UT.	10/11/2005	12/22/2005	49 CFR 173.835(g)	This emergency special permit authorizes the transportation in commerce of certain detonators and detonator assemblies on the same motor vehicle with any other Class 1 explosives when they are in separate and isolated cargo-carrying compartments powered by the same tractor. (Mode 1).
EE 14290–N	PHMSA–23321	Phoenix Air Group, Inc., Cartersville, GA.	12/01/2005	12/08/2005	49 CFR 172.101, column 9(B), 172.204(c)(3) and 173.27(b)(2)(3) and 175.30(a)(1).	The emergency special permit authorizes the one-time, one-way transportation in commerce of certain Division 1.1 and 1.5 explosives which are forbidden in cargo aircraft. (Mode 4).
EE 14291–N	PHMSA–23406	Bristol Bay Contractors, King Salmon, AK.	12/14/2005	12/19/2005	49 CFR 172.101 table, column 9(b).	Request for an emergency exemption to transport liquefied petroleum gas in quantities that exceed the quantities specified for cargo aircraft in the Hazardous Materials Regulations. (Mode 4).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14292–N	PHMSA–23591	Honeywell International Inc., Morristown, NJ.	12/15/2005	12/22/2005	49 CFR 173.301(d)(2); 173.302(a)(3).	This emergency special permit authorizes the transportation in commerce of boron trifluoride in DOT Specification 3AAX and 3AA manifolded cylinders. (Mode 1).
EE 14293–N	PHMSA–23405	Seacon Corporation, Charlotte, NC.	12/13/2005	01/24/2006	49 CFR 178.3	To authorize the transportation in commerce of certain multiwall paper bags that meet the performance requirements but do not have the proper specification marking. (Modes 1, 2, 3, 4, 5).
EE 14306–N	PHMSA–23789	BASF Corporation, Florham Park, NJ.	01/13/2006	01/13/2006	49 CFR 173.227(b)(3)(iv).	An application for an emergency special permit for authorization to transport a TIH, Zone B material with an inner container of a UN drum that does not meet the minimum thickness requirements.(Mode 1).
EE 14307–N	PHMSA–23788	Gayson SDI, Barberton, OH.	01/17/2006	01/23/2006	49 CFR 178.3	Application for an emergency special permit to authorize the transportation in commerce of certain drums containing organic peroxides that have not been marked with the UN markings. (Mode 1).
EE 14308–N	PHMSA–23750	Space Systems/Loral, Palo Alto, CA.	01/13/2006	01/20/2006	49 CFR 173.304a	To authorize the transportation in commerce of a non-DOT specification pressure vessel as part of a satellite assembly containing anhydrous ammonia. (Modes 1, 4).
EE 14309–N	PHMSA–24678	NYESC Acquisition Corp. dba Health Care Waste Services, Bronx, NY.	01/16/2006	01/30/2006	49 CFR 173.197(e)(1)(i); 172.301(c).	To authorize the emergency transportation in commerce of a Division 6.2 material in packagings which have not been marked with the ASTM testing certification. (Mode 1).
EE 14319–N	PHMSA–23900	United States Can Company Elgin, IL.	02/07/2006	02/09/2006	49 CFR 172.301(c)	To authorize the transportation in commerce of cans that have been manufactured in accordance with special permit 11644, but have been mis-marked with "134a" instead of the required "DOT–E 11644". (Mode 1).
EE 14320–N	PHMSA–23988	DSM Nutritional Products, Inc., Belvidere, NJ.	02/03/2006	02/09/2006	49 CFR 173.241	To authorize the transportation in commerce of a Division 4.2 material in non-DOT specification intermediate bulk containers by highway. (Mode 1).
EE 14321–N	PHMSA–23987	Luxfer, Inc., Riverside, CA.	02/15/2006	06/07/2006	49 CFR 173.302a, 173.304a, 180.205.	To authorize the transportation in commerce of approximately 118 cylinders originally manufactured under DOT–SP 10915 which were not subjected to proper autofrettage and/or hydrostatic testing by the Independent Inspection Agency containing division 2.2 hazardous material. (Modes 1, 3, 5).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14322–N	PHMSA–24024	Iditarod Trail Committee, Wasilla, AK.	02/16/2006	02/17/2006	49 CFR 173.27(c)(2) ..	To issue an emergency Special Permit to authorize the transportation in commerce of an ORM–D by air. the packaging does not meet the pressure capability requirements in 173.27(c)(2). (Mode 4).
EE 14327–N	PHMSA–24248	The Colibri Group, Providence, RI.	03/14/2006	03/29/2006	49 CFR 173.21, 173.308, 175.33.	Emergency exemption request to authorize the transportation of Colibri lighters in special travel containers in checked luggage in commercial passenger aircraft. (Mode 5).
EE 14328–N	PHMSA–24399	Korean Air Cargo, DFW Airport, TX.	03/20/2006	04/24/2006	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To authorize the transport of Division 1.3G explosives (ignitors) which are forbidden for shipment by cargo-only aircraft. (Mode 4).
EE 14340–N	PHMSA–24533	The Lightship Group, Orlando, FL.	12/21/2005	05/04/2006	49 CFR 173.6	To authorize the transportation in commerce of a flammable liquid in a 20 gallon non-DOT specification packaging by highway. (Mode 1).
EE 14344–N	PHMSA–25534	U.S. Environmental Protection Agency, Edison, NJ.	04/11/2006	04/19/2006	49 CFR 172.101 Table, Column 8C.	To authorize the emergency one-way transportation in commerce of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores, in a non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packagings conforming to the provisions of this special permit for decontamination.
EE 14351–N	PHMSA–24679	Department of Defense, Ft. Eustis, VA.	04/27/2006	04/28/2006	49 CFR 173.227(b)	To authorize the one-time shipment in exclusive use vehicles, of Nitric acid in 55 gallon DOT 42B drums which deviate from the required wall thickness, secondary cap seal and overpack requirements for Packing Group I Hazard Zone B materials. (Mode 1).
EE 14354–N	.....	Air Products and Chemicals, Inc, Allentown, PA.	05/22/2006	08/09/2006	49 CFR 173.40(b); 173.301(f).	To authorize the one way return transportation of approximately 24 DOT 3AA–2015 cylinders overfilled with a Division 2.3 gas (Mode 1).
EE 14355–N	PHMSA–25012	Honeywell International Inc., Morristown, NJ.	05/01/2006	07/07/2006	49 CFR 173.31(b)(3); 173.31(b)(4).	To authorize the transportation in commerce of nine DOT Specification 112 tank cars without head and thermal protection for use in transporting certain Division 2.2 material by extending the date for retrofitting beyond July 1, 2006. (Mode 2).
EE 14359–N	PHMSA–25277	Martex Biosciences Corporation, Winchester, KY.	06/06/2006	06/23/2006	49 CFR 173.241	To authorize the transportation in commerce of certain Division 4.2 PG II and III materials in non-DOT specification intermediate bulk containers by highway. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
EE 14361–N	PHMSA–25276	Rodda Paint Co., Anchorage, AK.	06/21/2006	06/23/2006	49 CFR 173.27(c)(2)(i) and (ii).	To authorize the transportation in commerce of certain UN1A2/Y1.6/90 steel drums containing paint that do not meet the 95 kPa pressure requirement for transportation by air in remote areas of Alaska. (Modes 1,4).
EE 14363–N	PHMSA–25278	L.A. Chemical, Southgate, CA.	06/22/2006	06/23/2006	49 CFR 173.240	To authorize the one-time highway transportation in commerce of seven freight containers containing 140 flexible IBCs containing Ammonium fluoride, 6.1, PG III that have become wet and may leak liquid hazardous material. (Mode 1).
EE 14364–N	PHMSA–25297	Dow Corning Corporation, Midland, MI.	06/27/2006	06/29/2006	49 CFR 180.407	To authorize the transportation in commerce of hydrogen chloride in an MC–331 specification cargo tank for which the prescribed periodic retest or reinspection is past due. (Mode 1).
EE 14367–N	PHMSA–25299	Volga Dnepr Airlines, Ulyanovsk, Russia.	06/27/2006	06/29/2006	49 CFR 172.101 Column 9B.	To authorize the one-way transportation in commerce of certain Division 1.3L explosives and lithium batteries as part of the payload for the Sea Launch Integrated Launch Vehicle by cargo only aircraft. (Mode 4).
MODIFICATION SPECIAL PERMIT WITHDRAWN						
12384–M	RSPA–99–6561	OilAir Hydraulics, Inc., Houston, TX.	01/10/2005	11/18/2005	49 CFR 173.302(a)(1); 175.3.	To modify the exemption to authorize an increased design pressure not to exceed 10,000 psig and a minimum 3:1 design service to burst ratio for the steel hydraulic accumulators transporting Division 2.2 materials.
10590–M	.....	ITW/SEXTON (formerly SEXTON CAN COMPANY, INC., Decatur, AL.	02/23/2005	09/20/2005	49 CFR 173.304a(d)(3)(ii); 178.33.	To modify the exemption to authorize a design change to the nonrefillable, non-DOT specification, inside container and the transportation of a Class 3 and additional Division 2.1 material.
12929–M	RSPA–03–14412	Matheson Tri-Gas, East Rutherford, NJ.	06/30/2005	04/24/2006	49 CFR 173.301(1)	To modify the exemption to authorize the optional use of pressure relief devices on certain domestic shipments for the transportation of certain Division 2.3 materials.
11670–M	.....	Oilphase Schlumberger, Dyce, Aberdeen Scotland.	07/21/2005	11/16/2005	49 CFR 178.36	To modify the exemption to authorize the alternative use of a nickel-based precipitation hardenable alloy for the non-DOT specification cylinder used for oil well sampling.
12290–M	RSPA–99–5858	Savage Services Corp. (formerly Savage Industries, Inc.), Pottstown, PA.	08/01/2005	09/27/2005	49 CFR 174.67(a)(2) ..	To modify the exemption to authorize the unloading of additional Class 3 and 8 and Division 5.1 materials in DOT Specification and non-DOT specification tank cars.

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
12844–M	RSPA–01–10753	Delphi Corporation, Vandalia, OH.	12/06/2005	06/22/2005	49 CFR 173.301(h); 173.302(a); 175.3.	To modify the special permit to authorize an increase in maximum service pressure of the non-DOT specification cylinder design.
11579–M	.....	Dyno Nobel, Inc., Salt Lake City, UT.	12/19/2005	06/22/2005	49 CFR 177.848(e)(2); 177.848(g)(3).	To modify the special permit to authorize the transportation of additional Class 8 materials in non-DOT specification metal containers.
13601–M	RSPA–18713	DS Containers, Batavia, IL.	04/05/2006	05/19/2006	49 CFR 173.306(b)(1);175.3.	To modify the special permit to authorize the use of an alternative non-DOT specification inner non-refillable container and revised procedures for testing an approved lot.
NEW SPECIAL PERMIT WITHDRAWN						
14138–N	RSPA–20343	INO Therapeutics, Inc., Port Allen LA.	01/05/2005	05/18/2006	49 CFR 172.202, 172.301.	To authorize the transportation in commerce of certain hazardous materials for use in clinical-blinded studies with alternative shipping papers and markings. (Modes 1, 3).
14140–N	RSPA–05–20342	Albemarle Corporation, Baton Rouge, LA.	01/27/2005	09/07/2005	49 CFR 172.101(j) and Column (9B) of the HMT and 173.27.	To authorize the transportation of a Division 4.3 material in DOT specification 3AA cylinders further packed in a UN fiberboard box by cargo aircraft only. (Mode 4).
14179–N	PHMSA–05–21793	USA Jet Airlines, Belleville, MI.	03/01/2005	09/20/2005	49 CFR 175.33	To authorize the transportation commerce of hazardous materials by air with alternative notification to the pilot. (Modes 4, 5).
14184–N	PHMSA–21129	Global Refrigerants, Inc., Denver, CO.	04/04/2005	07/11/2006	49 CFR 173.301(j)	To authorize the one-time, one-way, transportation in commerce of approximately 250 non-DOT specification cylinders of refrigerant gas. (Mode 1).
14197–N	PHMSA–05–21770	GATX Rail Corporation, Chicago, IL.	05/24/2005	05/18/2006	49 CFR 173.31(b)(5) ..	To authorize the transportation in commerce of tank cars containing certain hazardous materials without bottom discontinuity protection. (Mode 2).
14212–N	PHMSA–21804	Clean Harbors Environmental Services, Inc., North Andover, MA.	06/27/2005	04/28/2006	49 CFR 177.848(d)	To authorize the transportation in commerce of 30-gallon drums containing only residue of sulfuryl chloride on the same motor vehicle with Division 4.3 materials. (Mode 1).
14216–N	PHMSA–21813	ATK Thiokol, Inc., Brigham City, UT.	06/20/2005	11/22/2005	49 CFR 173.51, 173.56, 173.62.	To authorize the transportation in commerce of unapproved explosive articles and materials in non-DOT specification packaging by highway between ATK facilities within Utah. (Mode 1).
14220–N	PHMSA–21817	Sapp Bros. Petroleum, Omaha, NE.	06/032005	10/01/2005	49 CFR 173.315	To authorize the transportation in commerce of liquefied petroleum gas in non-DOT specification cargo tank motor vehicles exclusively for agricultural purposes when transported by private carriage. (Mode 1).

Special permit No.	Docket No.	Applicant	Application date	Action date	Regulation(s)	Nature of special permit thereof
14268–N		Stratus Systems, Inc., Belle Chase, LA.	10/07/2005	01/27/2006	49 CFR Part 173, Subparts B and C.	To authorize the transportation in commerce of certain 1.4B explosives in Non-DOT specification packagings. (Mode 4).
14271–N	PHMSA–22924	Florida Power and Light Co., Jensen Beach, FL.	10/20/2005	02/24/2006	49 CFR 173.403, 173.427(b), 173.465(c) and (d).	To authorize the transportation in commerce of a class 7 nuclear reactor head in alternative packaging. (Modes 1, 3).
14299–N	PHMSA–23588	Great Lakes Chemical Corporation, El Dorado, AR.	12/13/2005	03/15/2006	49 CFR 172.102(c) Special Provision B32.	To authorize the transportation in commerce of ethylene dibromide in MC 312 cargo tank motor vehicles. (Mode 1).
14312–N	PHMSA–23860	National Electrical Manufacturers Association, Rosslyn, VA.	01/09/2006	07/14/2006	49 CFR 173.421, 173.422, 173.423, 173.424.	To authorize the transportation in commerce of certain lamp and lamp components containing limited quantities of radioactive material without marking the identification number on the package. (Modes 1, 2, 3, 4, 5).
14370–N	PHMSA–25296	Pathology Laboratory, Des Moines, IA.	06/02/2006	07/31/2006	49 CFR 173.199	To authorize the transportation in commerce of diagnostic specimens in a triple packaging as required by § 173.199 except that the absorbent material would be located between the secondary packaging and the outer packaging. (Mode 1).
EMERGENCY SPECIAL PERMIT WITHDRAWN						
EE 13169–M	RSPA–02–13894	ConocoPhillips Alaska, Inc., Anchorage, AK.	06/09/2005	06/21/2005	49 CFR 172.101(9B)	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 3 materials in DOT Specification UN31A intermediate bulk containers which exceed quantity limitations when shipped by air. (Mode 4).
EE 14225–N	PHMSA–22009	The Colibri Group, Providence, RI.	07/25/2005	03/22/2006	49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33.	Emergency exemption request to authorize the transportation of Colibri lighters in special travel containers in checked luggage in commercial passenger aircraft.
EE 14278–N		Air Transport International, L.L.C., Little Rock, AR.	10/24/2005	06/01/2006	49 CFR 172.101, 171.11; 172.204(c)(3); 173.27; 175.30(a)(1); 175.320(b).	To authorize the emergency transportation in commerce of certain Division 1.1, 1.2, 1.3, and 1.4 explosives which are forbidden or exceed quantities presently authorized. (Mode 4).

DENIED

12412–M	Request by Los Angeles Chemical Company South Gate, CA February 14, 2006. Request by Los Angeles Chemical Company, South Gate, CA February 14, 2006, to modify the special permit to add additional hazardous materials to be unloaded without removing the IBC from the motor vehicle on which it is transported.
13192–M	Request by Onyx Environmental Services, L.L.C. Flanders, NJ January 30, 2006. To modify the exemption to remove relief that is now provided in the Hazardous Materials Regulations and authorize higher quantity limits for segregation of certain hazardous materials.
11924–M	Request by Wrangler Corporation Auburn, ME May 15, 2006. footnote To modify the exemption to authorize an additional design type of the composite intermediate bulk container (IBC) and a change to the additional IBC drop test requirements.

DENIED—Continued

7835–M	Request by Rinchem Company, Inc. Albuquerque, NM February 14, 2006. To modify the exemption to authorize the use of alternative combination and single packagings for the transportation of Division 2.1, 2.2, 2.3, 5.1, 4.3, Class 3 and 8 materials on the same motor vehicle.
13187–M	Request by Fluke Biochemical, LLC (formerly Radiation Management Services, Cardinal Health) Cleveland, OH March 29, 2006. To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification packaging for the transportation of Division 2.2 materials.
13583–M	Request by Structural Composites Industrial Pomona, CA August 02, 2006. To modify the special permit to authorize an alternative test method and extend the service life of each non-DOT specification composite cylinder for up to 30 years.
13481–M	Request by Onyx Environmental Services, L.L.C. Ledgewood, NJ March 16, 2006. To modify the exemption to authorize the transportation of solid explosive substances in special shipping containers.
7954–M	Request by Air Products & Chemicals, Inc. Allentown, PA February 07, 2006. Emergency modification application requesting that the decaling placed on the tube trailers need not be changed until the unit is due for re-qualification.
11911–M	Request by Transfer Flow, Inc. Chico, CA April 06, 2006. To modify the special permit to remove the requirement that hoses are not allowed to be attached to discharge outlets during transportation.
14136–N	Request by American Environmental Group Norfolk, VA February 11, 2005. To authorize the transportation in commerce of regulated medical waste in bulk outer packagings exceeding the quantity limitations provided in 49 CFR 173.197(d)(3)(i).
14142–N	Request by Arch Chemicals, Inc. Norwalk, CT March 30, 2005. To authorize the transportation in commerce of a hazardous substance without marking, labeling or placarding when further packaged in a freight container.
14143–N	Request by Federal Industries Corporation Plymouth, MN May 17, 2005. To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.12(b).
14177–N	Request by OraSure Technologies, Inc. Bethlehem, PA April 19, 2005. To authorize the transportation in commerce of a Division 2.1 material in a DOT specification 2Q container without shipping papers, marking or labeling.
14178–N	Request by Brider Fire Inc. Bozeman, MT April 06, 2006. To authorize the transportation in commerce of gelled gasoline in a non-DOT specification steel drum with a pump installed, mounted in a helitorch frame.
14198–N	Request by Pfizer, Inc. Memphis, TN July 12, 2005. To authorize the one-way transportation in commerce of certain infectious substances in special packagings transported by a contract carrier.
14199–N	Request by RACCA Plymouth, MA April 27, 2006. To authorize the transportation in commerce by air of certain hazardous materials with alternative notification to the pilot in command.
14200–N	Request by RACCA Plymouth, MA August 10, 2005. To authorize the transportation in commerce of packagings previously used for hazardous materials that have not had the hazard warning labels removed and are used for non-hazardous commodities.
14124–N	Request by Input/Output Marine Systems Harahan, LA August 23, 2005. To authorize the transportation in commerce of certain lithium batteries as materials of trade.
14218–N	Request by Air Logistics of Alaska, Inc. Fairbanks, AK April 28, 2006. To authorize an alternative method of notification to the pilot-in-command when transporting hazardous materials by cargo-only aircraft in remote areas within the State of Alaska.
14233–N	Request by U.S. Department of Energy (DOE) Richland, WA June 05, 2006. To authorize the transportation in commerce of non-DOT specification sealed electron tubes containing helium, compressed which are installed in a mobile radiation portal monitor.
14235–N	Request by Bunkers of St. Croix, Inc. Christiansted, VI February 24, 2006. To authorize the repair of certain DOT-Specification cargo tank motor vehicles in the US Virgin Islands to be performed by a repair facility that does not hold a Valid National Board Certification of Authorization for use of the National Board ''R'' stamp.
14252–N	Request by Hobo Incorporated Lakeville, MN April 20, 2006. To authorize the transportation in commerce of certain UN certified plastic drums containing soap products which are reused without leakproof testing.
14269–N	Request by Texmark Chemicals, Inc. Galena Park, TX April 28, 2006. To authorize alternative attendance requirements for loading and unloading Class 3 flammable liquids transported by motor vehicle and rail in cargo tanks, portable tanks and rail cards.
14270–N	Request by Piper Metal Forming Corporation New Albany, MS June 21, 2006. To authorize the manufacture, mark, sale and use of non-DOT specifications cylinders conforming to all regulations applicable to a DOT specification 3AL cylinder except that the material of construction is aluminum alloy 6069.
14276–N	Request by Environmental Packaging Technologies Atkinson, NH April 12, 2006. To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications.
14284–N	Request by Ox-Gen Incorporated, March 31, 2006. To authorize the transportation in commerce of a specially designed medical oxygen device to be classed and described as ''Oxidizing solid, n.o.s.'', Division 5.1, PG II, in lieu of a chemical oxygen generator.

DENIED—Continued

14326–N	Request by West Isle Line Alpaugh, CA July 31, 2006. To authorize the transportation in commerce of rail cars without the use of buffer cars on a class 2 restricted speed track during daylight hours.
14231–N	Request by FAA Washington, DC June 16, 2006. Request for an emergency exemption to offer packages of a non-hazardous material, represented as hazardous material, for purposes of conducting compliance testing of certain airlines' hazmat handling procedures.

[FR Doc. 06–6954 Filed 8–15–06; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34901]

Hondo Railway, LLC—Lease an Operation Exemption—in Medina County, TX

Hondo Railway, LLC (HRC), a Class rail carrier, has filed a verified notice of exemption under 49 CFR 1150.31–34, to lease and operate over approximately 13,200 feet of track in and adjacent to terminal facilities in the vicinity of Hondo, Medina County, TX. The track is owned by South Texas Liquid Terminal, Inc., a non-carrier, and will be leased by HRC.

HRC certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million. The transaction was scheduled to be consummated on or after July 27, 2006.

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. 0502(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. 34901, 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 Kelvin J. Dowd, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 9, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–13456 Filed 8–15–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Limited Payability Claim Against the United States For Proceeds of An Internal Revenue Refund Check.

OMB Number: 1545–2024.

Form Number: Not applicable.

Abstract: This form is used by taxpayers for completing a claim against the United States for the proceeds of an Internal Revenue refund check.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13403 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13797, Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

OMB Number: 1545–2026.

Form Number: Form 13797.

Abstract: This form will be provided to tribes who elect to perform a self compliance check on any or all of their entities. This is a voluntary program, and the entity is not penalized for non-completion of forms or withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations and State, Local, or Tribal Government.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 22 hours 20 minutes.

Estimated Total Annual Burden Hours: 447.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13404 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–161919–05 (TEMP) and REG 134317–05 (NPRM)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Temporary Regulation REG–161919–05, and Proposed Regulation REG–209828–05, Removing Impediments to E-filing.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Removing Impediments to E-filing.

OMB Number: 1545–2019.

Regulation Project Number: REG–161919–05 and REG–134317–05.

Abstract: These regulations eliminate certain impediments in the income tax regulations to mandatory e-filing of U.S. Federal income tax returns by large corporations. They eliminate the taxpayer signature requirement, and simplify and clarify reporting requirements.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 262,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2006.

Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–13405 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582–CR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, (202) 622–3634, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed, Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 14 hr., 53 min.

Estimated Total Annual Burden Hours: 2,370,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13407 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8912

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Clean Renewable Energy Bond Credit and Gulf Bond Credit.

OMB Number: 1545–2025.

Form Number: Form 8912.

Abstract: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of new Internal Revenue Code sections 54 and 1400N(l). The new form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 11 hours 55 minutes.

Estimated Total Annual Burden Hours: 5,955.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13408 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8554

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8554, Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

OMB Number: 1545–0946.

Form Number: 8554.

Abstract: The information obtained from Form 8554 relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) to practice before the Internal Revenue Service. The information will be used by the Director of Practice to determine the qualifications of individuals who apply for renewal of enrollment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 39,500.

Estimated Time Per Response: 1 hour, 12 minutes.

Estimated Total Annual Burden Hours: 47,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13412 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–130477–00: REG–130481–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–130477–00; REG–130481–00 (TD 8987) Required Distributions From Retirement Plans (§§ 1.401(a)(9)–1 and 1.401(a)(9)–4).

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Required Distributions From Retirement Plans.

OMB Number: 1545–1573.

Regulation Project Number: REG–130477–00 and REG–130481–00.

Abstract: This regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13413 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–37, Reverse Like-Kind Exchanges.

DATES: Written comments should be received on or before October 16, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: Revenue Procedure 2000–37.

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13419 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel (via teleconference) that was published in the **Federal Register** on August 1, 2006 has been cancelled. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting that was scheduled Thursday, August 24, 2006 from 10 a.m. Pacific Time to 11:30 a.m. Pacific Time has been cancelled.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel was cancelled for Thursday, August 24, 2006 from 10 a.m. Pacific Time to 11:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.*

Dated: August 9, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–13406 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 12, 2006, at 9:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2365.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, September 12, 2006, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2365 for additional information.

The agenda will include the following: Various IRS issues.

Dated: August 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–13410 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 6, 2006, at 1 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, September 6, 2006, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Barbara Toy, TAP Office, MS–1006–MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to (414) 231–2363, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227, or (414) 231–2364, or by fax at (414) 231–2363.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: August 10, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–13417 Filed 8–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

DATES: Written comments should be received on or before October 16, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

OMB Number: 1535–0068.

Abstract: The regulations govern book-entry Treasury bonds, notes and bills.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, Businesses or other for-profit, and state or local governments.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2006.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. E6–13450 Filed 8–15–06; 8:45 am]

BILLING CODE 4810–39–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Meeting To Prepare Annual Report

Advisory Committee: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open meeting to prepare Annual Report—August 23–24, 2006, Washington, DC.

SUMMARY: Notice is hereby given of a meeting of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare an annual report to the Congress ''regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China * * * [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions * * *''

Purpose of Meeting: Pursuant to this mandate, the Commission will meet in Washington, DC on August 23 and 24, 2006, to consider drafts of material for its 2006 Annual Report that have been prepared for its consideration by the Commission staff, and to make modifications to those drafts that Commission members believe are needed.

Topics To Be Discussed: The Commissioners will be considering draft Report sections addressing the following topics:

- China's Internal Challenges and Their Impact on China's Actions Affecting Other Nations Including the United States.
- China's Military Modernization.
- The Effect of U.S. and Multilateral Export Controls on China's Military Modernization.
- The Impact of China's Industrial Expansion and Industrial Subsidies on U.S. and Other Markets.
- China's WTO Compliance.
- China's Impact on the U.S. Auto and Auto Parts Industries.

Date and Time: Wednesday and Thursday, August 23–24, 2006, 9:30 a.m. to 4:30 p.m. Eastern Daylight Time.

Place of Meeting: The meetings will occur in Conference Room 381 of the Hall of The States, 444 North Capitol Street, NW., Washington, DC 20001. Public seating is limited, and will be available on a ''first-come, first-served'' basis. Advance reservations are not required.

Required Accessibility Statement: The entirety of this Commission meeting will be open to the public.

For Further Information About This Meeting Contact: Kathy Michels, Associate Director, U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409; e-mail *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: August 11, 2006.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E6–13508 Filed 8–15–06; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Wednesday,
August 16, 2006

Part II

Environmental Protection Agency

40 CFR Parts 9, 156 and 165

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 156 and 165

[EPA–HQ–OPP–2005–0327; FRL–8076–2]

RIN 2070–AB95

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this final rule, EPA is establishing regulations for the safe storage and disposal of pesticides as a means of protecting human health and the environment pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act. This final rule establishes requirements for pesticide container design, and procedures, standards and label language to facilitate removal of pesticides from containers prior to disposal or recycling. This final rule also establishes requirements for containment of stationary pesticide containers and procedures for container refilling operations. In addition, in order to display the OMB control number for the information collection requirements contained in this final rule, EPA is amending the table of OMB approval numbers for EPA regulations that appears in 40 CFR part 9.

DATES: This final rule is effective on October 16, 2006. For purposes of judicial review, this rule shall be promulgated at 1pm eastern daylight/standard time on August 30, 2006 (See 40 CFR 23.6).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0327. Please note that the docket material for the proposed rule and supplemental notice, identified previously by docket ID number OPP–190001, is included as part of the official docket for this action, although the material in the legacy docket is available only in hard copy. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Nancy Fitz, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7385; fax number: (703) 308–2962; e-mail address: *fitz.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, or an independent commercial applicator. Potentially affected categories and entities may include, but are not limited to:

- Pesticide formulators (NAICS 35232, former SIC code 2879), e.g., establishments that formulate and prepare insecticides, fungicides, herbicides or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments. Some formulating establishments are owned by the large basic pesticide producers and others are independent.
- Agrichemical dealers (NAICS 44422, former SIC code 5191), e.g., retail dealers that distribute or sell pesticides to agricultural users.
- Independent commercial applicators (NAICS 115112, former SIC code 0721), e.g., businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.
- Custom blenders (NAICS 44422, former SIC code 5191), e.g., most custom blenders are also dealers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Units II.D., III., V.B., VI.C., VII.B., VIII.C. and IX.A. of this document. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. You may also access a frequently updated electronic version of the Code of Federal Regulations (CFR) through the Government Printing Offices pilot e-CFR site at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. Statutory Authority

These final regulations are issued pursuant to the authority given the Administrator of EPA in sections 3, 8, 19 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a, 136f, 136q and 136w.

Sections 19(e) and (f) of FIFRA grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides. The regulations must ensure, to the fullest extent practicable, that the containers:

(1) Accommodate procedures used for removal of pesticides from the containers and rinsing of the containers.

(2) Facilitate safe use of the containers, including elimination of splash and leakage.

(3) Facilitate safe disposal of the containers.

(4) Facilitate safe refill and reuse of the containers.

FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal. The statute states that the regulations may:

(1) Specify, for each major type of pesticide container, procedures and standards for, at a minimum, triple rinsing or the equivalent degree of pesticide removal.

(2) Specify procedures that can be implemented promptly and easily in various circumstances and conditions.

(3) Provide for reuse, whenever practicable, or disposal of rinse water and residue.

(4) Be coordinated with requirements imposed under the Resource Conservation and Recovery Act (RCRA) for rinsing containers.

Section 19(f) provides that the EPA, at the discretion of the Administrator, may exempt products intended solely for household use.

Section 19(f)(2) states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f)(1).

Section 19(h), titled Relationship to Solid Waste Disposal Act, specifies that nothing in section 19 shall diminish the authorities or requirements of RCRA. Also, the Food Quality Protection Act (FQPA) of 1996 amended section 19(h) of FIFRA to add an exemption for certain antimicrobial pesticides.

B. Regulatory Background

Prior to 1995, recommendations regarding procedures for storage and disposal of pesticides and pesticide containers were listed under 40 CFR part 165. On June 19, 1995, as part of the Federal government's initiative to streamline regulations, part 165 was deleted as unnecessary (60 FR 32094) because it contained recommendations rather than requirements. (Ref. 62) Subpart A of part 165 covered the scope and definitions in the recommendations. Subpart B dealt with EPA's disposal of suspended and canceled pesticides, and EPA has completed disposal of all pesticides for which it was responsible under those regulations. Subparts C and D contained recommended procedures for storage and disposal of pesticide containers. Subparts A, B, C, and D were superseded by the passage of the Resource Conservation and Recovery Act in 1976. FIFRA section 19, as revised in 1988 and 1996, contains authority for EPA in the area of pesticide storage and disposal, and the container and containment regulations promulgated today are being inserted into a newly established part 165.

In a Notice of Proposed Rulemaking (NPRM) issued on February 11, 1994 (59 FR 6712), EPA proposed standards for pesticide containers and containment structures. (Ref. 66) This proposal included requirements for nonrefillable and refillable containers that would ensure the safe use and disposal of the containers. The proposal also included standards for containment structures, which would promote safe storage by facilitating the safe use, refill, and reuse of refillable containers. Additionally, the proposed rule contained amendments to the labeling regulations in 40 CFR part 156 to ensure adequate levels of residue removal from containers.

The public comment period for the NPRM closed on July 11, 1994. EPA received about 1,900 pages of comments from more than 200 commenters, including many trade associations and individual companies from the pesticide manufacturing, pesticide retail, and container manufacturing industries as well as many State regulatory agencies.

EPA received numerous comments on a few particular issues; specifically the scope of the container standards and the relationship between the 1994 proposed rule and the U.S. Department of Transportation (DOT) standards for hazardous materials packaging. A third issue arose from the 1996 passage of the FQPA, which amended section 19(h) of FIFRA to add an exemption for certain antimicrobial pesticides. To solicit comment on EPA's interpretation of the new statutory language on exempting antimicrobial pesticides and to reopen comment on the scope of the container regulations and an approach for incorporating DOT's standards, EPA published a supplemental notice in the **Federal Register** on October 21, 1999 (64 FR 56918). (Ref. 53) The supplemental notice also provided an alternative definition of small business for certain sectors of the pesticide industry for use in analyzing the potential impacts to small businesses that were presented as part of the economic analysis.

The public comment period for the supplemental notice closed on March 20, 2000. EPA received comments from about 70 respondents, including many trade associations and individual companies from the pesticide manufacturing, pesticide retail, and container manufacturing industries as well as many State regulatory agencies.

On June 30, 2004 (69 FR 39392), EPA reopened the public comment period for this rulemaking for 45 days because significant time had passed since the proposed rule in 1994 and supplemental notice in 1999. (Ref. 33) The purpose of the reopening was to solicit public input on any policies, market practices, technology or other issues relating to this rule's requirements which would not have been available or could not have been addressed at the time of either the proposal or supplemental notice. On August 13, 2004 (69 FR 50114), the comment period was extended for 30 days. (Ref. 32) The public comment period closed on September 15, 2004. EPA received about 50 comments, mainly from individual entities or trade associations representing pesticide manufacturers, agricultural pesticide retailers and State regulatory agencies.

On December 17, 1993 (58 FR 65989), EPA published an interim determination of adequacy for States with primary enforcement responsibility and/or certification programs because EPA had not promulgated regulations under section 19(f)(1) by December 24, 1993. (Ref. 69) To avoid having the provisions of section 19(f)(2) adversely impact the States and EPA, the Agency published a policy in the **Federal Register** on August 18, 1993 (58 FR 43994), which set forth a process for EPA to make such an interim determination. (Ref. 68) EPA's interim determination of adequacy was based on an initial commitment by a State to conduct a number of activities which will position the State to have an adequate program in place by the time compliance with the regulations promulgated under section 19(f)(1) is required. The December 17 notice stated that the determination of adequacy is temporary and will expire 2 years after promulgation of a final rule issued under section 19(f)(1). Thereafter, States must have a program to ensure compliance with the section 19(f) regulations. Related **Federal Register** notices were published on February 25, 1994 (59 FR 9214) regarding New Mexico and May 10, 1995 (60 FR 24855) regarding the Virgin Islands. (Refs. 60 and 67) The criteria and process for evaluating State programs to ensure that they have adequate compliance programs for regulations promulgated under section 19(f) will be published in a separate **Federal Register** notice.

C. Additional Container Issues Under Consideration for Potential Regulation

Since the 2004 public comment period closed, EPA has gathered information from a variety of sources about the status and robustness of existing pesticide container recycling programs. Over the past decade, the Ag Container Recycling Council (ACRC) has demonstrated that pesticide containers can be safely and efficiently recycled, and their success in recycling more than 80 million pounds of plastic since 1992 is commendable. However, the current voluntary container recycling system is showing signs of instability and non-sustainability, largely because it is financially

supported by only a portion of the pesticide industry.

EPA has an interest in promoting recycling to minimize the use of less environmentally-sound methods of disposing of these containers, such as by landfill or burning, and to reduce the amount of solid waste produced annually. After considering and evaluating a number of alternatives to sustain and increase the current level of container recycling, EPA has initiated development of proposed regulations for the recycling of plastic pesticide containers to ensure equitable, safe, effective and robust implementation of recycling programs. We are exploring a range of regulatory options for requiring participation in pesticide recycling programs and we will work with stakeholders to evaluate and pursue the most efficacious of these approaches.

D. Summary of the Final Rule

The Container and Containment Rule is composed of the following five specific sets of requirements or standards:

- Nonrefillable containers (container design and residue removal);
- Refillable containers (container design and residue removal);
- Repackaging pesticide products;
- Containment structures; and
- Container labeling.

Table 1 provides a brief overview of each portion of today's final rule. For each section of the regulations, the table identifies the types of businesses that must comply, the major requirements and the compliance date. The regulations, along with a summary of comments on major issues and comments that led to changes to the final regulations and EPA's responses, are discussed in later units of this preamble. EPA has also prepared a Response to Comment document that provides additional details with regard to the comments and EPA's responses (Ref. 19).

Each portion of the regulations applies to a different subset of pesticide products. The criteria that define which pesticide products are subject to which regulations (and which ones are exempt from them) are relatively complex, but some key points are:

- The new *label* standards apply to all pesticide products.
- The *containment* regulations apply to agricultural pesticides only.
- The *nonrefillable container, refillable container and repackaging* regulations apply to the same subset of pesticide products. These products are described in Table 2 below.
- For the *refillable container and repackaging* regulations, antimicrobial products that are used only in swimming pools (and closely related sites like hot tubs, spas and/or whirl pools) are subject to a reduced set of the requirements.
- For the *nonrefillable container* regulations, some products are subject to all of the regulations, while others must comply only with the basic Department of Transportation packaging requirements in 49 CFR 173.24.

TABLE 1.—OVERVIEW OF THE PESTICIDE CONTAINER AND CONTAINMENT STRUCTURE REGULATIONS

Category	Nonrefillable Containers	Refillable Containers	Repackaging Pesticide Products	Container Labeling	Containment Structures
Who must comply	Registrants	Registrants Refillers (retailers, distributors)	Registrants Refillers (retailers, distributors)	Registrants Pesticide users (must follow new directions)	Ag retailers Ag commercial applicators Ag custom blenders
Major Requirements	DOT container design, construction and marking standards Container dispensing capability Standardized closures Residue removal Recordkeeping	DOT container design, construction and marking standards Serial number marking One-way valves or tamper-evident devices Stationary container requirements	Registrants develop information Registrants and others comply with specified conditions Refillers (registrants and others) obtain and follow registrant information, and clean, inspect and label containers before refilling them	Identify container as nonrefillable or refillable (all) Statements to prohibit reuse and offer for recycling; batch code (all nonrefillables) Cleaning instructions (some nonrefillables) Cleaning instructions before final disposal (all refillables)	Secondary containment structures (dikes) around stationary tanks Containment pads for pesticide dispensing areas Good operating procedures Monthly inspections of tanks and structures Recordkeeping Provisions for States with existing programs
Compliance Date	August 17, 2009	August 16, 2011	August 16, 2011	August 17, 2009	August 17, 2009

TABLE 2.—PRODUCTS THAT ARE SUBJECT TO THE NONREFILLABLE CONTAINER, REFILLABLE CONTAINER AND REPACKAGING REGULATIONS

Category	Nonrefillable Containers	Refillable Containers	Repackaging Pesticide Products
Products that are not subject to the regulations.	(1) Manufacturing use products, (2) Plant-incorporated protectants, and (3) Antimicrobial pesticide products that satisfy all four of these criteria: The product is an antimicrobial pesticide (as defined in FIFRA section 2(mm)) or it has antimicrobial properties (as defined in FIFRA section 2(mm)(1)(A)) and is subject to a tolerance or a food additive regulation. Its label includes directions for use on a site in at least one of the 10 antimicrobial product use categories identified as household, industrial or institutional. It is not a hazardous waste when it is intended to be disposed, as defined in 40 CFR part 261. EPA has not specifically found that the product must be subject to these provisions to prevent an unreasonable adverse effect on the environment.	(1) Manufacturing use products, (2) Plant-incorporated protectants, and (3) Antimicrobial pesticide products that satisfy all four of the criteria listed in the nonrefillable container column.	(1) Manufacturing use products, (2) Plant-incorporated protectants, and (3) Antimicrobial pesticide products that satisfy all four of the criteria listed in the nonrefillable container column.
Products that are subject to the regulations	A product is subject to ALL nonrefillable container requirements if it satisfies at least one of the following criteria: It meets the criteria of Toxicity Category I in 40 CFR 156.62. It meets the criteria of Toxicity Category II in 40 CFR 156.62. It is a restricted use product.	All products not listed above.	All products not listed above.
	If a product does not meet any of these criteria, the product is subject to only the basic Department of Transportation requirements in the nonrefillable container regulations.		

E. Summary of the Major Changes Since Proposal

1. *Plain language format.* Many of the comments on the proposed rule and the supplemental notice made clear that the scope of parties and products subject to the rule was complex and potentially confusing. We have rewritten the Container and Containment rule in a plain language format to make it clearer and easier to use. A plain language format includes maximum use of the active voice; short, clear sentences; questions and answers; use of ''you'' to identify the person who must comply; use of ''we'' to identify EPA; and ''must'' rather than ''shall.'' This new format, which minimizes the layers of subparagraphs, should also allow the reader to easily locate specific provisions of the regulation. While we have made substantive changes in some provisions, the plain language changes are only editorial. The legal implications of plain English regulations are the same as traditional regulatory text. The word ''must'' indicates a requirement. Words like ''should,'' ''could,'' or ''encourage'' indicate a recommendation or guidance.

In this preamble, as in the rule text, we often use the pronoun ''he'' as a generic term. ''He'' does not necessarily mean a man; it may be a woman, or in some cases, a business organization when referring to an owner or operator.

The plain language approach also leads to more separate sections than traditional regulatory language.

Therefore, we had to reorganize and renumber the regulations to accommodate the increased number of separate sections. The changes are shown in Table 3.

Some sections of today's regulation are presented in the traditional language or format because these sections are amending or changing existing regulations. The plain language format was not used in these existing provisions in an attempt to avoid any possible confusion or disruption in the flow of the regulations.

TABLE 3.—COMPARISON OF PROPOSED RULE AND FINAL RULE SECTION NUMBERS

Format in Proposed Rule		Format in Final Rule	
Subpart	Section Numbers	Subpart	Section Numbers
Part 156			
Subpart H: Container Labeling	§§ 156.140 - 156.144	Subpart H: Container Labeling	§§ 156.140 - 156.159
Part 165			
Subpart A: General	§§ 165.1 - 165.16	Subpart A: General	§§ 165.1 - 165.3
Subpart B	Reserved	Subpart B: Nonrefillable Containers	§§ 165.20 - 165.27
Subpart C	Reserved	Subpart C: Refillable Containers	§§ 165.40 - 165.47
Subpart D	Reserved	Subpart D: Repackaging	§§ 165.60 - 165.70
Subpart E	Reserved	Subpart E: Containment Structures	§§ 165.80 - 165.97
Subpart F: Nonrefillable Containers	§§ 165.100 - 165.119	Subpart F	Reserved
Subpart G: Refillable Containers	§§ 165.120 - 165.139	Subpart G	Reserved
Subpart H: Containment Structures	§§ 165.140 - 165.157	Subpart H	Reserved

2. *Reorganization of the rule*. In the final rule, we split the refillable container standards and the repackaging standards into two separate subparts to reinforce and clarify the differences between these requirements. The refillable container regulations are mostly technical and apply mostly to pesticide registrants. On the other hand, the repackaging requirements are mostly procedural and apply to registrants and refillers (who could be registrants, distributors or retailers). EPA believes that separating these regulations into different subparts will better illustrate the differences and make it easier for the regulated parties to understand.

3. *Scope of products subject to container-related regulations*. In the February 1994 NPRM, EPA proposed that the container standards would generally apply to all pesticides and all containers except for manufacturing use products (MUPs). The 1999 supplemental notice proposed several options for exempting specific subsets of products from the container standards. Today's final rule exempts MUPs, plant-incorporated protectants and certain antimicrobial products from the nonrefillable container, refillable container and repackaging regulations. All other products are subject to the container-related regulations, although the number of applicable standards is greatly reduced for some products. These changes apply only to the container-related sections of the rule. As we proposed, all pesticide products are subject to the container labeling requirements in today's final rule and only agricultural pesticide products are subject to the containment requirements.

4. *Exemption from container-related regulations for certain antimicrobial products*. The FQPA amended section 19 of FIFRA to exempt certain types of antimicrobial pesticides from the pesticide container provisions. The amendment exempted household, industrial, or institutional antimicrobial products which are not subject to the Solid Waste Disposal Act (SWDA) from the container regulations unless the EPA Administrator determines that the product causes an unreasonable adverse effect on the environment. Because the definition of an antimicrobial product is complex, the phrase ''subject to the SWDA'' is unclear and ''unreasonable adverse effects on the environment'' from pesticide containers need to be clarified, EPA conducted many analyses based on the comments received. According to today's final rule, an antimicrobial product is exempt from the container standards if meets all four of the following criteria:

- The product is an antimicrobial pesticide as defined in FIFRA section 2(mm) or it has antimicrobial properties (as defined in FIFRA section 2(mm)(1)(A)) and is subject to a tolerance or a food additive regulation.
- The product includes directions for use on a site in one of the antimicrobial product use categories identified as household, industrial or institutional.
- The product is not a hazardous waste when it is intended to be disposed.
- EPA has not specifically determined that the product must be subject to the container regulations to prevent an unreasonable adverse effect on the environment.

In addition, antimicrobial products that would not otherwise be exempt from the regulations and that are used only in swimming pools (and closely related sites like hot tubs, spas and/or whirl pools) are subject to a reduced set of the refillable container and repackaging requirements.

5. *Scope of container-related regulations for products other than antimicrobial products*. As proposed in 1994, MUPs are exempt from the

container regulations. Plant-incorporated protectants, which were not discussed in the proposed rule, are also exempt from the container regulations. According to today's final rule, all other pesticide products, except antimicrobial pesticides that are exempt, are subject to the nonrefillable container, refillable container and repackaging regulations. For the nonrefillable container regulations, a product is subject to all of the requirements if it classified in at least one of the following categories:

- Toxicity Category I;
- Toxicity Category II;
- Restricted use pesticide.

Products that do not meet at least one of these criteria (i.e., products that are classified in Toxicity Category III or IV and that are not restricted use pesticides) are excluded from all of the nonrefillable container standards except the basic DOT requirements.

In general, products other than MUPs, plant-incorporated protectants and exempt antimicrobial products are subject to all of the refillable container and repackaging regulations. One exception is that antimicrobial products that are used only in swimming pools and closely related sites are subject to a reduced set of the refillable container and repackaging requirements.

6. *Referring to and adopting some Department of Transportation regulations*. In the 1994 proposed rule, EPA clarified that compliance with EPA's container regulations would not exempt registrants from complying with applicable DOT Hazardous Materials Regulations, and that compliance with DOT's marking and drop test requirements would satisfy the corresponding EPA requirement for refillable containers. Also, the preamble of the proposed rule requested comment on several options for determining who would be responsible for ensuring that containers meet the standards. In the 1999 supplemental notice, we discussed the comments on the proposal and discussed a new approach, namely to adopt and refer to the DOT Packing Group III criteria for both nonrefillable and refillable containers. Today's final rule includes the same basic approach as described in the supplemental notice. Specifically:

- Pesticide products that are DOT hazardous materials must be packaged as required by DOT.
- Pesticide products that are not DOT hazardous materials must be packaged in containers that are designed, constructed, and marked to comply with the cross-referenced and adopted requirements of DOT regulations, as applicable to a Packing Group III material or the limited quantity/consumer commodity exception.
- All pesticide products must comply with the pesticide-specific requirements in the nonrefillable and refillable container regulations.
- EPA may modify or waive these requirements under certain, limited conditions.
- If DOT proposes to change any of the regulations that are incorporated by these regulations, EPA will provide notice to the public in the **Federal Register**.

7. *Residue removal standard for nonrefillable containers*. The 1994 NPRM required that registrants demonstrate at least 99.9999 (six 9's) percent residue removal using a prescribed testing methodology for dilutable products in rigid containers. Testing would have been required on 19 representative samples in accordance with Good Laboratory Practice (GLP) standards in 40 CFR part 160. We received many comments opposing virtually every aspect of this proposed requirement. Today's final rule requires rigid containers of dilutable liquid formulations to be capable of achieving at least 99.99 percent (four 9's) residue removal using a defined laboratory triple rinse method conducted on three representative containers. In addition, testing and recordkeeping is only required for flowable concentrate formulations or if EPA requests the tests on a case-by-case basis.

8. *Consistency with existing State containment regulations*. At least 19 States have already promulgated and implemented State bulk containment regulations. EPA's proposed rule included basic standards generally similar to State standards, although some were more rigorous and others less stringent than certain State standards. Today's containment standards are intended to introduce substantial safeguards in States that currently lack containment regulations and to harmonize with containment requirements in States where adequate containment safety programs already exist. While EPA believes a national standard must provide substantial environmental protection, a mechanism is being provided to accommodate States that have successfully implemented bulk containment programs.

9. *Hydraulic conductivity standard for containment structures*. The proposed rule would have required that existing and new structures demonstrate compliance with a hydraulic conductivity standard of 1×10^{-6} cm/sec and 1×10^{-7} cm/sec, respectively. EPA received many comments opposed to the hydraulic conductivity standard which was perceived to be too restrictive, not achievable and too costly. The requirement for a numeric hydraulic conductivity standard was dropped from the final rule, but all existing and new structures are required to be liquid-tight, with cracks and seams sealed.

10. *Scope of products subject to label regulations*. The final labeling regulations in today's rule cover the same statements and topics that were included in the proposed rule. Unlike the container-related regulations, all products must comply with the container labeling requirements — the labeling regulations do not exempt MUPs or certain antimicrobial products. One exception is that plant-incorporated protectant container-related labeling instructions will be determined by EPA on a case-by-case basis until specific labeling guidance for plant-incorporated protectants are promulgated under 40 CFR part 174.

While today's label requirements generally apply to all pesticide products, the specific label requirements apply to different groups of products and containers. In particular:

- A statement identifying a container as nonrefillable or refillable is required on the labels of all products and all containers.
- Statements to prohibit reuse and offer for recycling and a batch code are required on the labels or container of all products distributed or sold in nonrefillable containers.
- Rinsing instructions are required on the labels of some products distributed or sold in nonrefillable containers. Specifically, the requirement for rinsing instructions applies to dilutable products in rigid nonrefillable containers. Residential/household use pesticide products are exempt from this requirement.
- Instructions for cleaning before final disposal (not before refilling) are required on the labels of all products distributed or sold in refillable containers.

III. Container Regulations—Scope

The purpose of Unit III. is to describe the scope of the container-related regulations, including the standards for nonrefillable containers in 40 CFR part 165, subpart B, refillable containers in subpart C and repackaging pesticide products in subpart D. The regulations themselves are discussed in more detail in Units V., VI. and VII. for nonrefillable containers, refillable containers and repackaging, respectively. Unit IV. discusses the relationship between

EPA's container-related regulations and the Department of Transportation's Hazardous Materials Regulations.

EPA is exempting some pesticides and containers from today's rule based on the statutory language and the relative risk posed by the pesticides and containers. The 1994 NPRM proposed that the container regulations would generally apply to all end use pesticides and all containers, regardless of the pesticide market sector. The NPRM proposed to exempt MUPs from the container requirements. Many commenters opposed the broad scope of the regulations and requested EPA to exempt one or more subsets of pesticides from the container requirements.

The 1996 FQPA amended section 19 of FIFRA to exempt certain types of antimicrobial pesticides from the container provisions under certain circumstances. In the October 1999 Supplemental Notice, EPA proposed a regulatory option for exempting certain pesticides, and requested comment on the applicability and interpretation of the antimicrobial exemption to FIFRA.

As described in this unit, the container-related provisions in the final rule apply only to a subset of end use pesticide products. All MUPs and plant-incorporated protectants are exempt from the container-related requirements. The container regulations define criteria for antimicrobial products that are subject to the container-related standards. Other than MUPs, plant-incorporated protectants and exempt antimicrobial products, all products are subject to the nonrefillable container, refillable container and repackaging regulations. However, some products are subject to a reduced number of requirements. The discussion in Unit III. applies only to the nonrefillable container, refillable container and repackaging regulations. The containment and labeling regulations have different scopes, as described in Units VIII. and IX.

A. Exempt Manufacturing Use Products (§§ 165.23(a), 165.43(a) and 165.63(a))

1. *Final regulations*. MUPs, as defined in 40 CFR 158.153(h), are exempt from the container regulations. As described in the preamble to the proposed rule, this exemption applies to technical grade products and formulation intermediates intended only for formulation into other pesticide products and labeled for formulation use only.

2. *Changes*. This exemption is identical to the exemption in the 1994 proposed rule and the 1999 Supplemental Notice.

B. Exempt Plant-Incorporated Protectants (§§ 165.23(b), 165.43(b) and 165.63(b))

1. *Final regulations*. Plant-incorporated protectants, as defined in 40 CFR 174.3, are exempt from the container regulations.

2. *Changes*. EPA did not specifically mention plant-incorporated protectants in either the proposed rule or the supplemental notice because there were either no registrations for these products or they were uncommon at that time; these types of products are relatively new to the marketplace. In the June 30, 2004 **Federal Register** notice (69 FR 39393), EPA cited plant-incorporated protectants as an example of a topic that would be appropriate to comment on during the 2004 reopening of the comment period. (Ref. 33) As explained below, EPA believes it is appropriate to exempt plant-incorporated protectants from the container requirements in the final rule.

In comments on the 2004 **Federal Register** notice, two registrant groups and five registrants urged EPA to exempt plant-incorporated protectants from the container and containment regulations. These commenters stated that plant-incorporated protectants fit the three conditions of EPA's treated article policy and therefore should be exempt from all provisions of FIFRA when used in the manner described. They also concurred with EPA's assessment in the 2004 **Federal Register** notice that plant-incorporated protectants are not sold and distributed in containers like other pesticides; they are distributed as parts of seeds or plants.

The regulations for plant-incorporated protectants in 40 CFR parts 152 and 174 were finalized in the **Federal Register** on July 19, 2001 (66 FR 37771). (Ref. 50) A plant-incorporated protectant is a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. As explained in the preamble to the final rule for plant-incorporated protectants (66 FR 37774), ''[p]lant-incorporated protectants are primarily distinguished from other types of pesticides because they are intended to be produced and used in a living plant. This difference in use pattern dictates in some instances differences in approach.'' (Ref. 50) Plant-incorporated protectants are not sold and distributed in containers as distinct substances (e.g., liquids, solids or gels) like other pesticides; they are distributed as part of the seeds or plants. In other words, plant-incorporated protectants do not have containers like most pesticides. Therefore, EPA believes it is appropriate to exempt plant-incorporated protectants from the requirements of the container-related regulations.

C. Exempt Certain Antimicrobial Products (§§ 165.23(c), 165.43(c) and 165.63(c))

The 1996 FQPA amended section 19 of FIFRA to exempt certain types of antimicrobial pesticide products from the pesticide container provisions under certain circumstances. Specifically, FQPA added the following to FIFRA section 19(h):

> A household, industrial, or institutional antimicrobial product that is not subject to regulation under the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) shall not be subject to the provisions of subsections (a), (e), and (f), unless the Administrator determines that such product must be subject to such provisions to prevent an unreasonable adverse effect on the environment.

Because this language was added after the pesticide container and containment rule was proposed in 1994, EPA solicited public comment on the applicability of this provision to the proposed container regulations in the 1999 supplemental **Federal Register** notice. In addition, the supplemental notice described EPA's interpretation and response to the following two broad questions relating to the antimicrobial exemption provision:

- What is the scope of household, industrial, or institutional antimicrobial products that are not subject to regulation under the Solid Waste Disposal Act?
- Which products must be subject to the container provisions to prevent an unreasonable adverse effect on the environment?

Based on comments on the proposed rule and supplemental notice and on several additional analyses, EPA is making a number of changes in the approach for regulating antimicrobial products in the final regulations. The approach in the final rule is briefly described here and the details are provided in the issue-by-issue sections below.

- All four of the following criteria must be met for a product to be exempt from the container regulations:

(1) The product is an antimicrobial pesticide as defined in FIFRA section 2(mm) or it has antimicrobial properties (as defined in FIFRA section 2(mm)(1)(A)) and is subject to a tolerance or a food additive regulation.

(2) The product includes directions for use on a site in one of the

antimicrobial product use categories identified as household, industrial or institutional.

(3) The product is not a hazardous waste when it is intended to be disposed.

(4) EPA has not specifically determined that the product must be subject to the container regulations to prevent an unreasonable adverse effect on the environment.

• EPA will determine which products must be subject to the container provisions to prevent an unreasonable adverse effect on the environment on a case-by-case basis as described in the regulations.

• The final rule exempts refillable containers used to distribute antimicrobials used in swimming pools (and that are subject to the regulations because they do not meet all of the exemption criteria) from some of the refillable container and repackaging standards (including, but not limited to, serial number markings, one-way valves or tamper-evident devices, and some recordkeeping).

The four criteria that identify which antimicrobial products are exempt from the container regulations are discussed in greater detail in Units III.C.1. - III.C.4. The other aspects of the approach toward regulating antimicrobials are discussed in Units III.D. - III.F.

Throughout the preamble, the term ''antimicrobial'' is intended to be interpreted broadly with the property of destroying or inhibiting the growth of microorganisms (and as identified in FIFRA section 2(mm)(1)(A)) unless specified otherwise. In other words, we specify ''FIFRA 2(mm) antimicrobial pesticides'' if we are referring to the more limited definition of antimicrobial pesticides in FIFRA section 2(mm).

1. *Exemption criteria: definition of an antimicrobial pesticide*—i. *Final regulations*. The first of the four criteria that must be met for an antimicrobial product to be exempt from the container regulations is:

The pesticide product meets one of the following two criteria:

(1) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(2) The pesticide product:

(i) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(ii) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

ii. *Changes*. In the supplemental notice, this criterion was limited to ''The product meets the definition of an antimicrobial pesticide in FIFRA section 2(mm).'' EPA continues to believe that the most straightforward approach for defining antimicrobial products is to use the FIFRA definition of antimicrobial pesticide. The second criterion was added because, after thorough analysis of the definition of antimicrobial pesticide, EPA believes that some pesticides that are excluded from the definition should be eligible for exemption from the container regulations. Specifically, FIFRA section 2(mm)(1)(B) explicitly excludes pesticides with antimicrobial properties as identified in section 2(mm)(1)(A) from being FIFRA section 2(mm) antimicrobial pesticides if they are subject to a tolerance or a food additive regulation in their intended use. EPA believes that these pesticides should be eligible for exemption from the container regulations along with pesticides that are FIFRA section 2(mm)-defined antimicrobial pesticides.

Although there is no official legislative history documenting the intent of the definition of antimicrobial pesticide in FQPA, EPA acknowledges that FQPA also established time periods in FIFRA section 3 for registration review and action for various kinds of antimicrobial pesticides. EPA believes it is reasonable to conclude that pesticides subject to a tolerance or food additive regulation were excluded from the FIFRA section 2(mm) definition of antimicrobial pesticide at least partly because these pesticides require more data and analysis than other antimicrobial pesticides and, therefore, should not be subject to the registration time periods established in FIFRA section 3.

More importantly, EPA believes that the containers of pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation generally pose a limited risk to human health and the environment. If either EPA or the Food and Drug Administration (FDA) determine that a pesticide with antimicrobial properties can be safely used on food or on food contact surfaces, the containers holding these pesticides are unlikely to pose a significant risk or even a risk greater than the pesticides that are FIFRA 2(mm) antimicrobial pesticides. EPA believes that these pesticides should also be eligible for exemption from the pesticide container regulations and that exempting these pesticides should not significantly increase the risk posed by containers of these pesticides. Therefore, it is very unlikely that such an exemption would pose an unreasonable adverse effect on the environment. We believe the provisions of FIFRA sections 19 and 25 authorize such an exemption.

While EPA is identifying pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation as being *eligible* for exemption from the container regulations, they are not automatically exempt. Pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation must also meet the other criteria identified by Congress in the FIFRA section 19(h) language: (1) It is a household, industrial or institutional product; (2) it is not a hazardous waste when disposed; and (3) EPA has not determined it must be subject to the regulations to prevent an unreasonable adverse effect. While EPA believes it is reasonable to make pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation eligible for exemption from the pesticide container regulations, we see no reason that these pesticides shouldn't be subject to the other criteria that Congress established for antimicrobial pesticides.

EPA is not implementing similar exemption provisions for the other pesticide types excluded from the definition of antimicrobial pesticide in FIFRA section 2(mm), which include:

• Wood preservatives with claims for pests other than micro-organisms;

• Antifouling paint products with claims for pesticides other than micro-organisms;

• Agricultural fungicide products; and

• Aquatic herbicide products.

EPA does not believe that the pesticides in this list generally pose a limited risk to human health and the environment, as is the case with pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation. EPA analyzed one of its pesticide data bases (Reference File System or REFS) and identified the wood preservative and antifouling paint products that claim to control pests other than micro-organisms. Many of the wood preservative products that claim to control pests other than micro-organisms also would be hazardous wastes when they are disposed and many of these are also restricted use products, such as those containing arsenic acid, arsenic pentoxide, chromic

acid, coal tar, creosote and pentachlorophenol. Many of the antifouling paint products that claim to control pests other than micro-organisms are also restricted use pesticides, such as products containing copper (I) oxide, bis(tributyltin oxide) and tributyltin methacrylate. EPA does not believe that products containing these active ingredients meet the criterion of generally posing a limited risk to human health and the environment, as is the case with pesticides with antimicrobial properties that are subject to a tolerance or food additive regulation.

2. *Exemption criteria: household, institutional or industrial products*—i. *Final regulations*. The second of four criteria that must be met for an antimicrobial product to be exempt from the container regulations is:

The product includes directions for use on a site in one of the following 10 antimicrobial product use categories identified as ''household, industrial or institutional:''

(1) Food handling/storage establishments premises and equipment.

(2) Commercial, institutional, and industrial premises and equipment.

(3) Residential and public access premises.

(4) Medical premises and equipment.

(5) Human drinking water systems.

(6) Materials preservatives.

(7) Industrial processes and water systems.

(8) Antifouling coatings.

(9) Wood preservatives.

(10) Swimming pools.

ii. *Changes*. Prompted by comments and after re-evaluating the antimicrobial product use categories, EPA is modifying the approach in the supplemental notice by adding a tenth category, *human drinking water systems*, to the list of ''household, industrial or institutional'' uses. EPA agrees with commenters that the category of human drinking water systems includes use in individual water systems, which could be used in homes. Additionally, human drinking water systems include use in public water systems and the drinking water treatment facilities that use the pesticides for this purpose fit into a reasonable understanding of industrial use. Therefore, 10 of the 12 antimicrobial product use categories will be ''household, industrial or institutional'' uses, compared to the nine categories identified in the supplemental notice. The two antimicrobial product use categories that are not identified as ''household, industrial or institutional'' are ''agricultural premises and equipment'' and ''aquatic areas.'' Multiple-use products with labels that include directions for use on a site in one of the excluded categories (''agricultural premises and equipment'' and ''aquatic areas'') and in at least one of the ten antimicrobial use product categories identified as ''household, industrial and institutional'' would be eligible for exemption.

3. *Exemption criteria: not subject to RCRA*—i. *Final regulations*. The third of four criteria that must be met for an antimicrobial product to be exempt from the container regulations is:

The pesticide product is not a hazardous waste as set out in 40 CFR part 261 when the pesticide product is intended to be disposed.

ii. *Changes*. This criterion is nearly the same as in the supplemental notice, but EPA modified the language slightly in response to a few comments to clarify that antimicrobials that are household waste are eligible for exemption. Rather than specifying that ''the pesticide product does not meet the criteria for hazardous waste as set out in part 261...'' as discussed in the supplemental notice, the final rule uses broader language (''the pesticide product is not a hazardous waste as set out in part 261...'') that clearly includes all of the criteria, exclusions and other provisions in 40 CFR part 261.

4. *Exemption criteria: EPA has not specifically determined the product must be subject to the regulations*—i. *Final regulations*. The fourth of four criteria that must be met for an antimicrobial product to be exempt from the container regulations is that EPA has not specifically determined that the pesticide product must be subject to the regulations to prevent an unreasonable adverse effect on the environment according to the provisions discussed in Unit III.F.

ii. *Changes*. This criterion is necessary to implement Option 1 in the supplemental notice. The sample regulatory text in the supplemental notice did not specifically have a provision for subjecting antimicrobial products to the container regulations on a case-by-case basis because the sample regulatory text reflected Option 3. As discussed in Unit III.F, the final rule must define conditions and procedures for EPA to determine that an antimicrobial product or group of products must be subject to the container regulations to prevent an unreasonable adverse effect on the environment. Because EPA may subject certain antimicrobial products to the container regulations in the future, a fourth criterion is necessary for the list of criteria for the antimicrobial products that are exempt from the container regulations. Respondents provided extensive comments (described in Unit III.E.) about how EPA should make these determinations.

D. Antimicrobial Swimming Pool Products That Are Not Exempt (§§ 165.43(d), 165.63(d))

1. *Final regulations*. An antimicrobial swimming pool product that is not otherwise exempt (because it is a manufacturing use product, plant-incorporated product or an exempt antimicrobial product) is subject to a reduced set of the refillable container and repackaging regulations. Comments on the supplemental notice and an analysis of antimicrobial products indicated that some antimicrobial swimming pool products are hazardous wastes when they are disposed and, therefore, would be subject to the pesticide container regulations because they do not meet all four criteria for exemption.

For the purposes of subparts C and D, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

- The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.
- The labeling of the pesticide product includes directions for use only on a site or sites in the antimicrobial product use category of swimming pools.

Antimicrobial swimming pool products that are not exempt must comply with all of the refillable container regulations in subpart C except for:

- § 165.45(d) regarding marking; and
- § 165.45(e) regarding openings.

Antimicrobial swimming pool products that are not exempt must comply with all of the repackaging regulations in subpart D except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(3)	§ 165.70(f)(3)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(4)	§ 165.70(f)(4)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

2. *Changes*. The supplemental notice included a similar provision, but it would have applied only to products eligible for exemption. Based on the comments and further analysis, EPA realized that the products for which relief was intended (those with sodium hypochlorite) may be hazardous wastes when disposed and, therefore, would not be eligible for either full or partial exemption according to the approach in the supplemental notice. Today's final rule subjects antimicrobial swimming pool products to a reduced set of the refillable container and repackaging requirements if they are sold and distributed in refillable containers. Specifically, antimicrobial swimming pool products would not have to comply with some of the standards, including, but not limited to, serial number markings, one-way valves or tamper-evident devices, and some recordkeeping. Currently, EPA is aware of sodium hypochlorite products that fit these criteria and that are sold and distributed in refillable containers. However, the partial exemption was drafted to be general so it would apply to any products that fit the criteria.

A description of an antimicrobial swimming pool product was added to subparts C and D for clarity. The regulatory text was modified to clarify that the reduced set of requirements applies to products labeled for use on a site or sites *only* in the antimicrobial product use category of swimming pools (which includes swimming pools, spas, hot tubs, and whirlpools). In other words, a product that is labeled for use in swimming pools (and/or spas, hot tubs and whirlpools) and another site, such as human drinking water systems, would have to comply with the full set of refillable container and repackaging requirements. Alternatively, the registrant of such a product could remove the use site(s) other than those in the antimicrobial product use category of swimming pools from the label, in which case the product would be subject to the reduced set of refillable container and repackaging requirements.

Many antimicrobial swimming pool products are completely exempt from the nonrefillable container, refillable container and repackaging regulations by §§ 165.23(c), 165.43(c) and 165.63(c). However, some antimicrobial swimming pool products are subject to the container-related regulations because they do not meet all of the criteria in these sections, for example, because they are hazardous wastes when they are disposed. The partial exemption in §§ 165.43(d) and 165.63(d) provides some regulatory relief from the refillable container and repackaging requirements for such antimicrobial swimming pool products. Antimicrobial swimming pool products that are not completely exempt must comply with all of the nonrefillable container requirements.

E. EPA Determinations that Products Must be Subject to the Container Regulations to Prevent an Unreasonable Adverse Effect on the Environment

1. *Final regulations*. The final regulations exempt all antimicrobial products that are eligible for exemption according to the criteria described in Unit III.C. from needing to comply with the nonrefillable container, refillable container and repackaging regulations. The final regulations also include a provision that allows EPA to determine, on a case-by-case basis, that a specific product or group of products must be subject to the regulations to prevent an unreasonable adverse effect on the environment if a problem becomes evident. The specifics of this provision are discussed in Unit III.F.

2. *Changes*. The approach in the final rule is a change from the approach that was identified as our preferred approach (Option 3) in the supplemental notice, which would have subjected all antimicrobials eligible for exemption that were classified in Toxicity Category I to a subset of the container regulations. In the supplemental notice, EPA described four options for determining which antimicrobial products that are eligible for exemption would be subject to the container provisions to prevent an unreasonable adverse effect on the environment. Today's final rule establishes Option 1 as the procedure to be implemented, which exempts all eligible antimicrobials, but includes a provision to require a specific product or group of products to comply with the container regulations if a problem becomes evident. The four options in the supplemental notice were:

- Option 1: Exempt all eligible antimicrobials, but include a provision to require a specific product or group of products to comply with the container regulations if a problem becomes evident.
- Option 2: Subject eligible antimicrobials classified in Toxicity Category I to all of the container regulations.
- Option 3: Subject eligible antimicrobials classified in Toxicity

Category I to a subset of the container regulations.

• Option 4: Apply the scope criteria being considered for other pesticides to eligible antimicrobials.

3. *Comments*. Two state agencies supported EPA's approach in the supplemental notice (Option 3). Eighteen commenters, representing the antimicrobial and/or the swimming pool/spa industries, strongly opposed EPA's approach, and most supported Option 1. An agricultural registrant stated that the language in section 19(h) is not a blanket exemption, and that focusing on only Toxicity Category I (as opposed to Toxicity Categories I and II in the applicability for all other products) is unfair and inconsistent.

Many commenters opposed EPA's approach and supported Option 1, either by specifically identifying it as the option EPA should adopt or by describing and supporting an approach that is consistent with Option 1. These commenters supported their positions with the following claims:

i. *Statutory intent*. Some commenters stated that only Option 1 is consistent with the statutory language. Several respondents specifically disagreed with EPA's general criteria approach, saying it was unnecessary, inappropriate and inconsistent with the statutory language.

ii. *Congress's intent*. Similarly, many commenters stated that only Option 1 is consistent with Congress's intent. The commenters generally argued that Congress's clear intent was to exempt nearly all eligible antimicrobials. One commenter referred to testimony received and comments made at various committee hearings to support its interpretation of the congressional intent. Several commenters stated that EPA's approach is contrary to the position of EPA negotiators during pre-FQPA discussions, which was that the provision constituted essentially a complete exemption.

iii. *No information about unreasonable adverse effects*. Many respondents pointed out that EPA does not have concrete information, such as documented incidents, of unreasonable adverse effects (UAEs) caused by antimicrobial pesticides. In addition, several pool supply companies said that there are no reports of accidents with refillable containers used for pool chemicals and mentioned that they have used these containers safely for many years and for large volumes of sodium hypochlorite.

iv. *Standard of unreasonable adverse effect on the environment*. Several commenters stated that the process of registration is intended to ensure that the pesticide will not cause an UAE, and therefore all registered products, including those in Toxicity Category I, have been determined to meet a standard of no UAE. These commenters further argued that information on specific exposures, leakage or other problems is needed to overturn the registration decision of no UAE and to determine that an UAE must be prevented. Another respondent commented that Congress didn't provide additional insight into what constitutes an UAE in the context of section 19, so it must have the same meaning as in the FIFRA registration standard in section 3(c)(5) and the obligation to report information on UAE in section 6(a)(2).

v. *FIFRA section 6(a)(2) reporting*. Several commenters stated that the section 6(a)(2) obligation for registrants to submit factual information regarding UAE to EPA provides an adequate mechanism for EPA to identify UAEs caused by antimicrobials eligible for exemption. A few of these respondents pointed out that the UAE standard in section 6(a)(2) is exactly the same as the standard in section 19(h)(2).

vi. *Minimal threat to the environment*. Several commenters specifically addressed sodium hypochlorite and commented that it is not a threat to the environment because: it has a short half life; it's final fate is sodium chloride (table salt); it is used widely without evidence that it is problematic; it's only in Toxicity Category I for eye effects, unlike the toxic and persistent agricultural pesticides; it's an inorganic chemical; the institutional/industrial formulation is only slightly more concentrated than common household bleach; it's less toxic than many automotive and household chemicals; and the resultant liquid from hosing down a spill is indistinguishable from drinking water. An industry association argued that many of these claims apply to institutional and industrial sanitizers and disinfectants in general.

vii. *No need for additional regulations*. Several commenters stated that there is no need for EPA to regulate institutional and industrial disinfectants because these products are already adequately regulated by EPA waste regulations, DOT's packaging requirements, and OSHA's health and safety standards. One commenter stated that most manufacturers and formulators of antimicrobial products use containers that meet at least the DOT Packing Group III standards for all materials, because it's not feasible to use certain containers for DOT hazardous materials and other containers for products that aren't DOT hazardous materials.

4. *EPA response*. EPA has decided to change its approach for determining which antimicrobial products that are eligible for exemption must be subject to the container regulations to prevent an unreasonable adverse effect. The final rule will implement Option 1 rather than Option 3.

EPA believes that Option 1 is acceptable because it is a legitimate, reasonable interpretation of the statutory language. In addition, making determinations for subjecting products to the container regulations based on specific information, data or other evidence of a problem to prevent unreasonable adverse effects on the environment is more straightforward than making such a determination based on arguments supporting the fact that there *could* be unreasonable effects.

In changing the approach to Option 1, EPA was partly convinced by the comments and observations relating to the standard of unreasonable adverse effect. The process of registration (including the submission and review of data plus establishing label restrictions) is intended to ensure that the pesticide will not cause UAEs on the environment. In other words, all registered products have been determined to meet a standard of not causing UAEs on the environment. This determination can be re-visited and changed by EPA if UAEs are identified during the process of reregistration or other review, under the ongoing mechanisms of FIFRA section 6(a)(2) (as implemented by 40 CFR part 159) or when other relevant information is received by EPA.

If all eligible Toxicity Category I antimicrobial products needed to be subject to the container regulations to prevent UAEs on the environment (according to options 2 and 3 in the supplemental notice), then currently we should be seeing UAEs from the containers of these products. This is especially true given the relatively large quantities of antimicrobial pesticides used annually. As described in the supplemental notice, in 1995 approximately 3,290 million pounds of antimicrobial active ingredients were used in the United States, compared to 1,222 million pounds of non-antimicrobial active ingredients.

However, EPA is unaware of a substantial number of UAEs resulting from the containers of antimicrobial pesticides. Data from the California Pesticide Illness Surveillance Program indicate only a limited number of cases where exposure to antimicrobial pesticides was very likely to be prevented if the container regulations had been in place. (Ref.22) Given the

limited number of incidents, we do not believe it is appropriate to require all eligible Toxicity Category 1 antimicrobial products to be subject to the container regulations, and we believe that a case-by-case approach is better suited to the issue.

Because Congress didn't provide additional insight into what constitutes an unreasonable adverse effect in the context of section 19, EPA agrees with the comment that it should have the same meaning as in the FIFRA registration standard in section 3(c)(5) and the obligation for registrants to report information about UAEs on the environment in FIFRA section 6(a)(2).

While some of the public comments were persuasive, EPA does not agree with all of the comments submitted in support of Option 1. For example, EPA stands by the statements in the supplemental notice that the statutory language ''unless the Administrator determines that [an eligible antimicrobial] product must be subject to [the container] provisions to prevent an unreasonable adverse effect on the environment'' provides considerable flexibility for EPA to implement it by establishing general criteria or by product-specific decisions. In addition, the lack of significant documented legislative or statutory history on the FQPA amendment to FIFRA section 19(h) makes it impossible to identify Congress's intent one way or another on this issue. Moreover, the fact that this language was added toward the end of the legislation's adoption indicates that commenters' statements regarding the intent of section 19(h) may not be an altogether accurate depiction of how Congress intended this portion of section 19(h) to be interpreted. EPA believes that some antimicrobial products may need to be subject to the container regulations to protect human health and the environment. These products will be identified and regulated by the process described in Unit III.F. below. Finally, EPA believes that the other regulations cited by commenters including EPA waste regulations, DOT's packaging requirements, and the OSHA health and safety standards overlap to some degree with the pesticide container regulations but generally address different stages of a container's life cycle. Also, these regulations apply to other pesticides and therefore do not uniquely affect antimicrobials.

F. Process for EPA to Make These Determinations (§§ 165.23(d),165.43(e) and 165.63(e))

1. *Final regulations*. The final regulations describe the process and standards by which EPA may determine that an antimicrobial pesticide product that would otherwise be exempt must be subject to the container regulations to prevent an unreasonable adverse effect on the environment. EPA may make this determination if all of the following conditions exist:

- EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.
- The information, data or other evidence is reliable and factual.
- The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.
- Complying with the container regulations could reasonably be expected to eliminate the problem.

The process in the final rule for making these determinations is based on the regulations in 40 CFR 152.164 for classifying products as restricted use pesticides. If EPA determines that an antimicrobial pesticide product that would otherwise be exempt must be subject to the container regulations to prevent an unreasonable adverse effect on the environment, EPA may:

- Require, by rule, that the product be repackaged (if applicable) and distributed or sold in containers that comply with all or some of the requirements in these regulations; or
- Notify the applicant or registrant of EPA's intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be repackaged (if applicable) and distributed or sold in containers that comply with all or some of the requirements in these regulations.

For the purposes of notification, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. This process allows EPA to apply all of the requirements in the nonrefillable container, refillable container and repackaging subparts to the product. Alternatively, EPA could apply a subset of the container-related requirements to the product if compliance with some but not necessarily all of the requirements would eliminate the problem.

EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the container and, if appropriate, the repackaging regulations within the time frames established by EPA in the rule or in its notification.

2. *Changes*. Because we are finalizing Option 1 rather than Option 3 in the supplemental notice, the final rule provides more specific criteria and a better-defined process for EPA to make determinations to prevent an unreasonable adverse effect on the environment. The criteria and process are outgrowths of comments on the supplemental notice and the following potential regulatory provision from the supplemental notice:

> EPA may determine that an antimicrobial product or products must comply with the container standards. EPA may consider evidence such as field studies, use history, accident data, monitoring data, or other pertinent evidence in deciding whether the product must comply with the container standards to prevent an unreasonable adverse effect on the environment.

3. *Comments*. Many commenters provided suggestions and information about how they believe the case-by-case determinations should be made. While the actual language varied among commenters, the respondents agreed that EPA needs specific evidence of a problem related to containers before EPA can determine a product must be subject to the container regulations to prevent an unreasonable adverse effect.

4. *EPA response*. EPA believes that the criteria and process in the final regulations for making determinations to prevent an UAE represent a legitimate, reasonable, straightforward interpretation of the statutory language. In addition, we think these criteria and the process for making determinations are similar to EPA's current systems. EPA has the ability to re-visit a product's registration standard of not causing UAEs and change it if UAEs are identified during the process of reregistration or other review, under the ongoing mechanisms of FIFRA section 6(a)(2) (as implemented by 40 CFR part 159, PR Notice 98–3 (Ref. 55), PR Notice 98–4 (Ref. 54) and other guidance documents) or when other relevant information is received by EPA. The criteria and process included in the final rule are consistent with most comments received on the supplemental notice.

It is difficult to precisely identify the kind of information that EPA would consider sufficient and to characterize in great detail the problems that could trigger this regulatory provision, because we cannot anticipate every situation that might arise in the future. However, the following items are intended to provide some guidance on the different factors that EPA will consider in making determinations about whether an antimicrobial product

or products must be subject to the container regulations:

- What kind of information, data or other evidence of a problem with containers has EPA obtained? This could be descriptions of cases, incidents or examples of problems or it could be some other kind of information.
- How severe are the problems identified in the information, data or other evidence obtained by EPA? The 6(a)(2) regulations in 40 CFR part 159 define severity categories assigned to incidents and PR Notice 98–3 (Ref. 55) expands the definitions for incidents involving humans and domestic animals.
- How prevalent are the problems identified in the information, data or other evidence obtained by EPA? Are the problems isolated or are they widespread? EPA will evaluate the prevalence of the problems and the severity of the problems before taking any action to subject the product or products to the container regulations.
- Where do the problems occur in the distribution chain? In other words, whether the incidents occur predominantly at the facilities of manufacturers, retailers or end users may affect our decision. Also, this information may allow EPA to trace a problem back to a certain facility or a limited number of facilities.
- What is the company's history in terms of reacting to problems of concern?
- Do the problems cause an unreasonable adverse effect on the environment?
- Could the problems reasonably be expected to cause an unreasonable adverse effect on the environment if they continue to occur? For example, about a decade ago, EPA received a significant number of reports of a household pesticide that exploded over time. While these initial incidents may not have directly led to a severe human injury or illness, it is reasonable to expect that someone could have been injured or become ill if they were in a garage or storage area when a container exploded.
- Would complying with the container regulations reasonably be expected to eliminate the problem? If the container regulations don't address the problem or would not mitigate the problem, then EPA could consider other approaches (such as establishing conditions specific to that registration) to mitigate the problem. As an example, it is possible that a problem could be caused by a problem with a specific kind of container material. In this case, the solution may be to require the product to be distributed in a certain container material or a container material that has been treated, e.g., fluorinated high density polyethylene. It is possible that some of these alternative approaches may have other impacts with respect to the container regulations. For example, requiring a product to be distributed in a nonrefillable container that is rigid rather than non-rigid would increase the number of nonrefillable container standards the product must comply with.

G. Summary Table of the Scope for Antimicrobial Products

The following tables compare the approach for regulating antimicrobial products in the final regulations and the supplemental notice. Table 4 compares the exemption criteria in the final rule with the criteria discussed in the supplemental notice. Table 5 compares whether certain kinds of products (assuming they would otherwise be exempt) are exempt from or subject to the container standards in the final regulations and the supplemental notice approach.

TABLE 4.—EXEMPTION CRITERIA FOR ANTIMICROBIAL PRODUCTS IN THE FINAL RULE COMPARED TO THE SUPPLEMENTAL NOTICE

Criterion for Exemption	Approach in the Final Rule	Approach in the Supplemental Notice
FIFRA section 2(mm) antimicrobial pesticide	As defined in FIFRA section 2(mm)	As defined in FIFRA section 2(mm)
Antimicrobial products that are not FIFRA 2(mm) antimicrobial pesticides because they are subject to a tolerance or food additive regulation	Criterion is included as an additional criterion allowing exemption	Criterion wasn't included; these would have been subject to the container regulations
Antimicrobial product use categories that are considered household, industrial, or institutional	10 antimicrobial product use categories are household, institutional or industrial. The additional antimicrobial product use categories are: • aquatic areas; and • agricultural premises and equipment	9 antimicrobial product use categories were identified as household, institutional or industrial. The additional antimicrobial product use categories were: • aquatic areas; • agricultural premises and equipment; and • human drinking water systems
Is not a hazardous waste when it is intended to be disposed	Is not a hazardous waste as set out in 40 CFR part 261 when intended to be disposed	Does not meet the criteria for hazardous waste in 40 CFR part 261 when intended to be disposed
EPA has not specifically determined product must be subject to container regulations to prevent an unreasonable adverse effect	Criteria and a process for making the determination are included in the final rule	Making case-by-case determinations was discussed as an option, but was not specifically included in the potential regulatory language

TABLE 5.—ANALYSIS OF WHETHER CERTAIN TYPES OF ANTIMICROBIAL PRODUCTS[1] WOULD BE SUBJECT TO OR EXEMPT FROM THE CONTAINER REGULATIONS - COMPARING THE FINAL RULE TO THE SUPPLEMENTAL NOTICE[2]

Antimicrobial Product Description	Final Rule	Supplemental Notice(Option 3)
Products that are subject to a tolerance or food additive regulation	Exempt from the regulations[3]	Subject to the regulations according to 2(mm) definition
Products that are exempt from, or otherwise not subject to a tolerance or food additive regulation	Exempt from the regulations according to 2(mm) definition[3]	Exempt from the regulations according to 2(mm) definition[3]
Wood preservative or antifouling paint intended to control only micro-organisms	Exempt from the regulations according to 2(mm) definition[3]	Exempt from the regulations according to 2(mm) definition[3]
Wood preservative or antifouling paint intended to control macro-organisms as well as micro-organisms	Subject to the regulations according to 2(mm) definition	Subject to the regulations according to 2(mm) definition
Agricultural fungicide or aquatic herbicide	Subject to the regulations according to 2(mm) definition	Subject to the regulations according to 2(mm) definition
Product in Toxicity Category I	Exempt from the regulations[3]	Subject to all nonrefillable container requirements except the residue removal standard; subject to all refillable container requirements unless used in swimming pools according to determination to prevent UAE
Product in Toxicity Category II, III or IV	Exempt from the regulations[3]	Exempt from the regulations[3]
Product used only in swimming pools and closely related sites	Exempt from some refillable container and repackaging requirements if subject to the regulations for any reason	Exempt from some refillable container and repackaging requirements if it met all of the exemption criteria and is in Toxicity Category I

[1] In this table, the term antimicrobial has a broad interpretation, i.e., as described in FIFRA section 2(mm)(1)(A).
[2] All antimicrobial products must comply with the new labeling requirements. (See Unit IX. for more details about the label regulations.) This table refers only to complying with the container-related regulations, i.e., standards for nonrefillable containers, refillable containers and repackaging.
[3] The product is exempt from the regulations unless it would be subject because of other triggers, such as it is a hazardous waste when intended to be disposed.

H. Other Pesticide Products Subject to These Regulations (§§ 165.23 (e), 165.43(f) and 165.63(f))

1. *Overview*—i. *Final regulations*. For nonrefillable containers, all pesticide products other than MUPs, plant-incorporated protectants and exempt antimicrobial products are subject to the nonrefillable container standards. However, only the ''higher risk'' products are subject to all of the nonrefillable container requirements. The ''lower-risk'' products are subject only to the basic DOT requirements. In particular:

- A product must comply with all of the nonrefillable container requirements if it is classified in at least one of the following categories: (1) Toxicity Category I; (2) Toxicity Category II; or (3) Restricted use product.
- All other products (those in Toxicity Category III or IV that are not restricted use products) must comply only with the basic DOT requirements in 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires it to be packaged according to 49 CFR parts 171–180.

The final rule does not distinguish between higher risk and lower risk products for the refillable container and repackaging regulations. In other words, pesticide products other than MUPs, plant-incorporated protectants and exempt antimicrobial products must comply with all of the refillable container and repackaging standards. The only exception is that antimicrobial products that are used in swimming pools and closely related sites are subject to a reduced number of the requirements, as described in Unit III.D.

ii. *Changes*. The 1994 NPRM proposed that the container regulations would generally apply to all end use pesticide products and all containers, regardless of the pesticide market sector. The proposed container regulations included requirements that are equivalent to some DOT requirements, such as marking, container integrity, reclosing securely and a drop test, and some requirements that are pesticide-specific, such as standard closures, one-way valves, and the residue removal standard. Many commenters opposed the broad scope of the regulations and requested EPA to exempt one or more subsets of pesticides from the container requirements.

In the 1999 supplemental notice, EPA described a potential regulatory option for products other than antimicrobials that would exempt some pesticides and containers from the final rule. Rather than exempt products based on the pesticide market sector or the type of pesticide (as specified by the commenters on the proposal), EPA's approach was to exempt pesticides based on the relative risk they posed.

The regulatory approach in the supplemental notice would have exempted manufacturing use products, as we proposed in 1994, and included a previously described set of standards for antimicrobial products that would be eligible for exemption. For all other

products, a product would be subject to the regulations if it met any one of the following criteria:

- The product is classified in Toxicity Category I or II;
- The capacity of the container is equal to or larger than 5 liters (1.3 gal) for liquids or 5 kilograms (11.0 lbs) for solids;
- The product's labeling permits outdoor use and includes at least one of the specified environmental hazard statements.

The container size and environmental hazard label statement criteria would have captured many products in Toxicity Category III and IV so they would have been subject to the regulations.

About 18 respondents provided comments on these general (non-antimicrobial) scope criteria in the supplemental notice, consisting largely of individual registrants and registrant groups. The commenters generally agreed that it was appropriate to differentiate the stringency of the regulations based on the relative risk posed by the products and containers. None of the commenters wholly supported the approach in the supplemental notice and there was no general agreement in an approach among the suggestions provided by the respondents. Some commenters stated that certain standards (either the DOT Packing Group III standards or the standards in a DOT limited quantity exception) should apply to all products. Many commenters suggested changes to the Toxicity Category and container size criteria. None of the commenters supported the environmental hazard statement criteria. A few commenters suggested other exemptions that should be included, such as exempting all residential use products.

After carefully reviewing these comments and conducting an analysis of the products that would be regulated using the supplemental notice criteria, EPA decided to revise the approach in the final rule for regulating pesticide products other than MUPs, plant-incorporated protectants and antimicrobials that are exempt. As described above, the approach for the nonrefillable container standards, which differentiates between ''higher risk'' and ''lower risk'' products, is different from the approach for the refillable container and repackaging requirements, which do not make that distinction.

iii. *Refillable container and repackaging regulations.* Pesticide products other than MUPs, plant-incorporated protectants and exempt antimicrobial products must comply with all of the refillable container and repackaging standards. One exception is that antimicrobial products that are used in swimming pools and closely related sites are subject to a reduced number of the requirements.

2. *Alternative approach and rationale for changes.* The final rule approach for regulating pesticide products that are not otherwise exempt was developed based on the comments on the supplemental notice and on an analysis conducted by EPA. The broad comments related to substantial changes in the approach are described in this subunit, while comments on the specific criteria in the supplemental notice are discussed individually in subunits below.

i. *Comments - overall approach.* EPA posed six questions in the supplemental notice related to the scope of products subject to the container regulations. The first question was ''Is it appropriate to apply the container standards only to the higher-risk pesticides?'' Eight respondents specifically addressed this question and seven of them generally agreed with EPA that it is reasonable to apply different levels of regulation to higher-risk and lower-risk pesticides. However, the commenters differed in their recommendations for regulating the lower-risk pesticides. Only one of the eight commenters, a non-agricultural registrant group, specifically supported a complete exemption for the lower-risk pesticides. Some commenters took a middle ground. In particular, the comments from a registrant group and three registrants were a bit vague, stating that it is appropriate to apply the container standards only to the higher risk pesticides and that lower-risk pesticides should not be subject to the same requirements. Several commenters opposed the approach of completely exempting some products. Two registrant groups explicitly supported an option where lower risk pesticides would be subject to some regulations, although different standards would be appropriate. Also, the commenter who didn't support distinguishing between risk levels was a registrant who stated that the requirements for DOT Class 9 materials should apply to all pesticides that are not DOT hazardous materials.

The second question was ''Are the criteria being considered by EPA to distinguish between higher-risk and lower-risk pesticides appropriate?'' The same eight commenters addressed this question and none of them believed that the criteria in the supplemental notice were appropriate for distinguishing between higher-risk and lower-risk pesticides. An agricultural registrant group commented that toxicity and container size are generally appropriate criteria, but questioned the viability of using these criteria because of the wide range of combinations of toxicity (human health and environmental), container sizes and distribution and handling practices. This commenter supports establishing the DOT Packing Group III standards as a minimum for agricultural pesticides in nonrefillable containers. A registrant group and a registrant stated that DOT limited quantity provisions should be authorized for pesticides that are not DOT hazardous materials. The regulatory language recommended by one of these commenters would require pesticide products to comply with all nonrefillable container standards unless they were specifically exempt or subject to a limited quantity exception. Four commenters--a registrant group and three registrants--strongly opposed the environmental hazard statement criterion because they don't believe the environmental hazard statements on the label are appropriate indicators of risk. One of them said that toxicity category alone should be used to distinguish between higher-risk and lower-risk pesticides. A non-agricultural registrant group questioned the appropriateness of human toxicity characteristics for packaging regulations that, it claims, deal primarily with storage and disposal. This commenter urged EPA to develop alternate criteria, such as the potential for the product to leak from containers and/or to persist in the environment.

In addition, a registrant group and a registrant who addressed the above question provided more detailed comments on an alternate approach. These commenters stated that all agricultural pesticides distributed in nonrefillable containers should comply with the DOT packaging standards. Under this option, pesticides that are not DOT hazardous materials would comply with the Packing Group III standards or, if appropriate, one of the limited quantity exceptions. The registrant group stated that having minimum requirements on pesticide integrity is in the best interest of agriculture, the public and our industry.

Another registrant provided a detailed description of an alternate approach. This commenter split the regulations into two primary issues - (1) container design and integrity testing and (2) container residue removal standards and others - based on the goals of the rule and their financial impact. This agricultural registrant strongly believes that all pesticides in nonrefillable containers should be required to use DOT Packing Group III containers as a minimum safety standard. On the other

hand, this respondent believes that it may be reasonable and appropriate to consider exempting lower-risk pesticides from some standards, such as the residue removal requirement.

ii. *EPA response - overall approach*. These comments prompted EPA to reconsider the approach discussed in the supplemental notice where lower-risk pesticides would be completely exempt from the nonrefillable container standards. EPA agrees with the point made by some commenters that all containers should meet standards for integrity and compatibility and is modifying the final rule accordingly. However, EPA believes that the minimum standards for integrity are different between nonrefillable and refillable containers.

In general, DOT has two different sets of package integrity standards. The most thorough set of requirements are the performance-oriented packaging standards, which include drop, leakproofness, hydrostatic pressure, stacking and vibration tests. These tests may vary in stringency depending on the packing group of the material. For example, a Packing Group I test involves a drop from 1.8 meters (5.9 feet) while a Packing Group III test has a drop from 0.8 meters (2.6 feet). The other set of requirements are the packaging standards in 49 CFR part 173 subpart B, which are referenced in DOT limited quantity exceptions. In other words, packages that are subject to a limited quantity exception must comply with the standards in subpart B of part 173, even though they are exempt from the full array of performance-oriented packaging tests and other standards.

The requirements in 49 CFR part 173 subpart B include many different standards related to ''Preparation of Hazardous Materials for Transportation.'' Some of these requirements address aspects of transportation other than packaging, such as the loading and unloading of transport vehicles, or establish requirements for specific modes of transportation, such as general requirements for transportation by aircraft. Therefore, it would not be appropriate for EPA to reference all of part 173 subpart B, because we are only interested in incorporating the DOT standards that address packaging design, construction and marking. After analyzing the subpart B regulations, EPA believes that the general requirements for packagings and packages in 49 CFR 173.24 are appropriate basic standards that all nonrefillable containers must meet. The standards in 49 CFR 173.24 address container integrity, compatibility, closures and outage/filling limits. These DOT standards cover the same areas as the proposed requirements for nonrefillable container integrity/compatibility in § 165.102(b) and reclosing containers securely in § 165.102(d)(3). EPA believes that all nonrefillable containers should easily be able to comply with these requirements, yet they provide a standard that we could enforce in situations where container problems may arise. Therefore, the final rule references the general requirements for packagings and packages in 49 CFR 173.24 as the basic standards for all nonrefillable containers, unless the pesticide product is exempt from the regulations.

On the other hand, EPA believes that the DOT Packing Group III standards, including the performance-oriented packaging tests, are an appropriate minimum standard for refillable containers. Refillable containers need to be sturdier, stronger and able to withstand more stress than nonrefillables because they spend more time in use (i.e., full of pesticide) and in the lanes of transportation. Because refillable containers are returned to the refiller and/or registrant repeatedly over the useful life of the containers, they are subject to more wear and tear than containers that are used once. Therefore, EPA believes that it is appropriate to require refillable containers to be capable of meeting DOT's packaging standards at the Packing Group III level, if the pesticide product is not a DOT hazardous material. If the pesticide product is a DOT hazardous material, it must comply with the relevant DOT standards.

3. *Nonrefillable containers: human toxicity criterion*—i. *Final regulations*. For pesticide products other than MUPs, plant-incorporated protectants, and exempt antimicrobial products, a pesticide product must comply with all the nonrefillable container requirements if it is classified in Toxicity Category I or II, as set out in 40 CFR 156.62.

ii. *Changes*. For pesticide products in nonrefillable containers, this criterion is identical to the one set forth in the potential alternative regulatory text in the 1999 supplemental notice. EPA continues to believe that the most hazardous groups of pesticides in terms of human toxicity - those in Toxicity Category I and Toxicity Category II - should be subject to the nonrefillable container standards. Most problems with handling containers will lead to human exposure, as a result of dripping, glugging, leaking, or container failures, so EPA believes that human toxicity is an appropriate criterion. Furthermore, EPA believes that products in Toxicity Category I and II pose a significant enough risk in these situations that these products should be subject to the nonrefillable container requirements.

EPA is participating in a global effort to harmonize the classification and labeling of chemicals for human and environmental hazards, which is being led by international agencies such as the Organization for Economic Co-operation and Development (OECD), the International Labor Organization and the UN Committee of Experts on the Transportation of Dangerous Goods. The global harmonization effort resulted in new definitions for toxicity characteristics and a new Category V. The categories and rationale were described in *OECD Series on Testing and Assessment Number 33, Harmonized Integrated Classification System for Human Health and Environmental Hazards of Chemical Substances and Mixtures*. That document has since been superceded by a consolidated document published by the United Nations Economic Commission for Europe (UNECE) entitled *Globally Harmonized System of Classification and Labeling of Chemicals (GHS)* and is available at the following Web site: *http://www.unece.org/trans/danger/publi/ghs/ghs_rev01/01files_e.html*. (Ref. 16) Each country will select elements of the system deemed appropriate for regulating transport, worker and environmental protection. When EPA modifies its definitions of toxicity categories in 40 CFR part 156 to harmonize with the OECD guidelines, EPA plans to revise the toxicity category criteria in § 165.23(e) to incorporate the new toxicity categories. The criteria and signal words associated with the GHS toxicity categories are different than EPA's existing criteria and signal words. Therefore, the universe of products subject to the full set of nonrefillable container standards and the universe of products subject only to the basic DOT packaging requirements will likely change.

4. *Nonrefillable containers: other toxicity criterion*—i. *Final regulations*. For pesticide products other than MUPs, plant-incorporated protectants, and exempt antimicrobial products, a pesticide product must comply with all the nonrefillable container requirements if it is classified by EPA as a restricted use product.

ii. *Changes*. This criterion is different than the criterion described in the supplemental notice that would have required a product to comply with the nonrefillable container regulations if its labeling allowed outdoor use and included at least one of the specified

environmental hazard statements. Rather than relying on the environmental hazard statements on pesticide labels, such as ''This pesticide is toxic to birds,'' EPA decided to change this criterion to products that are classified as restricted use products, which was discussed as an option in the supplemental notice. According to an EPA analysis, fewer than 250 restricted use products are in Toxicity Category III or IV (i.e., that are not already captured by the human toxicity criteria). (Ref. 45)

iii. *Comments*. Many commenters--all registrant groups and registrants--commented on the environmental toxicity criterion in the supplemental notice. One non-agricultural registrant group stated that some of the criteria covered by the hazard statements, such as whether a pesticide leaches through the soil to groundwater, are appropriate and should be substituted for the human toxicity criteria. A registrant group and a registrant opposed any environmental criteria. A registrant group and two registrants opposed the environmental hazard criterion because they did not agree that the actual use (indoor or outdoor) of a pesticide is a realistic basis for determining exemptions from the container regulations. These commenters said that a spill or release could happen at any point during transportation, storage or handling and that all pesticide products share the same lanes of transportation. Therefore, these commenters believe the distinction between whether the pesticide is used indoors or outdoors is irrelevant. Several commenters opposed the environmental hazard criterion because they don't believe the environmental hazard statements on the label are appropriate indicators of risk.

Several commenters addressed the option discussed in the supplemental notice for including a criterion for pesticides that are classified as restricted use for environmental or ecological reasons. In particular, a registrant group and several registrants commented that ''while it is true that compounds that are restricted in their use for ecological reasons would have some of the specified environmental hazard statements ..., it is also true that many compounds with little or no potential for risk could easily contain such language.'' This statement implies that these respondents distinguish between the risks posed by pesticides that are restricted in their use for ecological reasons - which are higher - and the risks posed by other pesticides.

iv. *EPA response*. As stated in the supplemental notice, EPA continues to believe that it is important and necessary to account for environmental factors when evaluating the risks posed by pesticide containers. After considering the comments and re-evaluating the environmental hazard statement approach described in the supplemental notice, EPA is changing the approach in the final regulations. EPA believes that the environmental hazard statement option, as described in the supplemental notice, would be difficult to implement because each label would have to be evaluated and because the ''catch-all'' standard included in the supplemental notice (''Any environmental hazard statement pertaining to wildlife, fish, birds or groundwater'') raises some ambiguity about which products would be included by this criterion. Also, while EPA doesn't necessarily agree with all of the comments, an EPA analysis (Ref. 78) raised questions about whether using the environmental hazard statements on the label would capture the highest-risk pesticides. Finally, the final rule uses the criterion of restricted use classification to distinguish between levels of regulation (subject to all of the nonrefillable container standards versus subject to the basic DOT standards) rather than to distinguish between whether the product is regulated or exempt. Therefore, we can afford to set the criterion at a level that would focus on the most environmentally risky products, because the other products will be subject to basic container integrity and compatibility standards, rather than being completely exempt.

The criteria that EPA utilizes to restrict an end use product to use by certified applicators (or persons under their direct supervision) are described in 40 CFR 152.170. The general criteria for restricting the use of a product are that EPA determines that:

- The product's toxicity exceeds one or more of the specific hazard criteria in 152.170, or evidence substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use;
- The product's labeling is not adequate to mitigate these hazards;
- Restriction of the product would decrease the risk of adverse effects; and
- The decrease in risks of the pesticide as a result of restriction would exceed the decrease in benefits.

Section 152.170 lists specific human and ecological toxicity endpoints that cause a product to be considered for restricted use classification. In addition, the regulations state that EPA may consider evidence such as field studies, use history, accident data, monitoring data or other pertinent evidence in deciding whether the product or use may pose a serious hazard that could be mitigated by restricted use classification.

An analysis of products in EPA's REFS data base shows that many restricted use products are also classified in Toxicity Category I or II. However, there are about 225 restricted use products in Toxicity Category III or IV and all of these products were restricted at least partly for environmental/ecological reasons. (Ref. 45) In particular, the criteria for restricting the Toxicity Category III/IV products include ground water contamination; toxicity to fish, birds, or aquatic organisms; and hazard to wildlife or non-target organisms.

5. *Nonrefillable containers: container size criterion*—i. *Final regulations*. Container size is not a criterion in the final regulations for determining whether a pesticide product is subject to the nonrefillable container regulations.

ii. *Changes*. The approach in the supplemental notice included a container size limit as one of the criteria for being subject to the nonrefillable container regulations. Specifically, a product would have been subject to the nonrefillable container regulations if the container's capacity was equal to or larger than 5.0 liters (1.3 gallons) for liquid formulations or 5.0 kilograms (11.0 pounds) for solid formulations. EPA decided not to incorporate the container size criterion into the final rule for nonrefillable containers because of other changes in the structure of the final regulations. In particular, the final rule uses the scope criteria to distinguish between levels of regulation (subject to all of the nonrefillable container standards versus subject to the basic DOT standards) rather than to distinguish between whether the product is regulated or exempt. The criteria in the final rule subject the most toxic and most risky pesticides — those in Toxicity Categories I and II and any others that are restricted use products — to the full set of nonrefillable container requirements. All other products that are not specifically exempt are subject to basic container integrity and compatibility standards, rather than being completely exempt. EPA believes the basic DOT packaging standards offer an acceptable level of protection for the products that are in Toxicity Categories III and IV and that are not restricted use products. Therefore, a container size criterion is not necessary for nonrefillable containers.

6. *Refillable containers and repackaging*—i. *Final regulations*. Pesticide products other than MUPs, plant-incorporated protectants and exempt antimicrobial products must comply with all of the refillable

container and repackaging standards. One exception is that antimicrobial products that are used in swimming pools and closely related sites are subject to a reduced number of the requirements.

ii. *Changes*. The regulatory language is different than the approach described in the supplemental notice, which described the criteria of Toxicity Category I or II, container size and environmental hazard statements for subjecting a pesticide product to the refillable container and repackaging regulations. However, the net effect of the scope language in the supplemental notice is very similar to the scope of the final rule. Because nearly all, if not all, refillable containers are larger than the container size identified in the supplemental notice of 5 liters (1.3 gallons) or 5 kilograms (11 pounds), the supplemental notice criteria would have subjected nearly all, if not all, products in refillable containers to the regulations.

iii. *Comments*. Respondents did not specifically address how the general scope criteria should apply to refillable containers. A few commenters specifically limited some points to nonrefillable containers, although most did not. Therefore, EPA believes that the comments described in Units III.H.1. though III.H.5. generally also apply to refillable containers.

iv. *EPA response*. Under the supplemental notice approach, nearly all refillable containers would have been subject to the refillable container and repackaging regulations because of the container size criterion of 5 liters for liquids and 5 kilograms for solids. Although the container size criterion is not being incorporated into the final regulations, EPA believes it is necessary for products that are not specifically exempt to comply with the refillable container and repackaging regulations.

First, one of the goals of the refillable container and repackaging regulations is to minimize cross-contamination in refillable containers. The regulatory standards in the final rule - including one-way valves, tamper-evident devices, having registrants develop cleaning procedures, and requiring refillers to clean containers if necessary - are necessary for preventing cross-contamination in all products. All products that are distributed or sold must have the composition as stated in their confidential statements of formula and not be adulterated. This standard does not differ based on the toxicity of the product, the container size or any other factor. Therefore, minimizing the chance of cross-contamination is one reason that the final regulations were changed so that the refillable container and repackaging regulations apply to all products that are not specifically exempt. Note that certain antimicrobial products are subject to a reduced number of requirements, as described in Unit III.D.

Second, the repackaging regulations assign responsibility for certain requirements to registrants and to refillers, in addition to setting out the procedures that both parties must follow for pesticide products to be repackaged into refillable containers. EPA believes that it is important for all products that are not specifically exempt to be handled consistently under the repackaging regulations. We think that this consistency will facilitate compliance by both the registrants and refillers.

Third, as stated earlier, the final rule takes the approach that all containers should meet standards for integrity and compatibility. EPA believes that the DOT Packing Group III standards, including the performance-oriented packaging tests, are an appropriate minimum standard for refillable containers. Refillable containers need to be sturdier, stronger and able to withstand more stress than nonrefillables because they spend more time in use (i.e., full of pesticide) and in the lanes of transportation. Because refillable containers are returned to the refiller and/or registrant repeatedly over the useful life of the containers, they are subject to more wear and tear than containers that are used once. Therefore, EPA believes that it is appropriate to require refillable containers to be capable of meeting DOT's packaging standards at the Packing Group III level, if the pesticide product is not a DOT hazardous material. If the pesticide product is a DOT hazardous material, it must comply with the relevant DOT standards.

7. *Changes to the container vs. label regulations*—i. *Final regulations*. In general, all products must comply with the container labeling requirements — the labeling regulations do not exempt MUPs or certain antimicrobial products. One exception is that plant-incorporated protectant container-related labeling instructions will be determined by EPA on a case-by-case basis until specific labeling guidance for plant-incorporated protectants are promulgated under 40 CFR part 174. This approach is discussed in more detail in Unit IX.

ii. *Changes*. This is the same approach described in the 1999 supplemental notice except for the case-by-case handling of plant-incorporated protectants.

I. Flow Chart/Summary

The full scope of the final pesticide container and containment rule is summarized in this section. Different sections of the final rule apply to different subsets of products:

- The *label* requirements apply to all products.
- The *containment structure* requirements apply to agricultural products (stored in stationary pesticide containers by retailers, custom applicators and custom blenders).
- The *nonrefillable container*, *refillable container* and *repackaging* requirements apply to products other than MUPs, plant-incorporated protectants and certain antimicrobial products, as shown in Figure 1.

Within Figure 1, there is a box with the question ''Is it an antimicrobial product that meets all four criteria?'' This box represents a placeholder for the flow chart in Figure 2.

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Figure 1. Scope of the Nonrefillable Container, Refillable Container and Repackaging Regulations

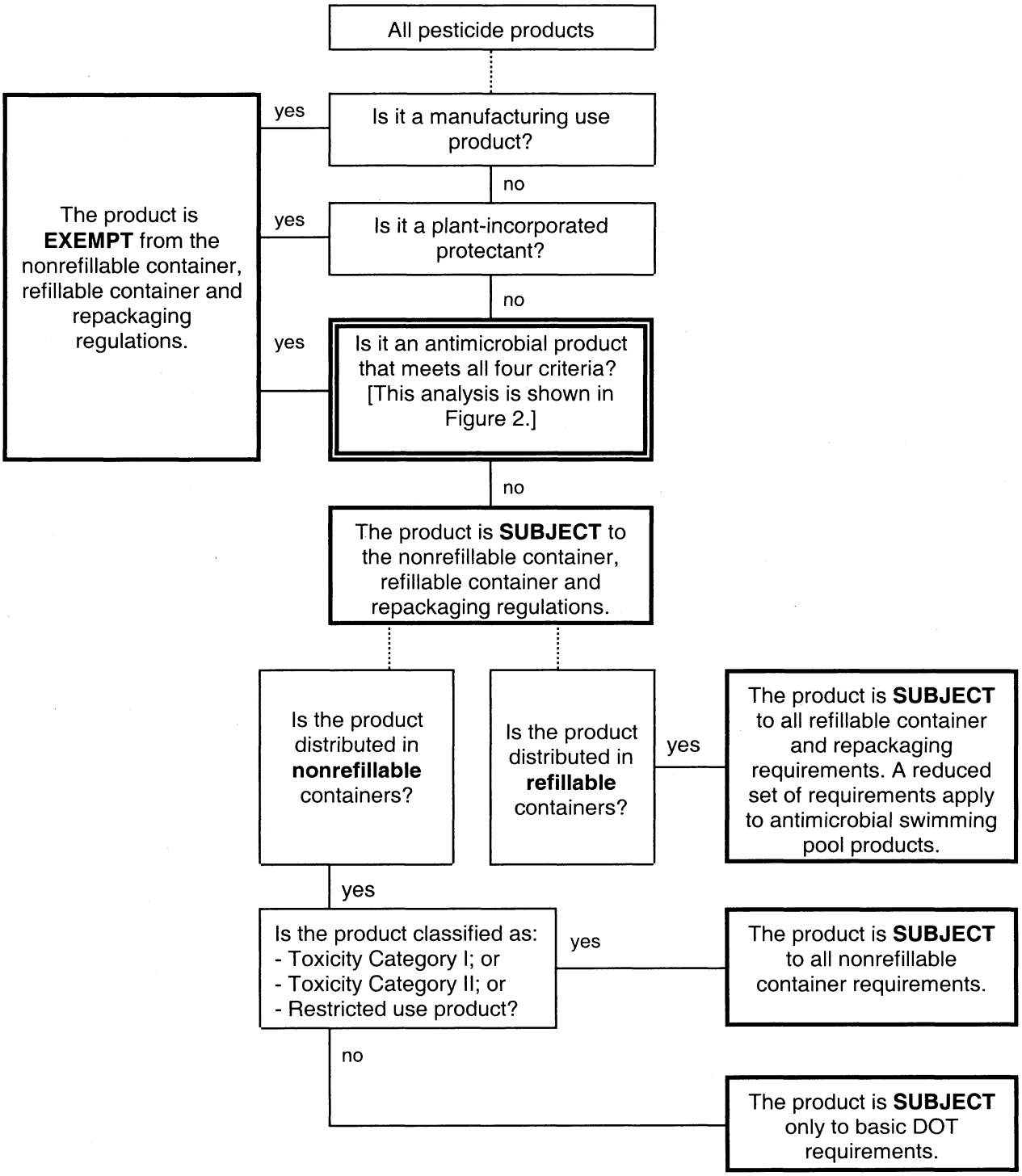
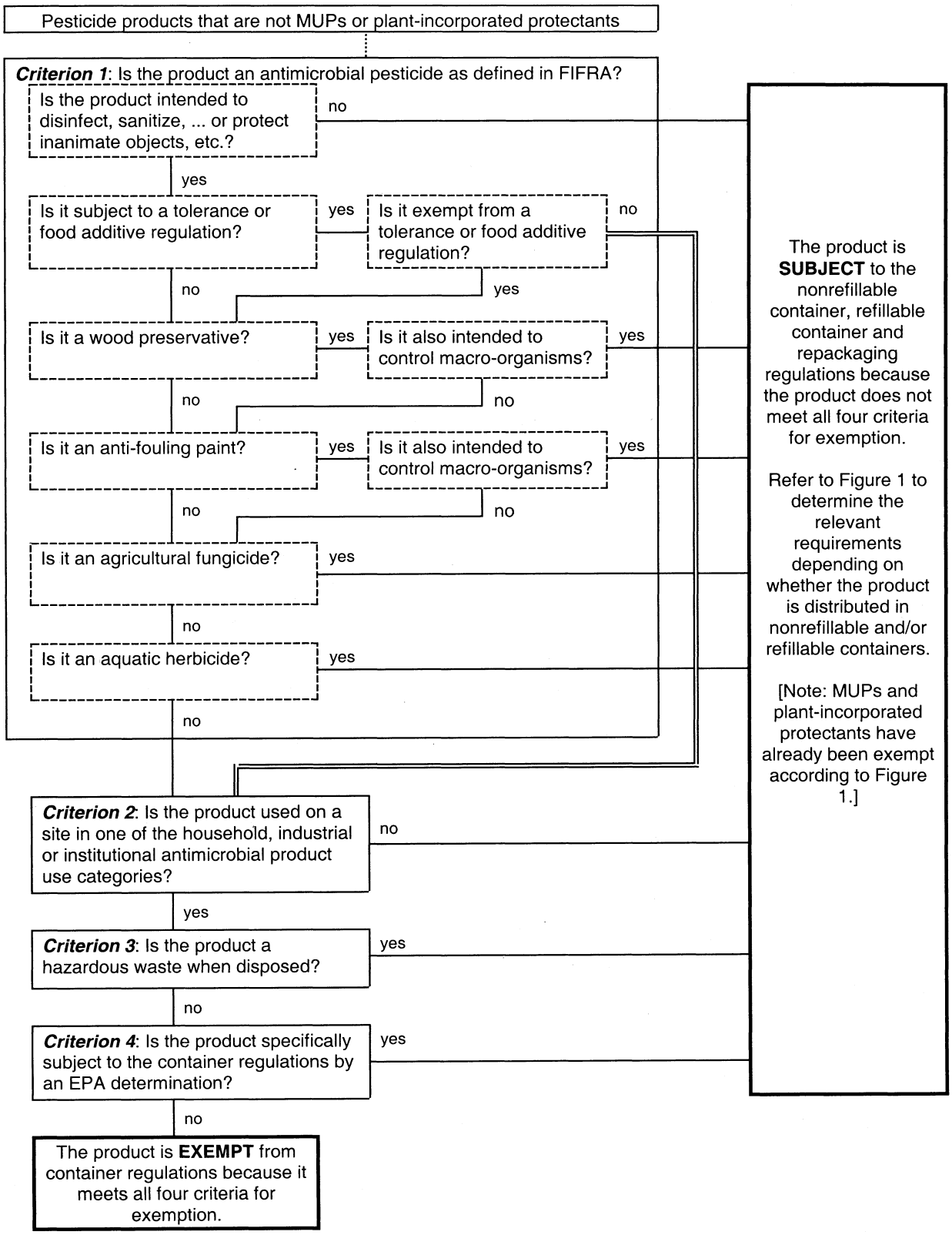


Figure 2. Determining Whether Antimicrobial Products are Exempt from or Subject to the Nonrefillable Container, Refillable Container and Repackaging Regulations



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IV. Container Regulations—Relationship with the Department of Transportation Regulations

A. Background

1. *Department of Transportation Hazardous Materials Regulations.* The U.S. Department of Transportation (DOT) Hazardous Materials Regulations (HMR) are based on the authority in the Federal hazardous materials transportation law, the Hazardous Materials Transportation Act, and are found in 49 CFR parts 171 through 180. The HMR establish standards governing a wide range of the safety aspects of transportation, including requirements for the classification of materials, packaging (including manufacture, continuing qualification and maintenance), hazard communication (i.e., package marking, labeling, placarding, and shipping documentation), transportation, handling and incident reporting.

Some, but not all, pesticide products are defined as DOT hazardous materials by 49 CFR 171.8. A pesticide product may be classified as a DOT hazardous material for displaying any of the hazards identified in the DOT regulations, which are defined in nine different classes. Some DOT hazard classes include several different divisions. The most common hazard classes and divisions for pesticide products include:

- Class 3: flammable or combustible liquids;
- Division 6.1: poisonous materials;
- Class 8: corrosive materials; and
- Class 9: miscellaneous hazardous materials, such as marine pollutants.

Pesticide products that are DOT hazardous materials are required under existing DOT regulations to comply with all applicable regulations in all of the safety areas mentioned above - classification, packaging, hazard communication, transportation and handling. For pesticide products that are not DOT hazardous materials, EPA has focused on the DOT requirements for package design (and manufacture, continuing qualification, and maintenance) and package marking, because these are the areas that overlap with the proposed pesticide container regulations. In other words, EPA is not adopting the HMR standards for DOT labeling, placarding, shipping documentation, transportation and handling, and incident reporting because these areas are generally outside the scope of the pesticide container regulations.

The DOT HMR include general packaging requirements that address areas such as compatibility, closures, venting, and filling limits. The HMR also set out performance standards and related tests that packaging must meet, including drop, leakproofness, hydrostatic pressure, stacking, and vibration tests. The stringency of these tests varies according to the packing group (PG) of the material being transported. The packing group represents a measure of the relative hazards, where PG I includes materials that pose a relatively great hazard and PG III includes materials that pose a relatively minor hazard. Within a given hazard class or division, the DOT HMR assign packing groups based on the materials characteristics, or the regulations refer to the hazardous materials table in 49 CFR 172.101 for substance-specific assignments of packing groups. Most pesticide products that are classified as DOT hazardous materials are in Packing Group III, although some are in PG II and a few are in PG I.

The HMR include exceptions from some portions of the overall regulatory scheme in certain situations, e.g., for damaged packages placed in salvage drums (49 CFR 173.3), for small quantities of hazardous materials (49 CFR 173.4) and for the shipment of waste materials (49 CFR 173.12). Also, the regulations in 49 CFR 173.150 through 173.156 set out limited quantity and consumer commodity exceptions for different hazard classes. The limited quantity exceptions provide relief from some of the HMR requirements, specifically the labeling requirements (unless the package is transported by aircraft), the placarding provisions, and the testing standards in 49 CFR part 178. Also, if a limited quantity meets the definition of consumer commodity, relief from the shipping paper requirements is provided in many cases.

Pesticide products that are classified as DOT hazardous materials must continue to be packaged in accordance with the DOT HMR. Nothing in the pesticide container regulations changes the specific requirements in the HMR that apply to pesticide products based on the criteria in the DOT regulations. Additionally, the pesticide container regulations do not change the stringency of the DOT HMR. If a pesticide product is categorized as a PG II material, it would continue to have to meet the PG II standards and likewise for products in PG I or PG III.

2. *Final regulations (§§ 165.25(a), (b) and (c), and 165.45(a), (b) and (c)).* The final regulations adopt and refer to some of the HMR for pesticides that are subject to this final rule. The approach in the final rule is closely tied to the changes in scope described in Unit III. Some products, including MUPs, plant-incorporated protectants, and some antimicrobial products are completely exempt from the container regulations and are not included in the following discussion because they are exempt. All other products are subject to the final regulations.

For pesticide products that are lower risk (in Toxicity Category III or IV and not restricted use products) in nonrefillable containers, the nonrefillable containers must comply only with the general requirements for packagings and packages in 49 CFR 173.24. No other requirements in EPA's pesticide container regulations apply to these lower risk products. Of course, if any of these products are DOT hazardous materials, they must comply with all applicable DOT regulations. For the purpose of enforcing the pesticide container regulations, however, EPA is only referring to and adopting 49 CFR 173.24 for any lower risk products that are subject to the regulations, regardless of whether or not they are classified as DOT hazardous materials.

Pesticide products that are higher risk (in Toxicity Category I or II or a restricted use product) in nonrefillable containers and all products in refillable containers must be packaged in a container that is designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178 and part 180 that apply to a Packing Group III material. These portions of the DOT regulations, which are described in more detail in later sections of this preamble unit, include:

- General requirements for packagings and packages (§§ 173.24, 173.24a, 173.24b);
- Reuse, reconditioning and remanufacture of packagings (§ 173.28), except for the leakproofness test specified in § 173.28(b)(2);
- Exceptions for Class 9 materials, miscellaneous hazardous materials (§ 173.155);
- Non-bulk packagings for hazardous materials in Packing Group III (§ 173.203 for liquids and § 173.213 for solids);
- Portable tanks, closed bulk bins and intermediate bulk containers for certain low hazard materials (§§ 173.240(c) and 173.240(d) for low hazard solid materials and §§ 173.241(c) and 173.241(d) for low hazard liquid and solid materials);
- Specifications for Packagings (part 178), including non-bulk performance-oriented packaging standards (subpart

L), testing of non-bulk packagings and packages (subpart M), intermediate bulk container (IBC) performance-oriented standards (subpart N), and testing of IBCs (subpart O); and

• Continuing qualification and maintenance of packagings (part 180)

Again, products that are DOT hazardous materials must comply with all applicable DOT regulations. For the purposes of enforcing the pesticide container regulations, the final rule states that a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a container that is ''designed, constructed and marked'' to comply with the requirements of 49 CFR parts 171–180. Including the phrase ''designed, constructed and marked'' allows EPA to focus on the DOT requirements for package design (and manufacture, continuing qualification, and maintenance) and package marking, as described above, rather than the HMR standards for DOT labeling, placarding, shipping documentation, transportation and handling, and incident reporting.

Because the pesticide container regulations refer to and adopt certain DOT requirements, these requirements also are EPA standards that can be enforced by EPA and the State agencies that implement EPA's pesticide programs. However, EPA and the State pesticide programs will enforce only the 49 CFR requirements that are referred to and adopted in the pesticide container regulations; not the full DOT HMR. Clearly, DOT maintains authority to enforce all of its regulations against parties that are subject to the HMR.

The final rule includes two other provisions related to the DOT standards. These provisions are discussed in more detail in Units IV.E. and IV.F. First, if DOT proposes to change any of the regulations that are incorporated into the pesticide container regulations, EPA will provide notice of the proposed changes and an opportunity to comment in the **Federal Register**. Following notice and comment, EPA will take final action regarding whether or not to revise its rules and the extent to which any such revision will correspond with revised DOT regulation. Second, the regulations include a provision for modifying or waiving the adopted standards if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the adopted requirements.

3. *Changes*. The same general approach that was described in the 1999 supplemental notice is included in the final regulations. The final rule refers to and adopts some DOT standards for pesticide products that are not DOT hazardous materials and requires that these products be packaged in containers that are designed, constructed, and marked to comply with the adopted requirements for Packing Group III materials. However, a number of changes are made in the final rule approach:

• The biggest change is related to the changes in the scope of the nonrefillable container standards. Rather than completely exempt the lower risk pesticide products (e.g., lower toxicity in small containers without an environmental hazard statement on the label), the final rule mandates that the lower risk products must comply with the general packaging requirements in 49 CFR 173.24.

• Some of the specific 49 CFR standards that are adopted for the higher risk products in nonrefillable containers and for all products in refillable containers are different in the final rule than in the supplemental notice approach. In particular, the final regulations include an exception from 49 CFR 173.28(b)(2), which requires leakproofness testing every time a non-bulk packaging is refilled. The final regulations specify that this leakproofness testing is not required for products that are not DOT hazardous materials if containers comply with the 40 CFR part 165, subpart C regulations and the repackaging is done in compliance with the 40 CFR part 165, subpart D regulations. Also, the final rule refers to and adopts only portions of 49 CFR 173.240 and 173.241 (bulk packaging for certain low hazard materials) to clarify that the pesticide container regulations do not regulate transport vehicles. By referring to and adopting only paragraphs (c) and (d) in both sections, the final rule incorporates the standards for portable tanks, bulk bins and intermediate bulk containers, but not for rail cars, motor vehicles or cargo tanks.

• The final regulations specifically refer to and adopt the terms of the exceptions for Class 9 miscellaneous materials in 49 CFR 173.155 instead of incorporating the relevant text from that section into the pesticide container regulations, as discussed in the supplemental notice.

4. *Comments on the overall approach*. More than 20 respondents commented on the approach of adopting some DOT requirements at the Packing Group III level in the supplemental notice. The comments can be split into two categories according to the type of commenter. State regulatory agencies and agricultural pesticide registrants and registrant groups generally supported the overall approach, while registrants and registrant groups from the non-agricultural pesticide sector generally opposed the overall approach.

i. *Support*. Several State regulatory agencies and an agricultural registrant group supported EPA's approach of adopting some DOT requirements for pesticide products that are not DOT hazardous materials. These commenters stated that consistency with DOT should facilitate compliance and minimize confusion in the regulated community and will avoid conflicting regulations.

In addition, a few agricultural registrant groups and some agricultural registrants supported EPA's overall approach, if EPA incorporates the changes included in their comments on the supplemental notice. These comments recommended changing several sections of the DOT regulations that are adopted and extending the compliance period for refillable containers. One of the registrants commented that all pesticides in nonrefillable containers should meet the DOT PG III standards at a minimum to provide an updated level of protection for the environment and for all who use, store, display, buy or distribute pesticide products.

ii. *Oppose*. About 10 respondents clearly opposed the supplemental notice approach of adopting some DOT Packing Group III standards for products that are not DOT hazardous materials, including several nonagricultural registrant groups, a group representing agricultural formulators and distributors, an institutional formulator/distributor group and some non-agricultural registrants. These respondents opposed EPA's approach because they claim that:

• There is no need to regulate pesticides that are not DOT hazardous materials. Several commenters stated that DOT requirements take into consideration the seriousness of transporting the substances and that DOT chose not to regulate these substances. Several others questioned whether there is evidence of a problem with shipping non-DOT hazardous pesticides.

• Costs of packaging would increase, which respondents state would be burdensome for small businesses. Costs mentioned were $2,500 for design plate changes and about the same amount per package type to maintain the required certification files.

• This approach would be burdensome for EPA to monitor DOT regulatory changes and to render exemption decisions. A commenter also

questioned whether EPA had the expertise to make exemption decisions.

• EPA's approach would be confusing because it incorporates some, but not all, of DOT's standards.

• EPA's regulations could be different than DOT's. Several commenters cited the waiver provision and the lack of a consumer commodity exemption in EPA's approach as examples.

iii. *EPA response*. EPA continues to believe that the general approach of referring to and adopting the DOT Packing Group III packaging design, construction and marking requirements is the best approach for regulating pesticide containers.

Commenters who opposed this approach in the supplemental notice must recognize that the alternative to the supplemental notice approach of referring to and adopting some of DOT's standards is not an option of declining to establish regulations for container integrity and construction. Instead, as described in the supplemental notice, the alternative is to finalize the standards from the 1994 proposed rule that address container integrity and construction. These standards include container integrity and compatibility, marking, and reclosing securely for nonrefillable containers and container integrity, marking and a drop test for refillable containers. EPA is separately required under FIFRA to promulgate such regulations for all pesticides. If Congress had believed that existing Federal requirements promulgated by DOT were sufficient, or that EPA should restrict its regulation to pesticides covered as DOT hazardous materials, Congress could have restricted FIFRA section 19 to that extent. Instead, it appears that, with limited exceptions, Congress intended all pesticides to be regulated under section 19.

In fact, the approach to refer to and adopt the DOT Packing Group III packaging design, construction and marking requirements was based on suggestions from commenters on the proposed rule, who urged EPA to be consistent with the DOT regulations. More than 20 respondents, including individual companies and trade groups from the pesticide registrant and container manufacturing industries, provided commentary on the DOT HMR and the United Nations (UN) Recommendations on the Transport of Dangerous Goods. All of the commenters agreed that EPA should be consistent with the DOT HMR and the UN standards in terms of definitions, requirements, and testing. Respondents argued that such consistency would: (1) Facilitate compliance because the industry is already familiar with the DOT and UN standards; (2) eliminate the potential burden of complying with two different, overlapping regulatory schemes; and (3) not establish additional trade barriers. Most of the commenters on the DOT issue in the proposed rule specifically favored the use of DOT's Packing Group III criteria as the minimum standard for pesticide products not regulated by DOT as hazardous materials.

B. Leakproofness Testing Before Reuse (49 CFR 173.28(b)(2))

1. *Final regulations*. The final regulations retain the reference to 49 CFR 173.28, which establishes standards for the reuse, reconditioning and remanufacture of packagings. Also, the final rule adds a provision that exempts refillers from the leakproofness test requirement in 49 CFR 173.28(b)(2) for products that are not DOT hazardous materials if the refillable container complies with the refillable container regulations and the refilling is done in compliance with the repackaging regulations.

2. *Changes*. The major change to this part of the approach is that the final regulations add a provision that exempts refillers (which includes registrants and independent refillers) from the leakproofness test requirement in 49 CFR 173.28(b)(2) for products that are not DOT hazardous materials if the refillable container is in compliance with the subpart C refillable container regulations and the refilling is done in compliance with the subpart D repackaging regulations. This exception was added in response to comments on the supplemental notice.

3. *Comments*. Some commenters - including several registrant groups and several registrants - opposed the requirement in 49 CFR 173.28(b)(2) for non-bulk packaging to pass a leakproofness test before every time it is refilled. The test involves applying a raised internal air pressure to the container and ensuring that no air leaks from it. The test method for the leakproofness test described in 49 CFR 178.604 specifies restraining the container under water to determine if air leaks from the container, although alternatives are provided in an appendix to part 178. The commenters generally requested EPA to delete the reference to 49 CFR 173.28, although they did not point out problems with any other provisions of 49 CFR 173.28. One of the registrants provided the most precise and detailed description of the potential problems that could result from requiring leakproofness testing before every refill, including:

• It would pose practical problems and increased costs because refillers and possibly farmers would have to obtain the training and equipment required to do the leakproofness test.

• Due to the logistical and cost problems, the registrant believes that many non-bulk refillable containers would be replaced by nonrefillable containers, contrary to EPA's stated goals of pollution prevention.

• This commenter believes that the general packaging requirements in 49 CFR 173.24 and the container inspection provisions in subpart D of EPA's regulations are sufficient to ensure the integrity of non-bulk refillable containers.

• In addition to a leakproofness test, 49 CFR 173.28(b)(2) specifies a marking requirement, which could be interpreted to impose a testing requirement because of other DOT provisions (such as 49 CFR 171.2(c)), even if the packaging is used to transport only non-hazardous materials. The commenter stated that DOT provided a verbal interpretation that 49 CFR 171.2(c) does not require such testing of non-bulk containers used to transport only non-hazardous materials. The registrant recommended that EPA consult with DOT to confirm the approach on this topic. This commenter and a few registrant groups recommended deleting the reference to 49 CFR 173.28 to avoid confusion about whether a container must be leakproofness tested before it is refilled.

4. *EPA response*. EPA agrees with the commenter's concerns about the problems that might be caused by requiring a leakproofness test each time a non-bulk refillable container is refilled with a pesticide product that is not a DOT hazardous material. However, EPA disagrees with the commenters that the solution is to delete the reference to 49 CFR 173.28. EPA believes that § 173.28 includes useful provisions that will help ensure the safe reuse of pesticide containers. In addition, § 173.28 includes provisions for reconditioning and remanufacturing containers, which will clarify and allow the reconditioning of certain kinds of packaging, such as drums. Many commenters on the proposed rule and supplemental notice identified the lack of a regulatory option for reconditionable containers as an issue. Including the reference to § 173.28 solves this problem and allows drums to be reconditioned and then reused under the pesticide container regulations.

Rather than deleting the reference to 49 CFR 173.28, EPA is modifying the final regulations to exempt refillers from the leakproofness test requirement in 49 CFR 173.28(b)(2) for products that are

not DOT hazardous materials if the refillable container complies with the refillable container regulations and the refilling is done in compliance with the repackaging regulations. This provision is similar to one in DOT's regulations, specifically 49 CFR 173.28(b)(7), which allows a package to be reused without being leakproofness tested with air if four criteria are met, including being refilled and offered for transportation by the original filler. EPA believes that the refillable container requirements in subpart C, including the adopted DOT standards, and the repackaging requirements in subpart D, including the container inspection standards, provide for the safe refill and reuse of refillable pesticide containers without requiring leakproofness testing before each refill.

C. Regulating DOT Intermediate Bulk and Bulk Containers (49 CFR 173.240 and 173.241)

1. *Final regulations*. The final regulations refer to and adopt only certain paragraphs of the DOT regulations that authorize bulk packagings for certain low hazard materials. In particular, the final container rule refers to and adopts 49 CFR 173.240(c), 173.240(d), 173.241(c), and 173.241(d), so it incorporates standards for portable tanks, bulk bins and intermediate bulk containers, but not for rail cars, motor vehicles or cargo tanks. DOT defines bulk packagings to be larger than 119 gallons for liquids and 882 pounds for solids.

2. *Changes*. The approach described in the supplemental notice would have incorporated all of 49 CFR 173.240 and 173.241. The final regulations were changed to refer to and adopt only the portions of those sections that authorize portable tanks, closed bulk bins and intermediate bulk containers (IBCs). The portions of 49 CFR 173.240 and 173.241 that are not included in the final regulations authorize rail cars, motor vehicles and cargo tanks, which are not regulated by the container regulations.

3. *Comments - supplemental notice*. The comments from eight respondents (registrants and registrant groups) were split fairly evenly on this topic, even though these commenters tended to provide similar comments on other parts of the approach to incorporate some DOT regulations.

A few registrant groups and a registrant (all from the agricultural pesticide sector) supported the reference to 49 CFR 173.240 and 173.241. These respondents supported authorizing bulk packagings by adopting these sections for the following reasons:

- DOT provides greater latitude on the construction and less frequent testing requirements for bulk packages because of their size and sturdier construction. EPA should follow the same approach and authorize the same standards for bulk containers used to distribute pesticides that are not DOT hazardous materials.
- These sections of the DOT regulations authorize the use of certain non-DOT specification bulk packaging, including portable tanks and bulk bins. A few of these commenters stated that non-DOT specification packagings that are authorized for DOT Class 9 materials should also be acceptable for pesticides that are not DOT hazardous materials. The non-specification packagings must comply with the general packaging requirements in 49 CFR part 173, but not all of the testing and marking standards in other portions of the HMR.

In addition, the registrant explained that the HMR do not require non-DOT specification packagings (which are authorized by 49 CFR 173.240 and 173.241) to have the UN symbol marked on them. This commenter requested EPA to confirm that the pesticide container regulations authorize the use of these non-DOT specification packagings.

On the other hand, a non-agricultural registrant group and several agricultural registrants opposed the reference to 49 CFR 173.240 and 173.241. Several of the registrants stated that the intent of their comments on the proposed rule was for EPA to adopt the DOT Packing Group III standards for non-bulk packagings, not for bulk containers (which includes intermediate bulk containers by definition). The registrant group stated that the requirements in §§ 173.240 and §§ 173.241 would be burdensome and are not necessary from a safety standpoint. This commenter also believes that adopting these requirements would lead to a decrease in the use of refillable containers.

A registrant requested that EPA re-evaluate the reference to these sections because they authorize bulk and intermediate bulk containers and the definitions of these kinds of containers are very different than the ones customarily used within the agricultural pesticide industry. A few other commenters also addressed the definition issue by pointing out that the term minibulk (used in the agricultural pesticide industry and in the proposed regulations) has no DOT regulatory definition.

4. *EPA response - supplemental notice*. EPA is aware that the DOT regulations do not include a definition of minibulk container. However, the proposed definitions for dry and liquid minibulks were developed to intentionally include container sizes in both DOT's non-bulk and intermediate bulk container categories. As mentioned above, under the DOT regulations, intermediate bulk containers are a subset of bulk containers. EPA is not finalizing the definitions of dry and liquid minibulk (and bulk) containers in the final rule, as described in Unit V.

EPA intended to refer to and adopt DOT Packing Group III packaging standards for DOT non-bulk containers and intermediate bulk containers. EPA disagrees with the commenters who support the DOT standards for non-bulk containers (less than 119 gallons for liquids or 882 pounds for solids) but not for the next largest size, intermediate bulk containers. Minibulk containers used for pesticides include ones with capacities in the non-bulk classification, e.g., 60 to 110 gallons, and containers in the intermediate bulk container sizes, e.g., 150 to 250 gallons. EPA believes that it is not logical to require smaller minibulks to comply with the DOT Packing Group III testing standards, and to not specify any testing standards for larger minibulks, which could lead to a bigger spill. EPA believes strongly that both non-bulk and intermediate bulk containers holding pesticides that are not DOT hazardous materials should comply with the applicable Packing Group III packaging construction, testing and marking requirements.

Upon re-evaluation of the reference to 40 CFR 173.240 and 173.241, however, EPA realized that there may be some confusion caused by the paragraphs that authorize rail cars, motor vehicles and cargo tanks. EPA has never intended to regulate transport vehicles. The proposed rule (in § 165.122(b)(2)) and the final rule (in § 165.43(h)) state that the pesticide container regulations do not apply to transport vehicles that contain pesticide in pesticide holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide. To eliminate potential confusion, EPA changed the final rule to only include the portions of 49 CFR 173.240 and 173.241 that authorize portable tanks, bulk bins and intermediate bulk containers.

5. *Comments - UN marking*. In response to the 2004 reopening of the comment period, some commenters provided new information and comments regarding the approach of referring to and adopting a subset of DOT's hazardous materials packaging regulations. A registrant group and two registrants commented that, since the supplemental notice was published in

1999, several manufacturers have voluntarily changed their packaging specifications for all products, hazardous materials and nonhazardous materials, to meet DOT Packing Group III standards.

These three respondents and two other commenters (a registrant group and a registrant) supported the marking that would be required by adopting the DOT standards. One registrant group stated that ''It is important to have the UN marks to provide a minimum performance standard to those in the channels of distribution that purchase, fill, and sell crop protection products in refillable containers.'' The other commenters also supported adopting the DOT marking, but asked for clarification about which containers would need the UN mark. The DOT regulations do not require UN markings on certain kinds of containers, such as non-DOT specification portable tanks and containers holding limited quantities or consumer commodities. One of the registrants stated that their understanding of the DOT reference is that EPA is proposing UN markings only for those kinds of containers that require UN markings for DOT Packing Group III hazardous materials. In other words, when DOT regulations require UN marking for a container holding a DOT hazardous material, that same marking would also be required for the same kind of containers that hold pesticides that are not DOT hazardous materials. Most of the respondents recommended adding a statement to the regulatory text referring to the DOT regulations such as ''This includes certain containers which require UN markings (e.g., 2 x 2.5 gallon cartons, 50 pound multiwall paper bags, 5, 30 and 55 gallon drums) and certain other containers which do not require UN markings (e.g., limited quantities, consumer commodities and non-DOT specification portable tanks).''

On the other hand, a registrant group and two registrants stated that the marking size and location requirements of 49 CFR 178.3 should not apply to non-hazardous materials, claiming that placing the UN mark on the containers of these materials could create confusion among carriers and emergency responders. They expressed concern that non-certified transporters may refuse entire loads of non-hazardous materials marked with the circle UN mark since this is an indication of a DOT regulated material. These commenters also said that emergency responders may assume the cargo is a hazardous material and handle the situation accordingly if there was an accident involving such materials. These respondents suggested a certification process similar to Child Resistant Packaging approval or placing the specification packaging designation for non-hazardous materials on the product label (like the EPA Registration Number) rather than the large and prominent marking required by 49 CFR part 178.

6. *Response - UN marking*. EPA wants to clarify that the approach of referring to and adopting a subset of the DOT requirements would require the marking that is specified in the DOT regulations. UN markings would be required only for those containers that require UN markings for DOT Packing Group III hazardous materials. If DOT does not require the UN marking but allows the use of the packaging for Packing Group III materials (e.g., limited quantities, consumer commodities and non-DOT specification portable tanks), the EPA regulations would allow the use of these packagings and would not require the UN marking. However, EPA is not modifying the final regulations to add the suggested additional sentence because we do not believe it provides additional clarification. In addition, EPA believes that the preamble and guidance documents are the proper vehicles for providing this kind of clarification. EPA disagrees with the commenters who opposed using containers with the UN mark for non-DOT hazardous materials. As other commenters stated, several companies have voluntarily switched to use DOT Packing Group III (presumably with the UN mark) since 1999 and have not reported any of the potential problems described by the respondents who oppose using the UN mark. Further, EPA clarifies that the UN mark would only be required if required by the DOT regulations.

D. Limited Quantity/Consumer Commodity Exception (49 CFR 173.155)

1. *Final regulations*. The final regulations refer to and adopt 49 CFR 173.155, which establish limited quantity and consumer commodity exceptions for Class 9 materials (miscellaneous hazardous materials).

2. *Changes*. The potential alternative regulatory text in the supplemental notice would have incorporated the relevant portions of the limited quantity exception in 49 CFR 173.155 into the text of the pesticide container regulations. After reviewing the comments and re-evaluating the regulations, EPA believes it is more straightforward to simply refer to and adopt the entire section of the DOT regulatory exceptions for Class 9 materials in 49 CFR 173.155.

3. *Comments*. About 11 commenters addressed the idea of including a provision such as a limited quantity exception in the pesticide container regulations and all but one strongly supported this kind of provision. The opposing commenter, a registrant, stated that it did not believe that incorporating the Class 9 limited quantity exception was appropriate. The other commenters, mainly registrant groups and registrants, varied a bit in the specific approach they recommended, but all supported the idea of including this kind of exception in the pesticide container regulations.

Several commenters specifically requested that EPA add a reference to 49 CFR 173.155, the limited quantity and consumer commodity exceptions for Class 9 materials, to the pesticide container regulations to be more consistent with the DOT regulations. Several respondents supported the limited quantity exception as described in the supplemental notice. Several other commenters recommended that EPA incorporate both the limited quantity exception and the consumer commodity exception in 49 CFR 173.155. As defined in the HMR, consumer commodity means a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. This term also includes drugs and medicines. Two registrant groups who urged EPA to also adopt the consumer commodity exception said that the consumer commodity exception is necessary to prevent increased costs and unnecessary complications caused by complying with EPA and DOT regulations that would be different.

4. *EPA response*. As stated in the supplemental notice, EPA continues to believe that it is necessary to incorporate a DOT limited quantity exception to maintain consistency with the HMR and to provide regulatory relief for relatively small quantities of pesticides. However, after reviewing the comments and re-evaluating the regulations, EPA believes it is better to simply refer to and adopt 49 CFR 173.155 in its entirety because it is more straightforward. In addition, the final rule approach adds the benefit of including the consumer commodity exception for Class 9 materials, which will provide clarity and consistency for registrants of products that are not DOT hazardous materials and that meet DOT's definition of consumer commodity.

E. Waiving or Modifying the Requirement to Comply with Some DOT Regulations (§§ 165.25(g) and 165.45(g))

1. *Final regulations*. The final regulations include provisions that would allow EPA to modify or waive the requirements of the regulatory sections that refer to and adopt the DOT requirements if EPA determines that the alternative (partial or modified) set of standards or pre-existing conditions achieves a level of safety that is at least equal to that specified in the requirements of this section. Section 165.25(g) establishes the waiver/modification standard for nonrefillable containers and § 165.45(g) provides it for refillable containers.

2. *Changes*. This is the same basic approach that was described in the supplemental notice. EPA made a few adjustments in the final regulations, such as clarifying that EPA must determine that the alternative set of standards achieves an acceptable level of safety before a waiver is granted (rather than being based on the registrant submitting information.) In addition, EPA reorganized the final regulations so all of the waiver requests are grouped together to simplify the process of applying for a waiver from any of the container standards. Finally, EPA changed the wording of the regulations to clarify that, for pesticide products that are DOT hazardous materials, we will modify or waive the requirements regarding the DOT standards only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

3. *Comments - DOT regulations*. Some commenters (registrant groups and registrants) supported the DOT waiver provision set out in the potential alternative regulatory text in the 1999 supplemental notice, stating they believed it was sufficient. A few registrant groups opposed the suggested DOT waiver provision in the supplemental notice. In particular, these commenters opposed EPA modifying DOT's standards for pesticides subject to DOT standards, because these pesticides could be rendered out of compliance with DOT standards and could not be transported legally. One of these commenters also expressed concern about EPA's ability to make waiver decisions, questioning EPA's resources, lack of expertise similar to DOT's, and the absence of the kinds of relationships that DOT has with transportation-related standard setting organizations.

4. *EPA response - DOT regulations*. EPA understands some of the concerns expressed by commenters regarding pesticides that are DOT hazardous materials. It is possible that EPA modifications to the adopted DOT requirements for a pesticide that is a DOT hazardous material could create a set of requirements that conflict with DOT's regulations. In this case, it would not be possible to package a pesticide such that it could meet both EPA's and DOT's standards. To prevent this kind of situation, EPA modified the final regulation in several ways. First, a separate waiver provision is included for pesticides that are DOT hazardous materials and for pesticides that are not DOT hazardous materials. Second, the waiver provision for pesticides that are DOT hazardous materials specifies that EPA will modify or waive the requirements only after consulting with DOT to ensure consistency with DOT regulations and exemptions. A similar provision is not necessary for pesticides that are not DOT hazardous materials, because these pesticides aren't subject to DOT's requirements, so there won't be a conflict.

EPA plans to coordinate with DOT as much as possible and hopes to benefit from their great experience in regulating packaging and their relationships with other organizations. EPA is very familiar with regulating pesticides. Through our authority in FIFRA to regulate pesticide products (which includes the pesticides, the labeling and the containers), we have directly or indirectly set packaging standards for a number of pesticide products. We also have established relationships with pesticide manufacturers and have developed expertise with pesticide handling and use practices. It is possible that at some point, compliance with one of the adopted DOT standards may conflict with safe use and handling practices for pesticides. For pesticides that are not DOT hazardous materials, EPA believes we should have the ability to modify or waive the adopted DOT standards if we determine (based on information provided) that an alternative set of standards achieves a level of safety that is at least equal to that specified in the adopted DOT standards.

F. Providing Public Notice of Changes in the Adopted DOT Regulations (§§ 165.25(c) and 165.45(c))

1. *Final regulations*. The final regulations include a provision that says EPA will provide notice to the public in the **Federal Register**, and an opportunity to comment, if DOT proposes to change any of the regulations that are referred to and adopted in EPA's pesticide container regulations. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

2. *Changes*. This is similar to the approach described in the supplemental notice.

3. *Comments*. A registrant group questioned whether OPP has the resources for the on-going effort of monitoring DOT's regulatory changes and constantly proposing and promulgating its own revisions to mirror the DOT actions. This respondent also expressed concern that there would be lag times between DOT's and EPA's regulatory changes, creating confusion and putting registrants in the position of being subject to conflicting Federal standards.

4. *EPA response*. EPA does not believe that the notification process in the pesticide container regulations will be overly burdensome. An OPP staff member currently monitors the DOT regulatory changes. Increased communication with DOT resulting from these final regulations should provide advanced notice of any changes, which would make any monitoring efforts even easier. In addition, EPA believes the commenter misunderstood the point of this notification provision. EPA does not anticipate changing its regulations based on proposed changes by DOT in most situations. Instead, the purpose of EPA's notifications will be to let EPA's regulated community know that DOT has proposed to modify the DOT regulations adopted by the pesticide container regulations. Therefore, pesticide registrants and related parties will be able to monitor the DOT rule process themselves and can provide comments to DOT if they believe it is warranted. If a DOT rule change creates a significant obstacle to compliance or another substantial problem for pesticide containers, EPA would consider changing the pesticide container regulations that refer to and adopt the DOT requirements. However, EPA believes the chances of this happening are very small because it defeats the purpose of referring to and adopting the DOT requirements to provide a consistent set of packaging requirements.

V. Nonrefillable Container Standards

A. Purpose (§ 165.20(a))

1. *Final regulations*. The purpose of the nonrefillable container standards is to establish design and construction requirements for nonrefillable containers used for the distribution or sale of some pesticide products.

2. *Changes*. This is nearly the same as the proposed purpose (in § 165.100). One minor change was to acknowledge the reduced number of products that are subject to the final regulations by stating that the rule applies only to the distribution or sale of *some* pesticide products. The proposed regulations would have applied to all products. Another modification was to delete the term ''standards'' from the phrase ''establish standards and requirements'' because it is redundant.

B. Who Must Comply (§ 165.20(b))

1. *Final regulations*. You must comply with the nonrefillable container regulations if you are a registrant who distributes or sells a pesticide product in nonrefillable containers. If your product is subject to the nonrefillable container regulations as described in Unit V.D., the product must be distributed or sold in nonrefillable containers that comply with these regulations. This statement applies to each and every nonrefillable container used to sell or distribute the product.

2. *Changes*. This is the same approach that we proposed in § 165.100. As described in Unit V.D., the final rule exempts some products from the final rule and subjects some products to only the basic DOT general packaging standards. However, the approach of registrants being responsible for complying with the nonrefillable container standards is unchanged.

C. Compliance Date (§ 165.20(c))

1. *Final regulations*. The final regulations provide a 3–year period after the date of publication of the final rule in the **Federal Register** before compliance with the nonrefillable container standards is required. Specifically, within 3 years from today's date, registrants must distribute or sell all subject pesticide products in nonrefillable containers in compliance with these regulations.

2. *Changes*. EPA made several significant changes to the compliance date for nonrefillable containers in the final rule. First, the final regulations provide a 3–year period after today's date before compliance is required, compared to the 2–year period in the proposed rule. Second, the proposed rule specified (in § 165.117(b)) that 5 years after the date of publication of the final rule, all products distributed or sold in nonrefillable containers by persons other than the registrant would have had to comply with these standards. This ''channels of trade'' date affecting persons other than the registrant is not being finalized in today's final regulations. Third, the compliance date for registrants to submit certifications is not being finalized because the certification requirement from the proposal is not being finalized, as described in Unit V.M.

3. *Comments - length of compliance period*. About 15 commenters, including registrants, registrant groups, a dealer group, and a State regulatory agency, stated that 2 years would not be enough time to comply with the proposed standards, especially the nonrefillable container residue removal standard. Many of the respondents commented that 2 years is not long enough to test containers initially and, for containers that fail the residue removal standard, to redesign containers, reformulate the product, or obtain EPA approval for a waiver. Also, many commenters expressed concerns about delays caused by EPA in providing necessary implementation information, processing waiver requests, and reviewing reformulated products.

4. *EPA response - length of compliance period*. EPA agrees with some of the commenters that a longer compliance period will make it easier for registrants to comply with the nonrefillable container standards. To facilitate compliance while trying to minimize the impact on companies, EPA lengthened the compliance period for the nonrefillable container requirements to 3 years. EPA believes a 3–year period is sufficient based on the results of the economic analysis and because some of the changes made to the regulations facilitate compliance. These changes include: (1) Some products are completely exempt from the nonrefillable container requirements; (2) many products must comply only with basic DOT requirements, not the full set of nonrefillable container requirements; and (3) changes in the residue removal requirement, discussed in Unit V.H., which reduce the burden of that requirement.

5. *Comments - channels of trade*. Some commenters — registrant groups and registrants — urged EPA to delete the channels of trade provision, generally stating that current products/containers don't pose a large enough hazard to justify the costs of a recall. A few State regulatory agencies and a container manufacturer requested clarification of this requirement, i.e., who would be included and who would be responsible for compliance and/or disposition of ''expired'' products.

6. *EPA response - channels of trade*. EPA is not finalizing the 5–year channels of trade provision in the final rule to minimize the disruption and burden of implementing the rule. EPA does not believe that current products and containers pose a large enough hazard (compared to the containers that would be used to comply with the requirements) to justify the costs of recalling them from retailers and distributors to either repackage or dispose of them. EPA believes that setting a date for when products distributed or sold by registrants must comply is sufficient. Products that are distributed and sold before this date can adequately work their way through the distribution system.

D. Pesticide Products Included (§ 165.23)

1. *Final regulations*. As described in detail in Unit III., only certain products have to comply with the nonrefillable container standards. MUPs, plant-incorporated protectants, and certain antimicrobial products are completely exempt from the nonrefillable container requirements. All other pesticide products are subject to the nonrefillable container regulations.

There are different tiers of regulation for products that are subject to the nonrefillable container regulations. A product is subject to *all* of the nonrefillable container requirements if it satisfies *at least one* of the following criteria:

- It meets the criteria of Toxicity Category I.
- It meets the criteria of Toxicity Category II.
- It is classified for restricted use as set out in 40 CFR 152.160 - 152.175.

If a product does not satisfy any of these criteria (and it is not an MUP, plant-incorporated protectant or an exempt antimicrobial), it must be packaged in accordance with 49 CFR 173.24. These products do not have to comply with any other nonrefillable container requirements. However, if any of these products are DOT hazardous materials, they are separately obligated under DOT regulations to comply with all applicable DOT requirements. In other words, nothing in EPA's regulations changes the requirements in the DOT HMR for products that meet DOT's criteria for hazardous materials.

2. *Changes*. In the proposal, only MUPs would have been exempt from the nonrefillable container regulations (in § 165.100). All other products would have been subject to the standards. The 1999 supplemental notice discussed regulatory options for exempting some products (antimicrobials and non-antimicrobials) from the full set of refillable container regulations and for exempting certain antimicrobial products from specific requirements.

The criteria in the final rule for exempting antimicrobials are somewhat different from those we indicated as our preferred approach in the supplemental notice. The final rule exempts plant-incorporated protectants. Also, the final rule uses toxicity category and restricted use product status to determine the level of regulation subject to all nonrefillable container requirements compared to the basic DOT packaging requirements rather than to determine whether the product is subject to or exempt from the nonrefillable container regulations.

Table 6 describes the provisions for determining which pesticide products are subject to which nonrefillable container regulations and a brief explanation of how (or if) this provision changed from the proposal and/or the supplemental notice.

TABLE 6.—CHANGES TO THE SCOPE OF THE NONREFILLABLE CONTAINER REGULATIONS

Regulatory Provision in the Final Rule	Changes
Manufacturing use products are exempt.	No change from proposed rule or supplemental notice.
Plant-incorporated protectants are exempt.	Plant-incorporated protectants would have been subject to the proposed rule. The regulations for plant-incorporated protectants were finalized in 2001. We are exempting them from the final rule because of their unique nature.
Certain antimicrobial products are exempt.	Antimicrobial products would have been subject to the proposed rule. The final rule implements an approach similar to option 1 in the supplemental notice, although some of the details are different.
All other products are subject to the regulations as follows:[1]	
Products in Toxicity Category I or II are subject to all of the nonrefillable container requirements.	No change from the supplemental notice approach.
Restricted use products are subject to all of the nonrefillable container requirements.	This is different from the other two criteria discussed most thoroughly in the supplemental notice, which were: (1) container capacity equal to or larger than 5 liters or 5 kilograms and (2) having a specified environmental hazard statement on the label of an outdoor use product.
All other products (those in Toxicity Category III or IV and that are not restricted use products) must comply only with the basic DOT packaging requirements in 49 CFR 173.24.	This category of lowest regulation is different from the supplemental notice in two ways. First, these products are subject to the basic DOT requirements rather than being completely exempt from the nonrefillable container regulations. Second, more products are in this category of lowest regulation because there are fewer Toxicity Category III or IV products subject to all of the nonrefillable container requirements in the final rule (restricted use products) than under the supplemental notice (products in small containers and outdoor use products with a specified environmental hazard statement on the label).

[1]The rest of the changes focus on changes from the supplemental notice. All of these products would have been subject to the proposed rule because the proposed rule would have applied to all products except for manufacturing use products.

E. DOT Standards (§ 165.25(a) - (c))

1. *Final regulations.* As discussed in detail in Unit IV., nonrefillable containers must comply with the DOT Hazardous Materials Regulations that are referred to and adopted into EPA's regulations. These incorporated regulations establish requirements for container design, construction and marking.

2. *Changes.* This is a significant change from the proposed regulation, although the approach of referring to and adopting a subset of the DOT standards was discussed in detail in the 1999 supplemental notice. See Unit IV. for a detailed discussion. As discussed in Unit V.M., three of the proposed requirements for nonrefillable containers (container integrity, marking the material of construction and ensuring that the container recloses securely) are not being finalized in the final rule because they were replaced by equivalent DOT requirements.

F. Closures (§ 165.25(d))

1. *Final regulations.* A nonrefillable container must have at least one of the four closures listed below if it meets all of the following criteria:

- The container is used to distribute or sell a liquid, agricultural pesticide;
- The container is rigid;
- The capacity of the container is equal to or greater than 3.0 liters (0.79 gal); and
- The container is not an aerosol container or a pressurized container.

The four closures specified in the regulations are:

- Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 11.5 threads per inch, National Pipe Straight (NPS) standard.
- Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 5 threads per inch, buttress threads.
- Screw cap, 63 millimeters, at least one thread revolution at 6 threads per inch.
- Screw cap, 38 millimeters, at least one thread revolution at 6 threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

2. *Changes.* The scope of the requirement for standardized closures is unchanged from the proposal; it applies to liquid agricultural pesticides in rigid containers with capacities equal to or greater than 3.0 liters. The closure standard does not apply to aerosol or pressurized containers. The final regulation made several changes in the dimensions and other specifications of the closures based on comments and additional research to accurately reflect

the closures that are most commonly used in the agricultural pesticide industry. Also, the proposed provision that would allow the use of non-standard closures was moved to a separate section of the final rule (§ 165.25(g)) along with the other waiver and modification provisions, as described in Unit V.I.

G. Dispensing Capability - Glugging and Dripping (§ 165.25(e))

1. *Final regulations.* A nonrefillable container with a capacity of 5 gallons (18.9 liters) or less, that is not an aerosol or pressurized container or a spray bottle, and that holds a liquid pesticide must do both of the following:

- Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.
- Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

2. *Changes.* The final rule includes several substantial changes from the proposal. First, the dispensing requirements in the proposed rule would have applied to all nonrefillable containers for liquid pesticides, regardless of the size of the container. The final rule only applies the dispensing requirements to containers that are less than 5 gallons (18.9 liters) in size. This change was made in response to the comments that said large containers should not be subject to the dispensing standards. Because these standards are intended to minimize exposure to pesticides when they are poured from containers, EPA agrees that the requirements should not apply to containers that are too large to allow their contents to be poured from them. The dispensing requirements in the final rule apply only to containers with capacities of 5 gallons (18.93 liters) or less, which we believe are the containers that can be picked up and the contents poured out.

Second, the final rule clarifies that, like the nonrefillable container closure requirement, the glugging and dripping standards do not apply to aerosol containers or pressurized containers. The proposed dispensing requirements would have applied only to liquid pesticides, and the final rule maintains this approach. EPA did not intend that these requirements would apply to aerosol or pressurized containers. The proposed closure regulation specifically excluded aerosols and pressurized containers, so the lack of similar language in the dispensing requirements led some commenters to believe that aerosol and pressurized containers are subject to the dripping and glugging standards. To clarify our intent, EPA modified the final rule to clearly state that the dispensing standards do not apply to aerosol containers and pressurized containers. As mentioned above, the dispensing standard is intended to minimize exposure to pesticides when they are poured from containers, which is not how pesticides are dispensed from aerosol or pressurized containers.

Third, the requirement in the final rule was modified to also exclude spray bottles. During a review of products that would be subject to the final regulation, EPA realized that spray bottles should also be exempt from the dispensing requirements because the container contents are sprayed out by a trigger mechanism, rather than poured.

Fourth, the requirement regarding dripping in the final rule specifies that the contents of a container must be poured with a minimum amount of dripping, rather than no dripping as proposed. Fifth, the dripping standard was clarified to specify ''dripping down the outside of the container'' to distinguish this from when the pesticide drips out of the container into its target when the material is poured from the container. Many commenters (registrants, registrant groups, a grower group, a container manufacturer, and a State regulatory agency) supported modifying this standard from ''eliminating'' dripping to ''minimizing'' dripping. Most of these respondents commented that completely eliminating dripping is impractical or impossible and that the amount of pesticide on the outside of the container is largely a function of user care. EPA agrees with the commenters that the proposed standard of eliminating dripping is not practical, particularly without a specific testing procedure and considering the significant role of user handling practices in whether the containers drip. Therefore, EPA is modifying the dripping standard to minimize rather than eliminate dripping. The structure of the standard was revised to be similar to the glugging standard so it would be clear that the dripping standard applies when the contents are poured from the container. Finally, the requirement refers to minimizing the amount of ''dripping down the outside of the container.'' EPA believes this phrase clarifies that the dripping that should be minimized is the trickle or drops of liquid on the container exterior; not the last few drops of material or rinsate that leave the container when the contents are poured.

Lastly, the proposed standard for reclosing securely is not being finalized in the final rule, because there is an equivalent DOT standard that is being adopted, as explained in Unit V.M.

H. Residue Removal (§ 165.25(f))

1. *Overview*—i. *Final rule.* Rigid containers with capacities less than or equal to 5 gallons for liquid formulations or 50 pounds for solid formulations holding dilutable formulations must be capable of attaining at least 99.99 percent removal for each active ingredient when tested using the EPA testing methodology. Percent removal represents the percent of the original concentration of an active ingredient in the pesticide product formulation when compared to the concentration of that active ingredient in an extra rinse following administration of the triple rinse procedure specified in the testing methodology, i.e., in the fourth rinse. All dilutable products in these smaller rigid containers must be capable of meeting the 99.99 percent removal standard, although the testing must be done only if products are flowable concentrate formulations or if EPA requests the test data on a case-by-case basis.

ii. *Changes.* EPA made many substantive changes to the nonrefillable container residue removal standard in the final rule based on public comments and a re-evaluation of currently available data. The significant changes are listed briefly in this subsection and are described in more detail below in the response to comment summaries. The major changes in the residue removal standard are:

- The performance standard was changed from 99.9999 percent removal (''six 9's'') in the proposal to 99.99 percent removal (''four 9's'') in the final rule.
- The wording was changed from ''The registrant shall demonstrate for each container/formulation combination that the standard is achieved'' in the proposal to ''Each container/formulation combination must be capable of attaining the standard.'' The language in the final rule provides more flexibility in showing compliance with the standard, while still placing the responsibility of meeting the standard on the registrant.
- Testing (and the corresponding recordkeeping in § 165.27(b)(5)) is only required for flowable concentrate formulations or if EPA specifically requests the records on a case by case basis.
- The test procedure will be established as an OPP test procedure titled ''Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers,'' which is incorporated into the

regulations. (Ref. 20) The proposed regulatory language provided some details of the test procedure, which EPA intended to supplement with guidance. The final rule does not include the specific testing requirements because we believe it is more appropriate to provide these detailed procedures in a test protocol rather than in the regulations.

• The residue removal standard only applies to containers that are small enough to be shaken because the final test procedure and the supporting data involved shaking the containers during triple rinsing. As stated in Unit IX.I., EPA generally believes that the largest containers that users can shake during a triple rinse are those with capacities of 5 gallons for liquids and 50 pounds for solids.

In addition, the final residue removal test procedures, incorporated in ''Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers,'' (Ref. 20) contain several key changes.

• In the final test procedure, the test must be conducted on three containers, rather than the proposed approach of a minimum of 19 containers.

• Rather than the proposed statistical standard (at least 95 percent confidence that at least 85 percent of containers tested will meet the standard), the final test procedure specifies that all three containers tested must meet the four 9's standard in the final rule. The final rule approach is similar to the standards for complying with DOT's drop tests and other performance tests.

• The final rule does not specify that the testing must be conducted in compliance with the full set of Good Laboratory Practice Standards in 40 CFR part 160. While registrants may comply with the GLP standards, it is not required. However, some key GLP requirements are specified in the final test procedure to accomplish the goals of ensuring adequate quality of the testing and the resulting data.

iii. *Comments*. Several State regulatory agencies and a container manufacturer group supported EPA's proposal to require a laboratory standard for removing residue from nonrefillable containers. These commenters stated that such a standard would enhance safe use and recycling, facilitate management of empty containers and provide flexibility to registrants.

A registrant and a registrant group supported consideration of a residue removal performance standard but opposed the stringency of EPA's proposal. Additionally, a few registrants commented that encouraging the use of containers and formulations that facilitate residue removal is reasonable, but did not support the proposed standard.

Many respondents (from nearly all commenter categories, but mostly the pesticide registrant industry) opposed the establishment of any numeric standard for residue removal for the following reasons (which are described in more depth in the Response to Comment document (Ref. 19)):

• EPA doesn't demonstrate a problem;

• Much of the information cited by EPA isn't relevant/applicable;

• The problem is that users don't rinse containers; not the container designs; and

• The solution is educating users and enforcing rinsing standards.

Many commenters specifically opposed the six 9's standard as too stringent. These comments claimed that the six 9's standard is overly ambitious and that the standard would be too costly for the benefit obtained. In many cases, commenters said the standard would be impossible to achieve. While some respondents acknowledged that the six 9's standard is technologically feasible, they said it would not be practical in application.

iv. *EPA response*. EPA believes that ensuring adequate residue removal at the user level to achieve the goal of containers that can be safely managed for disposal or recycling involves the following steps:

(1) The use of container designs and formulations that facilitate effective residue removal;

(2) Defining proper cleaning procedures;

(3) Educating users about proper cleaning procedures;

(4) Motivating users to properly clean containers; and

(5) Enforcing proper cleaning in the field.

Problems and breakdowns can occur with any of these steps. If problems do occur, containers will not be adequately clean when they are offered for disposal or recycling. EPA acknowledges the commenters' point that much of the problem with inadequately cleaned containers lies with the fact that the users don't rinse them properly, implying a breakdown in items 2, 3, and/or 4. EPA believes that the label standards associated with these regulations establish proper and clear cleaning procedures, as described in Units IX.F. - IX.K. EPA agrees that it is important and appropriate to dedicate adequate resources to user education and motivation and to enforcing the rinsing standards. Additional efforts on these points will be discussed in Unit V.H.5.

However, EPA still believes that the first step in adequate container cleaning - and a responsibility of the registrant - is making sure that the containers can come clean. Therefore, EPA is retaining a residue removal performance standard in the final regulations for rigid nonrefillable containers with dilutable formulations. Additional information about the many variables observed in more than 20 rinsing studies and about the FIFRA Section 19 mandates is in the Response to Comment document. (Ref. 19)

2. *Numeric residue removal standard*. EPA decided to change the performance standard from 99.9999 percent removal (''six 9's'') in the proposal to 99.99 percent removal (''four 9's'') in the final rule.

i. *Comments*. Several State regulatory agencies and an environmental group specifically expressed support for the ''six 9's'' standard. One State regulatory agency said their data show that 99.9999 percent removal is achievable under field conditions. Another said that the standard is achievable for most containers, but not for flat-topped metal cans — a container type it feels is not suited for use with pesticides.

On the other hand, many commenters opposed the proposed six 9's standard, stating that it was overly ambitious and too burdensome. Specific comments include:

• Almost 20 commenters, mostly registrants and registrant groups, objected to EPA's interpretation of the residue removal data and particularly opposed EPA's assessment that a level of six 9's was technologically practicable.

• About 20 commenters (mostly registrants and registrant groups) urged EPA to base the standard on the risks involved. Many of these respondents commented that there is no risk analysis showing that residues in existing containers pose a theoretical or real threat or that reaching a six 9's standard would substantially reduce this risk.

• Many commenters, including registrants, registrant groups, State regulatory agencies, a dealer and a dealer group, questioned the cost-effectiveness of the six 9's standard.

• Some registrants who opposed the six 9's standard favored adopting a less stringent four 9's requirement. They termed it more practical, in line with industry expectations, and the only achievable level of removal.

One registrant group provided comprehensive comments during the 2004 reopening of the comment period based on the Ag Container Recycling

Council's (ACRC's) experience over the past 10 years. This commenter described ACRC's efforts to assess and control the risk from using the recycled plastic and noted that, since ACRC's inception in 1992, there have been no reports of incidents where public health or safety has been compromised as a result of exposure to the minimal residues found in recycled plastic pesticide containers. Further, ACRC's study indicated that the risk to human health and the environment from recycling emptied pesticide containers that remove 99.99 percent of residue from containers is within acceptable levels for recycling.

This registrant group also stated that ACRC's experience with recycling clean, rinsed one way pesticide containers for more than a decade leads them to believe that residue removal is an issue of instructing applicators to triple or pressure rinse containers immediately after use. A registrant expanded on this idea by stating that recent experience with pesticide container collection programs has shown substantial improvement in the cleanliness of incoming containers and that it has become obvious that problems with dirty containers are not caused by product that is not able to be rinsed, but by users who do not rinse, or do not rinse in a timely manner. The registrant contrasted this experience with EPA's focus in the proposed rule on ensuring that products will rinse easily from their containers, which seems to have been based the reports of poorly rinsed containers from early container collection programs. The registrant said that great strides have been made in the growth of State container return/recycle programs and in grower, applicator, and user education since that period.

ii. *EPA response*. After considering the comments, re-evaluating the residue removal data and factoring in the experiences of pesticide container collection and recycling programs over the past decade, EPA believes the residue removal standard should be revised from 99.9999 percent to 99.99 percent removal.

Of the many rinsing studies, four sets of data were developed using a standard testing procedure (similar to the final test procedure) to test currently used formulations and container designs. Two sets of data focused on containers and formulations typical of the agricultural pesticide market and the other two were intended to represent containers and formulations in the household, institutional and industrial market. Table 7 summarizes the results of these studies in terms of the standard that the container/formulation would meet based on the concentration of active ingredient in the rinsate from the fourth rinse.

TABLE 7.—ANALYSIS OF RESIDUE REMOVAL DATA

Study Name	Total Cntr/Form Combinations Tested	Number of Container/Formulations That Meet*		
		Four 9's	Five 9's	Six 9's
Formulogics (agricultural) (Refs. 8 and 36)	19	19	17	13
NACA (triple rinse) (Refs. 15 and 39)	24	24	19	12
Subtotal: agricultural market	43	43 (100%)	36 (84%)	25 (58%)
Formulogics (nonagricultural) (Refs. 6 and 37)	29	29	26	16
CSMA (Refs. 35 and 77)	7	6	4	1
Subtotal: nonagricultural market	36	35 (97%)	30 (83%)	17 (47%)
Total	79	78 (99%)	66 (84%)	42 (53%)

*Note: Some container/formulation combinations were tested on one container; others on two or three (identical) containers for that formulation. Formulations tested on more than one container were classified in the highest standard that all of the containers met. For example, a container/formulation would be classified as four 9's if the results for the formulation in three containers were 99.9988, 99.9996 and 99.9995. For reference, the structure of the studies were: (1) Formulogics (ag): all 19 tests on 1 container; (2) NACA (triple rinse): 9 tests on 1 container, 15 tests on 3 containers; (3) Formulogics (nonag): 3 tests on 2 containers, 6 tests on 3 containers but the rinsates had to be composited to provide adequate volume, and 21 tests on 3 containers; and (4) CSMA: all 7 tests on 1 container.

While a more thorough discussion of these data and the comments regarding them is included in the next section, EPA believes that the data show that a standard of four 9's adequately represents the results from a careful laboratory triple rinse. Of the 79 container/formulations tested, only one did not meet a 99.99 percent removal standard. The Consumer Specialties Manufacturers Association (CSMA, now the Consumer Products Manufacturers Association) provided information indicating that the container/formulation that failed was an agricultural pesticide product in a household pesticide container. Therefore, EPA does not believe that this data point represents a formulation/container that is actually distributed in the marketplace. After reconsidering the available data, EPA believes that the proposed standard of six 9's would be a ''technology-forcing standard,'' whereas the final standard of four 9's accomplishes the goal stated in the preamble of the proposed rule and mandated in FIFRA section 19(f)(1)(B) to establish a standard that is equivalent to triple rinsing.

EPA also considered the experiences and results of pesticide container and recycling programs over the past decade. When the regulations were proposed, the experiences and observations of some of the earliest container collection and recycling programs were available. This information led to the statement in the preamble of the proposed rule that ''Pesticide container recycling programs and municipal waste facilities report the frequent rejection of certain pesticide formulation and container combinations because of unacceptable pesticide residues.'' The data from some of the earliest container collections are shown in Table 8.

TABLE 8.—RESULTS FROM EARLY PESTICIDE CONTAINER COLLECTION PROGRAMS (REF. 43)

State	Year	Number of Containers			Rejection Rate (percent)	Reference
		Accepted	Rejected	Brought In		
Florida (South Florida)	1991	1,594	231	1,825	12.7	(Ref. 4)
Florida (Jackson County)	1991	991	113	1,104	10.2	(Ref. 3)
Illinois	1993	57,086	3,451	60,537	5.7	(Ref. 2)
Iowa	1990	64,000	ND	ND	50	(Ref. 9)
Michigan	1992	18,959	2,990	21,949	13.6	(Ref. 12)
Minnesota	1990	9,192	2,136	11,328	18.9	(Ref. 17)
Minnesota	1991	56,928	4,646	61,574	7.5	(Ref. 17)

However, more recent information provided by several States shows that the container rejection rate decreases over time. This is generally attributed to pesticide users becoming more aware of proper rinsing procedures and the container cleanliness standards because of outreach, training and education efforts. One example is the decrease in the rejection rate experienced in Minnesota from 1990 (18.9 percent) to 1991 (7.5 percent) despite a large increase in the number of containers collected, as shown in Table 8. Out of the five Minnesota counties that had programs both years and for which data are available (Ref. 17), the rejection rate in four of them decreased substantially in 1991 while one stayed constant:

- Isanti County: The rejection rate decreased from 20.9 percent in 1990 to 12.9 percent in 1991;
- Polk, Pennington and Red Lake Counties: 9.5 percent in 1990 to 2.3 percent in 1991;
- Pope County: 13.8 percent in 1990 to 14.1 percent in 1991;
- Stevens County: 25.0 percent in 1990 to 0.2 percent in 1991; and
- Swift County: 14.6 percent in 1990 to 2.7 percent in 1991. (Ref. 17)

A 1996 report from the Minnesota Department of Agriculture confirms that this trend continued over time. (Ref. 13) From 1990 through 1995, the container rejection rate in Minnesota ranged from 10 percent to 20 percent, with a high of 35 percent. The report stated that ''Pesticide users had a difficult time rinsing containers to acceptable standards. Timing of the rinse, poor equipment for rinsing and inadequate rinsing techniques resulted in many containers not being accepted.'' The rejection rate for 1996 ranged from 0 percent to 2 percent.

Before 1995, a county in North Carolina collected about 2,500 containers per year and had a container rejection rate around 28 percent. After receiving a grant in 1995 which allowed the county to expand the program to 12 convenient sites and to provide additional training on proper rinsing, the county collected about 21,000 containers and the rejection rate dropped to 3 percent. (Ref. 10) Nebraska and South Carolina report current rejection rates of 2 percent on their web sites. Virginia reported a rejection rate of 0.5 percent in 2002, which was higher than the 2000 rate but still deemed to be acceptable. (Ref. 43)

EPA believes this information shows that the main reason containers are rejected from pesticide container collection programs is because they were not rinsed properly. EPA agrees with the States that the container rejection rates decreased substantially over time as pesticide users improved their rinsing techniques, rinsed the containers before residue dried, and gained understanding of the cleanliness criteria used by the Ag Container Recycling Council (ACRC) recycling contractors. The ACRC contractors have a strong incentive to carefully inspect containers to ensure they are clean because contamination increases the risk to the contractor's workers and reduces the value of the collected plastic. Therefore, we think it is accurate to conclude that the lower rejection rates in recent years are not a reflection of relaxed or reduced inspection standards.

EPA also believes that the container rejection rates from the container collection and recycling programs show that containers do not have to meet a standard of six 9's to be adequately cleaned. Table 7 shows that almost 60 percent of the agricultural formulations and containers tested met a standard of six 9's. Assuming that the tested formulations/containers are representative of the agricultural market, we would expect to find a rejection rate of over 40 percent if a six 9's standard was necessary for adequate cleaning. Data from several States show that currently a maximum of 2 percent of containers are rejected, which is much lower than 40 percent. EPA interprets this to indicate that meeting a standard of six 9's is not necessary to ensure that a container is clean enough to be recycled safely.

EPA disagrees with commenters who stated that the residue removal standard should be based solely on toxicological significance, because establishing and proving compliance with such a standard would be very complex. In addition, any amount of residue in a container could cause a disruption to its proper disposal or recycling because of the perception of risk the concentration of active ingredient may not be relevant in such a situation. However, toxicity and relative risk are indirectly taken into account for the nonrefillable residue removal standard in the final rule because of the changes in the scope of the container regulations. The less toxic/risky pesticide products (those in Toxicity Categories III and IV and that are not restricted use pesticides) are subject only to the basic DOT standards, and are exempt from some of the container requirements, including this one. Only products that are in Toxicity Category I and II and others that are restricted use products are subject to the residue removal standard in the final rule.

Setting the residue removal standard at four 9's in the final rule will reduce the costs of implementing the regulations because a higher percentage of existing container/formulations will comply with the standard. Therefore, fewer container design changes, re-formulations, and modification or

waiver requests will be needed. Reducing the stringency of the residue removal standard does not reduce the testing costs. However, the testing costs attributed to the final rule are reduced from those in the proposal because fewer containers/formulations are subject to the standard (due to the changes in the scope). In addition, changes in the final test procedure (see Unit V.H.4.) and the final implementation approach (discussed in Unit V.H.5.) of only requiring testing for flowable concentrate formulations and if requested on a case-by-case basis will greatly reduce testing costs.

EPA believes that a 99.99 percent removal standard is consistent with the results from triple rinsing current containers/formulations, which we generally believe can be adequately cleaned if they are properly rinsed.

In summary, EPA believes that most containers/formulations can meet a four 9's standard. However, we do believe that a standard is necessary and appropriate for several reasons. First, the initial step in ensuring clean containers is to use container designs and formulations that facilitate residue removal. This is a responsibility of the registrant and a standard ensures that the registrants appropriately facilitate safe and proper residue removal. Second, the rinsing data show that there is a difference in how easily residues can be removed from containers, based on the formulation and container characteristics, meaning that there is the potential for problems in removing residues. Third, observations from State pesticide container collection programs have noted a problem over time (i.e., not just when collections were initiated) with certain pesticide formulations as discussed in more detail in Unit V.H.5. Lastly, a four 9's standard maintains the current level of rinsability and prevents the use of formulations or containers that retain more residue or are harder to rinse than currently used containers and formulations.

3. *Rinsing data*—i. *Comments*. Some commenters specifically addressed the triple rinsing data discussed in the preamble of the proposed rule. A registrant group and a registrant questioned the relevancy of some of the container cleaning data cited by EPA. These respondents pointed out that some of the data were 6 to 10 years old, and cited a widespread move to plastic jugs, making data on metal pails obsolete.

Several commenters expressed the following specific concerns about the residue removal data that EPA cited to support the proposed six 9's standard:

- A registrant group and a registrant commented that several transcription errors were made in constructing Table 1 (triple rinsing data for agricultural containers/formulations) in the preamble of the proposed rule. One of the respondents added that these errors undermine the credibility of the data and the arguments developed that use the data as their basis.
- A registrant questioned whether the research data were generated under GLPs.
- Two registrants questioned whether the data are truly representative of containers/formulations that are subject to the regulations.
- A registrant commented that data other than EPA's (Formulogics), NACA's and CSMA's are not relevant because they are not generated from the same test procedures.

A registrant group and a few registrants expressed concerns that the EPA data for non-agricultural pesticide markets (in Table 2 of the preamble of the proposal) are not representative of the household, industrial and institutional markets. All of these commenters pointed out that the EPA data do not include tests on dilutable antimicrobial products or similar formulations. In addition, the registrant group stated that EPA (Formulogics) did not test formulations containing active ingredient concentrations lower than 38 percent by weight. This respondent also added that the data provided by CSMA cover a small but representative number of nonagricultural container/formulation combinations and that most of them (10 out of 12) would not meet the six 9's standard.

ii. *EPA response*. EPA agrees that residue removal data produced using a rinsing procedure other than the one identified in the EPA standard methodology are not relevant to supporting or changing a regulatory standard. As stated in Unit V.H.2., four sets of data were developed using a standard testing procedure (that is very similar to the final test procedure) to test currently used formulations and container designs. Two sets of data focused on containers and formulations typical in the agricultural pesticide market and the other two were intended to represent containers and formulations in the household, institutional and industrial market. Even though the testing to develop these four sets of data was done in the early 1990's, EPA believes that the formulations and containers tested are still commonly used.

Table 7 presents the results of these studies in terms of the standard that the container/formulation would meet based on the concentration of active ingredient in the rinsate from the fourth rinse. The following table presents the information in a somewhat different format. In Table 9, each container/formulation combination is included only once per row in the column for the most stringent standard it would meet. For example, if the percent removal for a container/formulation combination was 99.9992 percent, it would be listed only in the five 9's column (even though it also meets a standard of four 9's).

TABLE 9.—ANALYSIS OF RESIDUE REMOVAL DATA

Study Name	Total Cntr/Form Combinations Tested	Number of Container/Formulation Combinations That:[1]			
		Don't meet Four 9's	Meet Four 9's	Meet Five 9's	Meet Six 9's
Formulogics (agricultural)	19	0 (0%)	2 (11%)	4 (21%)	13 (68%)
NACA (triple rinse)	24	0 (0%)	5 (21%)	7 (29%)	12 (50%)
Formulogics (nonagricultural)	29	0 (0%)	3 (10%)	10 (34%)	16 (55%)
CSMA	7	1 (14%)	2 (29%)	3 (43%)	1 (14%)
Total	79	1 (1%)	12 (15%)	24 (30%)	42 (53%)

[1] Same note as Table 7.

Looking at the presentation of the results of the four studies in Tables 7 and 9, it can be seen that a higher percentage of the container/formulations tested by Formulogics for EPA meet a standard of six 9's than the containers/formulations tested by the industry associations. This is especially true for the tests of nonagricultural products. However, there is no difference or minimal difference in the results between EPA's data and industry's data in terms of whether the containers/formulations meet a standard of four 9's. As described earlier, only one container-formulation combination (which isn't actually distributed in the marketplace) did not meet a four 9's standard.

EPA acknowledges that there were discrepancies between the data in the Report to Congress and the data in Table 1 in the proposed rule's preamble. These discrepancies were due to corrections made to the NACA data reported to EPA; the earlier (and incorrect) data were presented in the Report to Congress and the more recent, correct data (which should have been cited) were included in the preamble for the proposal. Reference 42 explains these discrepancies in more detail. Tables 7 and 9 present the correct data.

EPA acknowledges that the sample size of 79 container/formulation combinations is relatively small, but we believe that the formulation types and container designs tested to produce the data in Tables 7 and 9 are representative of the formulations and containers that are currently used. Some formulations (such as dilutable sanitizers and disinfectants) may be under-represented numerically, since only the CSMA testing included these kinds of formulations. However, the CSMA tests done on the dilutable sanitizers and disinfectants show that these kinds of products can attain a standard of four 9's. Also, only a limited number of antimicrobial products will be subject to the container regulations (and therefore the residue removal standard) based on the revised scope of the final rule. Therefore, the proportion of antimicrobial product formulation types that were tested may be similar to the proportion that are subject to the residue removal standard in the final regulation.

The supporting data were not generated according to GLPs. Additionally, the supporting studies were conducted on one, two or three containers per formulation; not 19 containers. As described in Unit V.H.4., the methodology in the final rule was changed to be consistent with the supporting data.

4. *Final test protocol*. Many respondents commented on the proposed testing methodology and particularly its relationship to the protocol developed for EPA by Formulogics prior to proposing the rule. Most of these comments are addressed in the Response to Comment document, although the comments regarding GLP standards and the number of containers tested are summarized below.

i. *Comments - GLP standards*. Many commenters (registrants, registrant groups, and a consultant) objected to the GLP testing requirement as unnecessarily burdensome, substantially increasing the cost of testing without increasing the validity of the data. However, one respondent (a consultant) commented that all studies should be done under GLPs in some form to ensure data quality. A registrant group and a registrant suggested that it would be sufficient to require a company official to certify the data. Several registrants commented that GLP testing would force them to have outside labs conduct the testing and claimed that this would dramatically increase the costs. One registrant said that many container testing labs are not familiar with EPA's GLP regulations. Another stated that because labs cannot dispose of rinsate properly, they will send it back to the registrants, increasing costs and waste generation. A registrant group and a registrant pointed out that the data used to develop EPA's proposal were not generated under GLP and asked that the GLP requirement be dropped from the final rule.

ii. *EPA response - GLP standards*. EPA changed the test protocol for the final rule in several ways to address some of the problems described by commenters. First, the final rule does not specify that the testing must be conducted in compliance with the full set of GLP standards in 40 CFR part 160. While registrants may comply with the GLP standards, it is not required. EPA believes that the container residue removal testing can adequately be accomplished by registrants at their facilities; the intent was not to have this testing contracted to outside labs, although a registrant may choose that option.

While EPA does not believe that compliance with the full GLP standards in 40 CFR part 160 is necessary, we think that it is necessary to incorporate some of the key GLP requirements to ensure that the data are of sufficient quality. EPA reviewed the part 160 regulations and particularly the subset of requirements specified in 40 CFR 160.135 for certain studies to determine physical and chemical characteristics of pesticides. Of the subset of requirements identified in 160.135, we identified some requirements that residue removal testing must meet. These GLP requirements are identified in the final test protocol. (Ref. 20)

iii. *Comments - number of containers*. All of the many (nearly 20) commenters (registrants, registrant groups and a container manufacturer group) who addressed this issue were opposed to testing 19 containers per formulation/container combination. Many registrants and a registrant group urged EPA to require testing of only three replicates of each container/formulation combination, rather than the proposed 19. A registrant group and a few registrants suggested starting with three and testing more if necessary to achieve a predetermined level of statistical significance. Commenters said testing of 19 containers is not statistically justified, not cost effective, and not necessary for achieving the data requirements. Some of these commenters pointed out that EPA used only three containers to generate the preamble data and asked why the same standard is not sufficient for registrants.

iv. *EPA response - number of containers*. EPA changed the test protocol for the final rule to specify that the test must be conducted on a minimum of three containers, rather than the proposed approach of a minimum of 19 containers. The main reason for changing the number of containers that must be tested is that the testing conducted to produce the data supporting the residue removal standard was conducted on three containers. The supporting data was not conducted on 19 containers, so it is unclear whether the available data could support a standard based on testing 19 containers. Upon re-evaluation, EPA agrees that the test procedure used to produce the supporting data and the test procedure for the regulatory standard should be very similar if not identical. In addition, EPA believes that testing three containers offers cost reduction benefits including less time to actually conduct the testing with one-sixth the number of containers to be rinsed, one-sixth the number of analyses that need to be conducted, and one-sixth the amount of rinsate that needs to be managed or disposed. The final rule approach of testing three containers is similar to the standards for complying with DOT's drop tests and other performance tests.

5. *Implementation*—i. *Comments*. In the preamble of the proposed rule, EPA requested comments on the circumstances under which submission of residue removal data from pesticide products with substantially similar

container/formulation characteristics would be sufficient in lieu of data generation for every pesticide product. EPA also requested comments on the factors to be considered in determining when container and formulation characteristics should be considered ''substantially similar'' for the purposes of this requirement. The following comments address these issues:

• Too many tests required: Some respondents, including registrants, registrant groups, and a container manufacturer group, expressed concern that the proposed residue removal standard and the interpretation of design type as expressed in the proposed rule would necessitate testing for virtually every container/formulation combination in every size and variation. They said the costs to registrants would be crippling and asked EPA to consider alternatives.

• Design type clarification: Several commenters asked for clarification of EPA's criteria for determining whether containers are the same or different. They urged a broad definition of design type to reduce the testing burden.

• Formulation similarities: Several commenters suggested ways to eliminate duplicative testing on the basis of formulation, such as granting waivers to products that meet certain physical property criteria or to formulations similar to ones that have already passed.

• Industry task force: Some agricultural registrants and a registrant group voiced support for a plan to establish an industry task force that would conduct studies to determine the physical properties of formulations and containers that meet the four 9's standard. Combinations matching those criteria would be exempted from testing; necessary testing would be limited to broad categories of product/container combinations developed by the studies.

ii. *EPA response*. Many of the changes in the residue removal standard discussed in the previous sections reduce the cost of complying with this standard, including:

• Changing the scope of the nonrefillable container regulations so only dilutable products in Toxicity Category I or II or that are restricted use products have to comply with the residue removal standard;

• Reducing the standard from 99.9999 percent to 99.99 percent removal; and

• Changing the testing protocol.

Despite these changes, the estimated costs of complying with the residue removal standard were still a fairly large percentage of the overall annual costs and costs per facility. Rather than trying to minimize the burden to registrants by trying to identify and define substantially similar containers and formulations, EPA believes it is better to require testing only for formulations and containers that have shown to be difficult to clean. As stated earlier, EPA believes the data show that most containers/formulations can meet a four 9's standard although practical experience with container recycling programs shows that there are problems with certain formulations. Because a universal approach (testing all products subject to the regulations) to identify the exceptions (the problematic formulations) is inefficient, EPA believes there is a more efficient yet effective way to implement the residue removal standard in the final regulations.

In particular, the final rule takes the following approach:

• All dilutable liquid products in rigid containers must be capable of meeting the 99.99 percent removal standard. This sets a minimum standard for all products.

• On the basis of the Formulogics and NACA data, EPA is making the assumption that nearly all products meet a standard of 99.99 percent removal, and therefore is requiring testing only in limited circumstances. In particular, registrants only have to conduct the residue removal testing if the products are flowable concentrate formulations or if EPA requests the test data on a case-by-case basis.

• Accordingly, the recordkeeping standards in § 165.27(b)(5) were changed so recordkeeping of test results is only required for flowable concentrate formulations or if EPA specifically requests the records on a case-by-case basis.

EPA chose to require testing of flowable concentrate formulations for several reasons. First, the results of the four studies in Table 7 show that there is a difference in rinsing efficiency between the formulation types that were tested, specifically flowable concentrates, emulsifiable concentrates, aqueous solutions, and encapsulated formulations. Tables 10, 11, and 12 show the data from the studies in Table 7 with the residue removal performance broken down by formulation type. The results - particularly for the studies with the most testing - show that flowable concentrate formulations had the biggest difference between meeting four 9's and five 9's, which suggests that these kinds of products may generally be a little more difficult to remove from containers due to characteristics of the formulation type in general. The emulsifiable concentrates tested generally reached a five 9's level of residue removal but showed a similar difficulty as flowable concentrates in reaching the six 9's level of residue removal in the Formulogics study of agricultural formulations and containers. While not completely conclusive, EPA believes these data support the observation that flowable concentrates may generally be more difficult to remove from containers than other kinds of formulations.

TABLE 10.—ANALYSIS OF RESIDUE REMOVAL DATA BY FORMULATION TYPE - AGRICULTURAL FORMULATIONS AND CONTAINERS (FORMULOGICS & NACA)

Formulation	Total Cntr/Form Combinations Tested	Number of Containers/Formulations That Meet:		
		Four 9's	Five 9's	Six 9's
Flowable concentrate	15	15	11	10
Emulsifiable concentrate	20	20	18	12
Encapsulated	4	4	3	1
Aqueous Solution	3	3	3	1
Dry Flowable	1	1	1	1
Total	43	43	36	25

TABLE 11.—ANALYSIS OF RESIDUE REMOVAL DATA BY FORMULATION TYPE—HOUSEHOLD, INDUSTRIAL AND INSTITUTIONAL CONTAINERS (FORMULOGICS)

Formulation	Total Cntr/Form Combinations Tested	Number of Containers/Formulations That Meet:		
		Four 9's	Five 9's	Six 9's
Flowable concentrate	10	10	7	1
Emulsifiable concentrate	9	9	9	8
Encapsulated	10	10	10	7
Total	29	29	26	16

TABLE 12.—ANALYSIS OF RESIDUE REMOVAL DATA BY FORMULATION TYPE—HOUSEHOLD CONTAINERS (CSMA)

Formulation	Total Cntr/Form Combinations Tested	Number of Containers/Formulations That Meet:		
		Four 9's	Five 9's	Six 9's
Flowable concentrate[1]	1	1	1	0
Emulsifiable concentrate[1] [2]	2	1	0	0
Aqueous solution[1]	4	4	3	1
Total	7	6	4	1

[1] Based on the description of the formulations, we assumed that the CSMA data included one flowable concentrate, two emulsifiable concentrates and four aqueous solutions.
[2] The container/formulation that did not meet four 9's was an agricultural emulsifiable concentrate in a small (16 ounce) container.

Second, the Minnesota Department of Agriculture (DOA) developed a report that summarized the observations of inspectors and the experiences of pesticide users regarding rinsing containers that held pesticide products formulated as flowable concentrates. (Ref. 18) These containers tended to be rejected at a higher rate than other types of formulations. The Minnesota DOA observed that about 60 percent of the containers of one specific flowable concentrate formulation contained pesticide residue, even when the overall container rejection rate at the collection site was less than 1 percent. To make the containers holding the studied formulation come clean, users had to take extra measures beyond triple rinsing, such as power rinsing for a long time, using hot water, cutting the containers open to allow access to hard-to-reach areas, soaking the containers, using soap or another material and conducting extra rinses. While we do not have laboratory triple rinsing data on this product to confirm whether or not it meets a 99.99 percent standard, the description in Minnesota's report clearly documents a problem with cleaning the containers used for this product, which was a flowable concentrate. The Minnesota DOA report mentioned several other products that it also categorizes as more difficult to rinse.

Third, recent conversations with people active in pesticide container recycling confirmed commenters' assertions that the main reasons for unclean containers at recycling programs are lack of effort by the end users when rinsing containers and because of pesticide product drying along the inside of the container if the material in the container is not used all at once. (Ref. 26) Neither of these problems would be addressed by the residue removal standard. Based on their observations, these people believe that any container with any formulation type can be adequately cleaned if the container is emptied completely at one time (all contents are used initially), if the end user rinses the container promptly after emptying it and if the end user rinses it properly (either pressure or triple rinsing). On the other hand, these people also commented that specific products may need a little extra effort into rinsing (more time in a pressure rinse or an extra rinse after the triple rinse procedure) to completely clean the container.

Based on this information, EPA believes the final regulations should be implemented in a way that minimizes the required testing because the laboratory data and field observations do not support a widespread problem with residue removal that could be solved by the residue removal standard. Therefore, EPA decided to only require residue removal testing for flowable concentrates, which showed the most difficulty in being removed in the laboratory testing. EPA believes that the field observations indicated that specific products - in any formulation type - may be more difficult to remove by rinsing than other products. Therefore, the final regulations also provide EPA the option to require residue removal testing (and keeping records of it) on a case-by-case basis. EPA anticipates using this option if we receive credible information about a wide-spread problem with a specific container/formulation combination being difficult to clean.

I. Waiver and Modification Criteria (§ 165.25(g))

1. *Final regulations.* Section 165.25(g) of the final rule explains that registrants may request waivers from or modifications to the nonrefillable container standards. This section sets out the criteria that must be met for EPA to approve a waiver/modification request. The criteria are different for each of the nonrefillable container requirements, as described below.

• *§ 165.25(a): DOT standards for pesticide products that are not DOT hazardous materials.* EPA may waive or modify the requirements of § 165.25(a) if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of § 165.25(a).

• *§ 165.25(b): DOT standards for pesticide products that are DOT*

hazardous materials. EPA may waive or modify the requirements of § 165.25(b) if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of § 165.25(b). EPA will modify or waive the requirements of § 165.25(b) only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

• *§ 165.25(d): Container closures*. EPA may approve a non-standard closure (that is, a closure not listed in § 165.25(d)) if EPA determines that both of the following conditions are satisfied:

(1) The non-standard closure is necessary for the proper mixing, loading, or application of the pesticide product.

(2) The non-standard closure offers exposure protection to handlers during mixing and loading that is the same or greater than that provided by the standard closures.

• *§ 165.25(e): Container dispensing capability*. EPA may waive or modify the standards in § 165.25(e) if EPA determines that at least one of the following conditions is satisfied:

(1) The product is typically removed from the container by a method other than pouring.

(2) Compliance with the container dispensing capability standards would increase exposure to the pesticide container handler.

• *§ 165.25(f): Residue removal standard*. EPA may waive or modify the requirements of § 165.25(f) if EPA determines that both of the following conditions are satisfied:

(1) The residue remaining in the container would not cause an unreasonable adverse effect on the environment; and

(2) The product offers significant benefits and cannot be economically reformulated or repackaged.

2. *Changes*. The final rule is significantly different than the proposal. Additional waiver/modification provisions were added and all of the criteria were consolidated into one section. The proposed rule included waiver/modification provisions only for the standard closure and residue removal requirements. The waiver/modification criteria for the standard closure requirement in the final rule are similar to the proposed regulations, although a few minor editorial changes were made. Also, the final rule clarifies that both criteria must be met before EPA will approve the use of an alternative closure, which was the intent of the proposed rule. The waiver/modification provision for the residue removal requirement was modified to add specific criteria that must be met. This change was made partly because the proposed criterion for waiving or modifying the residue removal standard was very broad and partly because a more specific and limited waiver/modification standard is appropriate with the less stringent residue removal standard in the final rule. The final rule incorporates a DOT waiver provision similar to the one set out in the potential alternative regulatory text in the 1999 supplemental notice. EPA modified the DOT waiver provision in several ways to address a few comments about the problems that could be caused if EPA changed the adopted DOT requirements for pesticides that are DOT hazardous materials. First, a separate waiver/modification provision is included for pesticides that are not DOT hazardous materials and for pesticides that are DOT hazardous materials. Second, the waiver/modification provision for pesticides that are DOT hazardous materials specifies that EPA will modify or waive the requirements in § 165.25(b) only after consulting with DOT to ensure consistency with DOT regulations and exemptions. The final rule also adds waiver/modification provisions for the container dispensing standards.

The waiver/modification provisions are included to address situations where the nonrefillable container requirements might compromise the success, safety and effectiveness of currently used containers or those developed in the future. While EPA has attempted to focus each nonrefillable container requirement on containers and pesticides for which it is appropriate, we are not familiar with every container used for every product. It is likely that there are some problematic situations where existing containers that are specifically designed for a certain use or adaptation may have difficulty complying with the final regulations. We may not be aware of these situations and they may not have been mentioned by commenters. In general, waivers or modifications are intended to provide relief for a limited number of situations, and we wanted to provide a mechanism to account for these situations without having to amend the regulations. Waivers and modifications are appropriate in a limited number of situations, such as the use of non-standard closures, since the point of the requirement is to limit the number of closures (and therefore adapters) to encourage the use of closed transfer systems.

J. Procedure for Applying for a Waiver or Modification (§ 165.25(h))

1. *Final regulations*. Section 165.25(h) describes the procedure for registrants to follow if they want to obtain a waiver from or a modification to any of the nonrefillable container standards. The regulations specify that a registrant cannot distribute or sell a pesticide product in a nonrefillable container that does not comply with all of the nonrefillable container standards unless and until EPA approves the request for the waiver or modification in writing.

To obtain a waiver or modification, a registrant must submit a written request for a waiver or a modification to the EPA's Office of Pesticide Programs at the address provided in the regulations. Two copies of the following information (which may be part of an application for registration or amended registration) must be included with the request:

• The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

• The name and EPA registration number of the relevant pesticide product.

• A statement specifying the requirement(s) from which the waiver or a modification is requested.

• A description of the relevant nonrefillable container(s).

• Documentation or justification to demonstrate that the applicable waiver or modification criteria in § 165.25(g) are satisfied.

2. *Changes*. The procedure for obtaining all waivers and modifications is essentially the same as the procedure proposed (in § 165.119) for obtaining a waiver of the standard closure requirement. No specific procedure was identified for the residue removal waiver in the proposed rule or for the waiver from DOT requirements in the 1999 supplemental notice. Consolidating all of the waiver criteria in § 165.25(g) and using the same procedure for all waivers requests should facilitate the process for registrants and EPA. Therefore, the significant change to the waiver procedure requirements in the final rule is that they clearly apply to all waiver requests. Several additional minor modifications were made to the final rule, including updating the address, clarifying the statement requiring EPA approval before a pesticide product can be sold or distributed in containers with waived or modified requirements, broadening several of the information items to accommodate the additional waiver provisions, and clarifying that a waiver request could apply to more than

one nonrefillable container design for the identified pesticide product. Because the waiver and modification requests are part of an application for registration or amended registration, each waiver request must apply to only one product.

K. Reporting (§ 165.27(a))

1. *Final regulations.* This section clarifies that the pesticide container regulations do not require registrants to report to EPA with information about their nonrefillable containers. It refers registrants to the reporting standards in 40 CFR part 159 to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2).

2. *Changes.* The intent and substance of this standard is the same as in the proposal. However, the wording was changed to clarify that this is simply a reference to the existing 6(a)(2) standards and that it does not add any new requirements.

L. Recordkeeping (§ 165.27(b))

1. *Final regulations.* For each product that is subject to the full set of nonrefillable container regulations and is distributed and sold in nonrefillable containers, registrants must keep the following records for as long as a nonrefillable container is used for the product and for 3 years thereafter:

- The name and EPA registration number of the product.
- A description of the container(s) used to distribute or sell the product.
- Documentation of compliance with the closure requirement, if applicable.
- Documentation of compliance with the dispensing requirement, if applicable.
- Documentation of compliance with the residue removal requirement, if applicable.

The registrant must make these records available for inspection or copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

2. *Changes.* The requirements are substantially the same as proposed. Several minor modifications were made in the final rule to improve the clarity of the recordkeeping requirements, including:

- Deleting ''design type'' in several places to clarify that the requirements apply to the containers used to distribute or sell the product. However, the specific records for the dispensing and residue removal recordkeeping allow information for different containers and products to be used to document compliance, under the specified conditions.
- The first sentence in the recordkeeping requirement in the final rule was revised to clarify that the recordkeeping applies to pesticide products distributed or sold in nonrefillable containers and that are subject to the full set of nonrefillable container regulations in §§ 165.25 - 165.27. In other words, products that are completely exempt and products that must comply only with the standards in 49 CFR 173.24 do not have any recordkeeping requirements. This change was necessary because of the changes in the scope of products that are subject to the nonrefillable container standards.
- Because the requirement for registrants to submit a certification is not being finalized, the need to keep a record of the certification is no longer necessary.
- For the closure-related records, several minor changes were made to further describe the kinds of documentation that would be acceptable.

M. Proposed Standards That Are Not Being Finalized

1. *Final regulation/changes.* The following requirements relating to container design from the proposed regulation are not being finalized in the final rule:

- § 165.102(b): Container integrity and compatibility;
- § 165.102(c)(1): Permanently marking the EPA registration number;
- § 165.102(c)(2): Permanently marking the container's material of construction;
- § 165.102(d)(3): Requiring the container to reclose securely; and
- § 165.106: Residue removal methodology for dilutable products in rigid containers
- § 165.111: Certification.

Three of these proposed requirements for nonrefillable containers are not being finalized because they were replaced by equivalent DOT requirements. The following table lists the non-finalized requirements from the proposed rule and the DOT equivalent regulations:

TABLE 13.—PROPOSED NONREFILLABLE CONTAINER STANDARDS THAT WERE NOT FINALIZED AND THEIR DOT EQUIVALENTS

Proposed Pesticide Container Requirement	Proposed 40 CFR Cite	Equivalent 49 CFR Cite
Container integrity and compatibility	§ 165.102(b)	§§ 173.24(b), 173.24(e)
Permanently marking the material of construction	§ 165.102(c)(2)	§§ 178.3(a), 178.503(a)
Requiring the container to reclose securely	§ 165.102(d)(3)	§ 173.24(f)

As discussed in Units V.H.1. and V.H.4., the residue removal testing methodology that was proposed in § 165.106 is not being finalized in the regulatory language and will be incorporated into EPA's testing guidelines. The test procedure is established as an OPP test procedure titled ''Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers.'' (Ref. 20) The proposed regulatory language provided some details of the test procedure, which EPA intended to supplement with guidance. The final rule does not include the specific testing requirements because we believe it is more appropriate to provide these details in a test protocol than in the regulations.

EPA decided not to finalize the proposed requirement in § 165.102(c)(1) that each nonrefillable container be permanently marked with the EPA registration number of the pesticide in the final rule. Also, EPA is not finalizing the proposed requirement in § 165.111 for registrants to certify that their nonrefillable containers meet the standards and to submit the certifications to EPA.

2. *Comments - EPA registration number.* Several State regulatory agencies supported requiring the EPA

registration number, saying it would help in the identification and disposal of unwanted and/or abandoned pesticides. One acknowledged that the container might not hold its original contents, but that the benefits outweigh the disadvantages. One commenter suggested imbedding identification stripes in bags to identify the contents and another recommended requiring the year the pesticide was manufactured in addition to the EPA registration number.

Almost 30 commenters, including almost 20 registrants, some registrant groups, a few container manufacturer groups, and a State regulatory agency, opposed requiring the EPA registration number to be permanently marked on the container because the container may not hold its original contents, the number is already on the pesticide label, it would be too expensive, and it would create inventory and container ordering problems.

3. *EPA response - EPA Registration Number*. This requirement was intended to help the managers of State pesticide collection and disposal programs (often called Clean Sweep programs) identify unknown pesticides when they receive containers without labels. However, based on the comments, we no longer believe that the benefits of this standard would outweigh the costs. EPA believes that many commenters misunderstood the intent of the proposed interpretation of permanent marking because the comments implied that the EPA registration number would have to be embossed in the container. This was not the intent of the proposal, which would have allowed ink jetting, so the comments regarding inventory problems and some of the costs are not relevant. However, even the estimates for ink jet printing and the costs to alter a filling line are substantial when extrapolated to all of the formulators, particularly when the actual benefits are unclear. EPA doesn't question the benefit of helping State pesticide disposal programs identify pesticides to facilitate and minimize the cost of disposing of unwanted pesticides. However, there are many legitimate questions about how often this might happen and how much confidence a pesticide disposal program manager would have that the container holds its original contents. (See the discussion of good stewardship for service containers in Unit VII.L. of this preamble.) Also, the EPA registration number is required on the pesticide's label. Therefore, EPA is not finalizing this requirement in today's final nonrefillable container regulations. EPA continues to believe that durably marking a product's EPA registration number on its nonrefillable containers is a good practice and we encourage registrants to do this (or continue doing it), although it is not required.

4. *Comments - certification*. A registrant group commented that registrants would be able to certify compliance if appropriate standards are established. Another registrant group commented that current registration guidelines make the certification redundant and claimed that the requirement to certify was not in compliance with the Paperwork Reduction Act. A registrant group and a registrant urged EPA to develop guidance to define what registrants should certify, because it is unclear what must be certified and when. A registrant group and a registrant/distributor said that formulators and subregistrants should be allowed to meet this requirement by a data certification process.

5. *EPA response - certification*. EPA considered modifying the certification requirement to clarify the intent. However, EPA decided not to finalize the certification requirement because, in this case, we believe that the benefits of having registrants certify compliance are outweighed by the paperwork burden on industry and EPA. EPA believes that having a high level official certify compliance with the regulations generally facilitates compliance by having companies focus on the regulations up-front and by creating an incentive for that official to ensure compliance because of the responsibility of signing such a statement. However, the registrants will already be sending in a submission with an official's signature because of the changes to the pesticide storage and disposal label statements. Therefore, we believe that some of the benefits of the label submissions will carry over onto the container standards. Also, this approach should eliminate potential confusion about submitting label changes and certifications if a product must comply with the label changes in this rule but not the nonrefillable container standards (because of different scopes). Lastly, the container regulations, promulgated under the authority of FIFRA section 19, are directly enforceable by section 12(a)(2)(S) of FIFRA, which states that it is unlawful to violate any regulation issued under section 3(a) or 19. In other words, the certifications are not necessary to enforce these regulations. For all of these reasons, EPA decided not to finalize the certification requirement in today's final rule.

VI. Refillable Containers

A. Key Terms

1. *Overview*. The following terms, defined in § 165.3 of subpart A, are key to understanding the refillable container standards in subpart C.

(1) Dry pesticide
(2) One-way valve
(3) Portable pesticide container
(4) Refillable container
(5) Stationary pesticide container
(6) Tamper-evident device
(7) Transport vehicle.

Three of these definitions--dry pesticide, tamper-evident device, and transport vehicle--are identical to the proposed definitions. The definition of refillable container was slightly modified to clarify that refillable containers are used for sale or distribution. As discussed below, a definition of portable pesticide container has been added to the final rule and the other two definitions were changed substantively.

The following proposed definitions that were relevant to the proposed refillable container standards are not being finalized: dry bulk container; dry minibulk container; liquid bulk container; and liquid minibulk container. These are discussed below in conjunction with stationary pesticide container.

2. *One-way valve*—i. *Final regulation*. One-way valve means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposition direction, thus allowing the withdrawal of material from, but not the introduction of material into a container.

ii. *Changes*. EPA incorporated the following phrase, as suggested by a registrant: ''to allow virtually unrestricted flow in one direction and no flow in the opposition direction.'' EPA believes this improves the definition by clarifying what we mean by one-way.

3. *Stationary pesticide container*—i. *Final regulation*. Stationary pesticide container means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

ii. *Changes*. The proposed definition for ''stationary bulk container'' was revised in several ways, as discussed in detail in Unit VIII.E. of this preamble, which describes the containers that are subject to the containment requirements. The final rule changes the term from ''stationary bulk container'' to ''stationary pesticide container'' because

the changes to the final containment regulations eliminated the need for the proposed definitions of minibulk and bulk containers.

The proposed containment regulations would have required each stationary bulk container to be protected by a secondary containment unit. The proposed rule defined stationary bulk container to be ''a liquid bulk container or a dry bulk container that is fixed at a single facility or establishment...'' The proposed rule also defined liquid bulk and dry bulk containers by size. For example, liquid bulk container was defined as ''a refillable container designed and constructed to hold liquid pesticide formulations with the capacity to hold undivided quantities of greater than 3,000 liters (793 gallons).''

The final containment regulations take a different approach of delineating the containers that must be within secondary containment units. Section 165.81(b) states that ''Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart ...'' Because the container sizes are a regulatory criterion in § 165.81(b), the definitions of liquid bulk container and dry bulk container are no longer necessary and are not being finalized. The definition of dry minibulk container was not used in the proposed or final regulations and is also not being finalized.

4. *Portable pesticide container*—i. *Final regulation*. Portable pesticide container means a refillable container that is not a stationary pesticide container.

ii. *Changes*. The proposed regulations did not define portable pesticide container. However, this definition is necessary in the final rule to replace the term liquid minibulk container in the refillable container regulations. As described above, EPA is not finalizing the definitions for liquid bulk, dry bulk and dry minibulk containers because they are not necessary. Similarly, EPA believes that it is logical to not finalize the definition for liquid minibulk container. In the proposal, the only time the term liquid minibulk container was used in the regulatory language was to define the kinds of refillable containers that had to comply with the one-way valve/tamper-evident device requirement. In the final rule, EPA partially describes the containers that must comply with the one-way valve/tamper-evident requirement in § 165.45(e) as ''a refillable container that is a portable pesticide container that is designed to hold liquid pesticide formulations...''

B. Purpose (§ 165.40(a))

1. *Final regulations*. The purpose of the refillable container standards is to establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.

2. *Changes*. This is nearly the same as the proposed purpose (in § 165.120(a)). One minor change was to acknowledge the reduced number of products that are subject to the final regulations by stating that the rule applies only to the distribution or sale of *some* pesticide products. The proposed regulations would have applied to all products. Another insignificant modification was to delete the term ''standards'' from the phrase ''establish standards and requirements'' because it is redundant.

C. Who Must Comply (§ 165.40(b))?

1. *Final regulations*. You must comply with all of the refillable container regulations if you are a registrant who distributes or sells a pesticide product in refillable containers. If your product is subject to the refillable container regulations as described in Unit VI.E., the product must be distributed or sold in refillable containers that comply with these regulations. This is true regardless of whether you repackage the product into the container yourself or whether you sell or distribute the product to an independent refiller, who repackages your product into refillable containers.

In addition, you must comply with the regulations in § 165.45(f) for stationary pesticide containers if you are a refiller of a pesticide product and you are not the registrant of the pesticide product.

2. *Changes*. For registrants, this is the same approach that we proposed in §§ 165.122(a)(1)(i) and 165.122(a)(2)(i). However, the wording is more straightforward because the regulations for refillable containers were separated from the repackaging regulations in the final rule. This subpart includes only the refillable container standards, which apply to all registrants that use refillable containers to distribute or sell their products. The standards for repackaging were placed in a separate subpart, because those regulations must distinguish between registrants who repackage product directly into the containers and registrants who allow independent refillers to repackage their product into refillable containers.

The final rule clarifies that refillers must comply with the requirements for stationary pesticide containers in § 165.45(f). EPA believes it is reasonable to hold both the registrants and refillers responsible for meeting the stationary pesticide container standards in § 165.45(f) because they are both selling and distributing the pesticide that is held in those containers.

D. Compliance Dates (§ 165.40(c))

1. *Final regulations*. The final regulations provide a 5–year period after the date of publication of the final rule in the **Federal Register** before compliance with the refillable container standards is required. Specifically, within 5 years from today's date, registrants must distribute or sell all pesticide products in refillable containers in compliance with these regulations.

2. *Changes*. Based on the comments, EPA decided to extend the compliance period from the 2–year time frame that was proposed in § 165.139. Also, the compliance date for registrants to submit certifications is not being finalized because the certification requirement from the proposal is not being finalized, as described in Unit VI.M.

3. *Comments*. A few commenters (registrant groups, a registrant and a State) on the proposed rule supported a 2–year compliance period if EPA adopts a grandfather clause or references the DOT regulations rather than the proposed regulations. However, many commenters (mostly registrants, but also a dealer group and a few States) argued for a longer compliance period to allow the continued use of sound containers and to minimize the burden of retrofitting containers or replacing the containers in inventory. Because refillable containers can be used for many years (the average life span is 5 years for plastic minibulks and 15 years for steel minibulks), a 2–year phase-in period would require companies to dispose of good containers or to retrofit them. Several of the commenters mentioned that it would take longer than 2 years to come into compliance.

In addition, many commenters (registrants and registrant groups) on the supplemental notice stressed the need for an adequate transition period regarding the option of adopting the DOT Packing Group III standards in the final rule. The main points made by the commenters included:

- An adequate transition period is required to design and obtain new packaging, finish using existing supplies of previously authorized packaging, allow existing nonrefillable packaging to

work its way through the distribution system and let refillable packaging complete its useful life.

• An inadequate transition period would significantly increase the cost of compliance with this rule. Major costs would be avoided as long as it is not necessary to dispose of packaging which has not yet reached the end of its useful life or to recall packaging which is still in the distribution channels and has not yet reached its final destination. The suggested transition periods would minimize the cost impact of the EPA container regulation.

• Pesticide products change hands several times as they move down the distribution chain from the basic producer to the end user (basic producers, formulators, distributors, retail dealers, brokers, custom applicators and end users). In many cases, the movement of materials is reversed when products are not consumed.

• The distribution process normally is completed in a given sales year. However, when materials are not consumed, inventories build at all levels of the distribution chain. Quite often materials may be held in inventory for multiple years before re-entering the distribution network. During periods when materials are being held in inventory, the pesticide formulators and others are negatively impacted when regulatory changes are imposed on products in the distribution chain (rather than on products that will be sold or distributed at some future date), which involves substantial expenses to producers with, in most cases, no justifiable gain in safety.

4. *EPA response*. As described above, EPA is extending the compliance period for refillable containers to 5 years to provide for a smoother and less burdensome transition for companies. Companies that have already made significant investments in refillable containers will be able to use their existing containers for 5 years, which covers the average expected lifetime of a plastic minibulk container. Also, the changes to the refillable container standards will allow existing refillable containers that meet the DOT Packing Group III standards to be retrofitted relatively easily (by durably marking each container with a serial number and having a one-way valve and/or tamper-evident device on each opening of liquid minibulk containers) so they can continue being used. EPA believes that the longer compliance period in the final regulations is reasonable and should apply equally to all products and all refillable containers.

E. Pesticide Products Included (§ 165.43(a) - (g))

1. *Final regulations*. As described in detail in Unit III., only certain products have to comply with the refillable container standards. MUPs, plant-incorporated protectants, and certain antimicrobial products are completely exempt from the refillable container requirements. All other pesticide products are subject to the refillable container regulations.

Some of the antimicrobial pesticides that are subject to the refillable container regulations are subject to a reduced set of regulations. In particular, antimicrobial pesticides that are used in swimming pools and closely related sites (such as hot tubs, spas and whirlpools) are exempt from the requirements for marking the serial number and having a one-way valve and/or tamper-evident device on each opening.

2. *Changes*. In the proposed rule, only MUPs were exempt from the refillable container regulations (in § 165.122(b)(1)). All other products would have been subject to the standards. The 1999 supplemental notice discussed regulatory options for exempting some products (antimicrobials and non-antimicrobials) from the full set of refillable container regulations and for exempting certain antimicrobial products from specific requirements.

The criteria in the final rule for exempting antimicrobials are different than those discussed in the supplemental notice and the final rule exempts plant-incorporated protectants. The final refillable container regulations do not incorporate the toxicity category, container size or environmental hazard criteria from the supplemental notice. Also, the final rule changes some aspects of the supplemental notice approach of subjecting antimicrobial swimming pool products to a reduced set of requirements.

Table 14 describes the provisions for determining which pesticide products are subject to which refillable container regulations and a brief explanation of how (or if) this provision changed from the proposal and/or the supplemental notice.

TABLE 14.—CHANGES TO THE SCOPE OF THE REFILLABLE CONTAINER REGULATIONS

Regulatory Provision	Changes
Manufacturing use products are exempt.	No change from proposed rule or supplemental notice.
Plant-incorporated protectants are exempt.	Plant-incorporated protectants would have been subject to the proposed rule. The regulations for plant-incorporated protectants were finalized in 2001. We are exempting them from the final rule because of their unique nature.
Certain antimicrobial products are exempt.	Antimicrobial products would have been subject to the proposed rule. The final rule implements an approach similar to option 1 in the supplemental notice, although some of the details are different.
All other products are subject to the refillable container requirements, except for certain antimicrobial swimming pool products.	All products other than manufacturing products would have been subject to the proposed rule. The final rule is different than the approach discussed in the supplemental notice, which would have exempted products in Toxicity Category III or IV in small containers and outdoor use products without the specified environmental hazard statements on their label.
Antimicrobial products used in swimming pools and closely related sites are subject to a reduced set of refillable container requirements.	Antimicrobial products used in swimming pools would have been subject to the proposed rule. The final rule is the result that was intended in the supplemental notice, although the specifics of how it is implemented in the final rule are different than in the supplemental notice.

F. Other Exemptions (§ 165.43(h))

Final regulations and changes. The refillable container regulations do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide. This is identical to the exemption proposed in § 165.122(b)(2). In addition, the final rule includes a specific exemption for gaseous pesticides, which is necessary to implement our intent from the proposal because the final rule does not use the proposed terms liquid minibulk, dry minibulk, liquid bulk and dry bulk containers, which would have excluded gaseous pesticides.

G. DOT Standards (§ 165.45(a) - (c))

1. *Final regulations.* As discussed in detail in Unit IV., refillable containers must comply with the DOT Hazardous Materials Regulations that are referred to and adopted into EPA's regulations. These incorporated regulations establish requirements for container design, construction and marking.

2. *Changes.* This is a change from the proposed regulation, although the approach of referring to and adopting a subset of the DOT standards was discussed in detail in the 1999 supplemental notice. See Unit IV. for a detailed discussion. As discussed in Unit VI.M., some of the proposed requirements for refillable containers are not being finalized in the final rule because they were replaced by equivalent DOT requirements.

H. Serial Number Marking (§ 165.45(d))

1. *Final regulations.* Each refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container. Antimicrobial products used in swimming pools and closely related sites (that are subject to the regulations) are exempt from this requirement.

2. *Changes.* The marking requirement was changed significantly from the proposal to the final rule. First, the proposed rule included seven pieces of information that would have been marked on the containers and the final rule only includes one piece of data, the serial number (or other identifying code). Some of the proposed items--the container manufacturer, date of manufacture, rated capacity, and material of construction--were deleted because this information is required in the DOT standards. The other pieces of information--the model number and the phrase ''Meets EPA standards for refillable containers''--were deleted from the regulations because they are no longer necessary for implementing the refillable container and repackaging requirements due to the change to refer to and adopt the DOT regulations and because commenters raised some legitimate problems with them.

Second, the regulatory text was changed to clarify that the serial number (or identifying code) must be durably marked on the container, rather than permanently marked as stated in the proposed regulations. EPA's intent for permanent marking in the proposal was described in the preamble as ''Permanent marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.'' EPA believes that durable marking is a more accurate term to describe our intent. The text in the final regulation-- ''must be marked in a durable and clearly visible manner''--is based on the DOT marking standards for intermediate bulk containers in 49 CFR 178.703(a)(1).

Third, the proposal included a provision that allowed compliance with a similar DOT marking requirement to satisfy the corresponding EPA pesticide container standard. This provision is no longer necessary because the final regulation refers to and adopts some of the DOT standards.

3. *Comments - permanent marking.* The proposal for the container marking drew a large number of comments. About 20 commenters, consisting mainly of registrants, registrant groups, and container manufacturer groups, addressed EPA's interpretation of permanent marking. These comments focused on the proposed permanent marking requirements for nonrefillable containers, but are applicable to the refillable container and label regulations as well. These comments are included in the refillable container section because the marking requirements for nonrefillable containers are not being finalized.

One registrant supported the list of different techniques that would qualify for permanent marking. Some respondents (registrants and registrant groups) specifically supported including ink jetting as a means of permanent marking and one suggested adding rubber-stamping to the list. A few registrants commented that many inks can be removed with solvent-based products.

Some commenters (registrants and registrant groups) urged EPA to move the list of acceptable forms of permanent marking from the preamble to the regulations if permanent marking is required. Respondents said this would prevent confusion and misunderstanding during enforcement.

One container manufacturer group discussed the difference between the UN/DOT terms ''permanent'' and ''durable'' and suggested that EPA's purposes would be met by requiring durable marking. A registrant provided similar comments and supported marks that are ''long-lasting and persistent through the life of the pesticide.'' This registrant also commented that permanent marking is best performed by container manufacturers, although registrants can add durable marking, such as ink jetting and stenciling with paint. A container manufacturer group supported providing options because different types of markings are suitable for different container types, but opposed mechanically attaching a plate to plastic containers and expressed concern about some of the other alternatives.

Some respondents (registrants and registrant groups) urged EPA to allow the use of pressure-sensitive labels and/or labels attached with permanent adhesive as alternative ways to comply with the permanent marking requirement. A container manufacturer group recommended requiring the containers to be marked in a manner ''that at least some of the material from which the container is made must be destroyed to remove the marking.'' A pesticide user commented that the marking should be legible after the third water rinse and dry cycles.

4. *EPA response - permanent marking.* EPA modified the approach toward permanent marking several ways in the final rule to eliminate confusion about the intent and to facilitate compliance. First, EPA changed the description of marking from ''permanent'' to ''durable'' marking. EPA believes that durable marking is a more accurate term to describe our intent because the description of ''permanent'' marking in the preamble of the proposal included marking methods, such as ink jetting, stamping and marking with durable ink, that are durable but not permanent. Second, the final rule clarifies that ink jetting and stamping are allowable

methods of marking the required information on the containers. Third, the allowable methods of marking are listed in the regulations, rather than only in the preamble or guidance material, to enhance the understanding of the intent.

5. *Comments - serial numbers*. Serial numbers were uniformly opposed by several registrants, several registrant groups, and a container manufacturer because these commenters claimed requiring serial numbers would greatly increase the cost of compliance. Several commenters focused on the potential impact on plastic and steel drums and flexible intermediate bulk containers, and said it would be very burdensome to permanently mark a serial number on each container. Three respondents specifically addressed swimming pool chemicals. These commenters stated that the requirement for serial numbers and the associated recordkeeping requirements would be completely unworkable for refillable pool chemicals because millions of refillable containers (from 1 to 55 gallons) are used each year and a single shipment can contain 4,000 to 5,000 bottles. This increased cost would make refillable containers uneconomical for swimming pool chemicals, which would lead to the registrants switching to nonrefillable plastic jugs.

6. *EPA response - serial numbers*. EPA disagrees with commenters that the cost of complying with the serial number requirement (for products other than swimming pool chemicals) would be overly burdensome. First, the final regulation clarifies that the serial number must only be durably marked, not permanently marked. Therefore, it would not have to be done by an automatic marking device capable of changing each time a new container is made. Second, this standard only applies to containers that are refilled. It does not apply to containers that are being reconditioned, remanufactured or repaired according to the DOT standards in 49 CFR 173.28 or 180.352. In other words, it does not apply to drums that are used once and reconditioned according to DOT standards and then filled with pesticide or another substance. See the discussion in Unit IV.B. that states that the reference to 49 CFR 173.28 is included in the final regulations to allow drums to be reconditioned and then reused under the pesticide container regulations.

EPA agrees with the commenters that applying serial numbers (and some other requirements) to refillable containers used for swimming pool pesticides would disrupt the current refillable container system for swimming pool chemicals and would quite likely cause the refillables to be replaced by millions of single-use, nonrefillable containers. Therefore, the final rule exempts antimicrobial products used in swimming pools and closely related sites (and that are subject to the regulations) from the serial number requirement.

I. Openings - One-Way Valves or Tamper-Evident Devices (§ 165.45(e))

1. *Final regulations*. Like the proposed rule, this standard applies only to *portable pesticide (refillable) containers designed to hold liquids*--not portable pesticide containers for dry pesticides or stationary pesticide containers. Also, this standard does not apply to cylinders that comply with the DOT HMR. Each opening of a portable pesticide container for liquid materials (except for DOT cylinders) other than a vent must have a one-way valve, a tamper-evident device or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

2. *Changes*. EPA made several modifications to this requirement. First, the description of the containers that must comply was changed to portable pesticide containers that are designed to hold liquid formulations because the definition of liquid minibulk container is not being finalized. Second, we changed the word ''aperture'' in the proposal to ''opening'' in the final rule because it is a more common term that should facilitate understanding and therefore compliance with the regulations. Third, the standard was changed so vents do not need to have tamper-evident devices or one-way valves. Instead, a sentence was added to ensure that vents are designed to minimize the amount of material that could be introduced into containers through them. Fourth, the requirement was amended to clarify that a one-way valve may be located in a separate device or system, such as a coupler, if that device or system is the only reasonably foreseeable way to withdraw pesticide from the container. This was the intent of the proposed standard, as described in the 1994 preamble, but we are adding it to the regulations for clarity. Fifth, the final rule was amended to state that this requirement does not apply to cylinders that comply with DOT's Hazardous Materials Regulations. Sixth, antimicrobial products used in swimming pools and closely related sites (that are subject to the regulations) are exempt from this requirement.

3. *Comments - vents*. A container manufacturer group pointed out that vents are needed to provide air flow and that a person could introduce a material through a vent if they tried hard enough. This commenter recommended requiring vents to be designed to minimize the introduction of material through them. Similarly, a State regulatory agency urged EPA to modify the requirement to acknowledge that vents are required on refillables and are not one-way.

4. *EPA response - vents*. EPA agrees with the commenters that vents are needed to provide air flow when unloading material from a container and that vents do not meet the definitions of either one-way valves or tamper-evident devices. Therefore, EPA modified the regulations to clarify that vents do not need one-way valves or tamper-evident devices, but that they must be designed to minimize the introduction of material through them.

5. *Comments - chloropicrin*. A group of chloropicrin manufacturers and users cited several reasons why that product should be exempt from the opening requirement. This commenter provided the following information:

- Chloropicrin is a highly volatile liquid that is shipped and handled essentially like a gas.
- End-use formulations containing chloropicrin are shipped in refillable steel containers manufactured under the same DOT specifications as propane cylinders.
- Chloropicrin containers typically have only one specialized valve for filling and emptying the cylinder and specialized connections are required to fill them.
- Chloropicrin cylinders contain screw-on valve protections known as bonnets. The commenter stated that adding external one-way valves is not possible due to space limitations and increasing the size of the bonnets would reduce the ability of the bonnet to protect the valve.

In addition, the commenter claimed that:

- The specialized valve and refilling connections minimize the chance of contamination or unauthorized filling.
- No valves were available in 1994 that were compatible with chloropicrin and that allow filling and emptying the container through a one-way valve.
- Installing one-way valves on thousands of existing cylinders could cause unnecessary worker exposure.

6. *EPA response - chloropicrin*. EPA agrees that the one-way valve/tamper-

evident device requirement could be problematic for cylinders, such as those used to distribute chloropicrin end-use products and propane. The one-way valve/tamper-evident device requirement applies to portable pesticide containers for liquid materials, which we envisioned as DOT portable tanks, IBCs and the non-bulk refillable containers designed to hold liquids. As explained by the commenter, chloropicrin is unusual in the sense that it is a liquid, but it is shipped and handled essentially like a gas. DOT classifies chloropicrin as hazard division 6.1 (poisonous material). EPA believes that the DOT specifications for cylinders are extremely detailed and extensive and we do not want to add requirements to them that would compromise the safety and protection provided by the DOT cylinder requirements. Note that cylinders holding gases would not be subject to the one-way valve/tamper-evident device requirement because they are exempt from the refillable container regulations by § 165.43(h)(2).

EPA believes that the chloropicrin cylinders described by the commenter should not have to comply with the one-way valve/tamper-evident device requirement. However, rather than specifically exempt containers holding chloropicrin, the final regulations take a more general approach and exclude cylinders that comply with the DOT HMR. The more general approach was taken because there may be other highly volatile liquid pesticides that are distributed in DOT cylinders that would face the same difficulties in complying with this requirement.

7. *Comments - sodium hypochlorite*. In comments on the proposed rule, a registrant group stated that the one-way valves identified in their research cost several times more than the refillable containers used to distribute sodium hypochlorite. According to this commenter, the one-way valve costs (in 1994) ranged from $10 for a 1–gallon container to $45 for a 55–gallon container. Another registrant group identified one-way valves as one aspect of the proposed regulations that would make refillable containers economically unfeasible for sodium hypochlorite in the swimming pool industry. A trade group representing all aspects of the swimming pool industry explained that sodium hypochlorite is a relatively low value product that sold for as little as $1.00 per gallon in 1994. At the time, purchasers would pay a deposit of $0.50 to $1.00 per refillable container. This commenter believes that the proposed regulations would make the refillable jugs used to distribute sodium hypochlorite for swimming pool use prohibitively expensive. All of these commenters favored exempting sodium hypochlorite from the pesticide container rule.

The comments on the supplemental notice were similar. The trade group representing all aspects of the swimming pool industry stated that the proposal to exempt eligible Toxicity Category I antimicrobial products used in swimming pools from most of the refillable container standards is laudable, but that it does not go far enough. A pool supply company commented that using one-way valves and serial numbers on its returnable bottles would increase the cost to the point where it could no longer compete in the marketplace. A sodium hypochlorite manufacturer stated that the relatively low value of the product makes the use of one-way valves unaffordable. This commenter stated that one-way valves for drums cost about $75 container, not including the connectors/adaptors that the applicators would need. This manufacturer identified a one-way valve device that could be added to the refillable jugs for about $3 per container, which is more reasonable, but noted that these devices could not be produced in large enough quantities to account for all refillable jugs currently in use.

8. *EPA response - sodium hypochlorite*. EPA modified the regulation to exempt antimicrobial products (that are subject to the regulations) used in swimming pools and closely related sites from this requirement for one-way valves or tamper-evident devices. As stated in the supplemental notice, EPA acknowledges that applying some of the refillable container standards, including this one, to sodium hypochlorite used in swimming pools would disrupt the current refillable container system for these products. This disruption would probably cause the refillables to be replaced by millions of single-use, nonrefillable containers, which is inconsistent with the goals of pollution prevention and of facilitating the safe refill and reuse of containers (FIFRA section 19(e)). Therefore, the 1999 supplemental notice described a regulatory option intended to exempt swimming pool chemicals from some of the refillable container requirements. Based on comments and further analysis, EPA realized that the products for which relief was intended (sodium hypochlorite) may be hazardous wastes when disposed and, therefore, would not be eligible for exemption as described in the supplemental notice. Therefore, the final rule was revised to clarify that swimming pool products are exempt from the problematic requirements. Currently, EPA is aware of sodium hypochlorite products that fit the exemption criteria and that are distributed and sold in refillable containers, although the partial exemption was drafted to be general so it would apply to any products that fit the criteria. See Unit III.D. for a more detailed discussion.

J. Stationary Pesticide Container Standards (§ 165.45(f))

1. *Final regulation*. Stationary pesticide containers that are designed to hold undivided quantities of pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide and are located at the refilling establishment of a refiller operating under written contract to a registrant must meet certain standards. As discussed in Unit VI.C., both registrants and refillers are responsible for ensuring that these requirements for stationary pesticide containers are met. First, all of these stationary pesticide containers (for liquid and dry pesticides) must be:

- Resistant to extreme changes in temperature,
- Constructed of materials that are adequately thick and that are resistant to corrosion, puncture, or cracking, and
- Capable of withstanding all operating stresses.

As proposed, these requirements do not apply during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Second, several other standards apply only to liquid bulk containers. Specifically,

- They must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.
- External sight gauges are prohibited.
- Each container connection below the normal liquid level must be equipped with a shutoff valve, which is capable of being locked closed.
- Shutoff valves must be located within a secondary containment unit (if secondary containment is required).

2. *Changes*. There were several changes in this section from the proposed rule. First, the description of containers that must comply with these requirements was changed to be consistent with the quantities for secondary containment structures

because the definitions of liquid and dry bulk containers are not being finalized. Second, the requirement for shutoff valves on liquid bulk containers was amended to specify that a shutoff valve: (1) Is only required for container connections that are below the normal liquid level; and (2) must be located within a secondary containment unit, if secondary containment is required by subpart E. Third, the text for the shutoff valve requirement was adjusted to make it clear that the valves must be capable of being locked closed. Fourth, the proposed phrase ''act of God'' is not included in the final rule. The language in § 165.45(f)--''any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight''--sufficiently describes the kinds of events that would be considered ''acts of God,'' so that phrase is not necessary.

3. *Comments - shutoff valve*. Some commenters addressed the need for requiring shutoff valves and there were few common themes among the respondents. A few registrants and a registrant group supported having all connections on stationary liquid pesticide containers (except for vents) equipped with a lockable valve. A container manufacturer group asked to change the language to: ''Each liquid bulk container connection below the normal liquid level...,'' stating that requiring valves above that level serves no purpose on bulk tanks.

4. *EPA response - shutoff valve*. EPA agrees with the container manufacturer group and will amend the final rule so the shutoff valve requirement applies to liquid pesticide container connections below the normal liquid level. Vents and other openings on the top of the container are above the normal liquid level, so the phrase ''except for vents'' is no longer necessary and is not in the final regulation.

5. *Comments - location of shutoff valve*. EPA requested comments on whether it is necessary to regulate the location of shutoff valves, and if so, what the location should be. Some commenters (registrants, registrant groups, dealer groups, and a State regulatory agency) supported a general guideline that would allow placement of the valve anywhere within the secondary containment. These commenters believed that fine-tuning the valve location wouldn't increase overall release protection as long as the valve was in secondary containment. Only one commenter, a State regulatory agency, stated a preference for locating the valve close to the storage vessel, saying that field experience has demonstrated that valves are subject to incidental spillage due to factors such as ''pipe chatter.''

6. *EPA response - location of shutoff valve*. EPA agrees with the majority of the commenters that shutoff valves should be located within a secondary containment unit. Therefore, this part of the standard will be amended to specify that the shutoff valve be located within a secondary containment unit, if secondary containment is required by subpart E. EPA believes that nearly all, if not all, stationary pesticide containers that are subject to § 165.45(f) will be required to be within a secondary containment unit by subpart E. However, subpart E applies only to agricultural pesticides, so it is possible that a container holding a nonagricultural pesticide could be subject to the stationary pesticide container standards, but not the containment standards.

K. Waivers and Modifications (§ 165.45(g) - (h))

1. *Final regulation*. Section 165.45(g) of the final rule explains that registrants may request waivers from or modifications to some of the refillable container regulations and sets out the criteria that must be met for EPA to approve a waiver/modification request. Section 165.45(g) regulations are identical to the corresponding portion of the waiver/modification provisions regarding the DOT provisions for nonrefillable containers in § 165.25(g).

Section 165.45(h) describes the procedure for registrants to follow if they want to obtain a waiver from or modification to the specified refillable container regulations. The procedure in § 165.45(h) is identical to the procedure for obtaining waivers from or modifications to the nonrefillable container regulations in § 165.25(h).

2. *Changes, comments and EPA responses*. The proposed rule did not include any waiver or modification provisions for the refillable container regulations. The supplemental notice discussed an approach for incorporating a waiver from or modification to the referenced and adopted DOT requirements. EPA made several changes to the supplemental approach before incorporating the waiver/modification provisions into the final regulations. See Unit V.I. (on nonrefillable containers) for changes, comments and EPA responses regarding the waivers from and modifications to the pesticide container regulations that refer to and adopt the DOT requirements, which apply to both nonrefillable and refillable containers. Unit V.J. provides more details on the process for applying for waivers and modifications, which is the same for nonrefillable and refillable containers.

L. Reporting (§ 165.47)

1. *Final regulation*. This section clarifies that the pesticide container regulations do not require registrants to report to EPA with information about their refillable containers. However, it refers registrants to the reporting standards in 40 CFR part 159 to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2).

2. *Changes*. The intent and substance of this standard is the same as in the proposal. However, the wording was changed to clarify that this is simply a reference to the existing 6(a)(2) standards and that it does not add any new requirements.

M. Proposed Standards That Are Not Being Finalized

Final regulation/changes. The following requirements relating to refillable container design from the proposed regulation are not being finalized in today's final rule:

- § 165.124(b)(1)(i) - (v) and (vii): Permanent marking other than serial numbers
- § 165.124(b)(2): Compliance with DOT's marking satisfies the corresponding EPA permanent marking requirement
- § 165.124(c): General minibulk integrity standard
- § 165.124(d): Drop test for minibulk containers (requirement)
- § 165.125: Minibulk container drop test methodology (test procedure)
- § 165.128(a) & (b): Keep records of container descriptions, minibulk drop test results and the GLP statement specified for the drop test.
- § 165.126: Certification
- § 165.128(c): Keep records of the certification.

The first six proposed standards are not being finalized in the refillable container regulations because the approach of referring to and adopting a subset of the DOT standards makes them unnecessary. In particular:

- Some of the items for permanent marking in proposed § 165.124(b)(1)--the container manufacturer, date of manufacture, rated capacity, and material of construction--are not being finalized because this information is required in the DOT standards that specify marking. Two other proposed pieces of information--the model number and the phrase ''Meets EPA

standards for refillable containers''--are not being finalized because they are no longer necessary due to the change to refer to and adopt the DOT regulations. See Unit VI.H. for more detail about the proposed marking requirements.

• The statement proposed in § 165.124(b)(2) is not being finalized because the final rule specifically refers to the DOT marking, so it is no longer necessary to include a provision stating that compliance with DOT's marking satisfies the corresponding EPA marking requirement.

• The proposed general minibulk integrity standard in § 165.124(c) is not being finalized because the DOT regulations address container integrity in 49 CFR 173.24.

• The proposed drop test requirement for minibulks in § 165.124(d) and the proposed minibulk container drop test in § 165.125 are not being finalized because the DOT regulations include a drop test requirement. The drop test procedure for nonbulk packagings is defined in 49 CFR 178.603 and the drop test procedure for intermediate bulk containers is defined in 49 CFR 178.810.

• The proposed recordkeeping requirements in § 165.128(a) and (b) for container descriptions, drop test results and a GLP statement for the drop test are not being finalized because they are no longer necessary because compliance with the DOT requirements can be ensured by the structure and certification standards in the DOT HMR. Because we can rely on the DOT or UN marking to ensure compliance with the applicable DOT requirements, EPA no longer needs to see records of the testing to confirm compliance with the drop test (and in the final rule) and other test requirements.

The final two proposed items listed above--having registrants certify compliance with the regulations and the associated recordkeeping--are not being finalized for the same reasons that the nonrefillable container certification and recordkeeping are not being finalized, as described in Unit V.M.

N. Options for Implementing the Rule

1. *Final regulations.* In the preamble to the proposed rule, EPA discussed three options for implementing the refillable container and repackaging standards, which were all in one subpart in the proposed rule. These options covered different approaches for determining who would be held responsible for ensuring that the refillable containers meet the refillable container standards. EPA considered several options because the pesticide products distributed or sold in refillable containers and the containers themselves often enter the pesticide distribution chain separately, so identifying responsibility for compliance is not as straightforward as it is for nonrefillables, which the registrants fill at their establishments.

In evaluating the options for container design responsibility, EPA considered the differences among the options in terms of seeking the least burdensome approach that is also effective, practicable, and easily enforceable. In the proposal, we identified Option 1 as our preferred option (as indicated in the proposed regulatory text) because we thought it was more effective, more practicable, and significantly more easily enforceable than the other two options. The three options are described below.

• Option 1. Registrants would be responsible for containers meeting the design standards. The containers would be marked ''Meets EPA standards for refillable pesticide containers'' and registrants would maintain records for their containers. The registrants would develop a list of acceptable containers for each product, identified by manufacturer and model number, and provide the list to refillers. Refillers could repackage pesticide only in containers identified on the registrants list.

• Option 2. Anyone could produce containers, certify to EPA that the containers meet EPA design standards, and receive permission to mark containers with EPA certification seal. This could be container manufacturers, but it could also be registrants, refillers, or even end users. EPA would compile a list of certified container models. Registrants and refillers could repackage products only into certified containers. Registrants would develop a list of acceptable container construction materials for each product and provide the list to refillers, who could refill only into certified containers made from materials identified as acceptable by the registrant.

• Option 3. Container manufacturers would be responsible for containers meeting EPA's design standards and would mark containers with a certification seal. Container manufacturers would keep records for containers. Registrants would develop a list of acceptable container materials for each product and provide the list to refillers. Registrants and refillers would repackage only into containers marked with the seal and made of materials identified as acceptable by the registrant.

As discussed in the 1999 supplemental notice, EPA is implementing a combination of Option 1 and Option 3 in the final rule.

2. *Changes.* The key change from the proposed rule is that the final regulations adopt and refer to the DOT standards for container design, construction and marking, as discussed in Unit IV. Therefore, registrants only have to ensure that they use containers that meet the cross-referenced DOT standards for container integrity, construction and testing, rather than being responsible for the testing themselves. Registrants must also ensure compliance with the permanent marking (serial number) and opening (one-way valve/tamper-evident device) requirements. Because containers will be identifiable by the UN/DOT marking, some of the repackaging standards can be adjusted to be more flexible. Specifically, rather than requiring the registrants to identify acceptable containers by the model numbers and container manufacturers, they will be able to identify acceptable containers by the appropriate level of DOT testing (Packing Group I, II or III) and the container materials that are compatible with the product. The general structure of the repackaging standards, though, remains as proposed: (1) Registrants are responsible for developing certain information and providing it to the refillers; (2) refillers have certain responsibilities for inspecting, cleaning, and labeling the container since they are the ones actually handling the containers; and (3) both registrants and independent refillers have certain responsibilities if an independent refiller repackages a registrant's product. The changes to the repackaging regulations are discussed in more detail in Unit VII.

VII. Repackaging Standards

A. Format Changes

Final regulation and changes. In the proposed regulation, the refillable container design standards and the repackaging requirements were included in the same subpart of the regulations. In the final rule, EPA moved the repackaging requirements into a separate subpart because we think separating the two kinds of requirements will make the regulations easier to understand. The container design requirements are mostly technical and apply mostly to registrants. The repackaging requirements are mostly procedural and apply to registrants and to anyone who repackages pesticide products into refillable containers, which could be registrants, distributors, retailers, or other kinds of companies.

In addition, the repackaging requirements were reorganized so all of the requirements that apply to a certain kind of business are listed together. Specifically, the requirements are listed for: (1) Registrants who distribute or sell pesticide products directly in refillable containers; (2) registrants who distribute or sell pesticide products to independent refillers for repackaging; and (3) independent refillers. The term ''independent refiller'' is used to identify a refiller that is not part of the registrant's company. The differences between these categories are described in more detail below in Unit VII.C. This format requires some standards to be repeated. For example, the container inspection requirement applies to registrants who distribute or sell pesticide products directly in refillable containers and to independent refillers, so the inspection requirement is repeated. Despite the repetition, EPA believes this regulatory structure is more clear and easier to understand.

B. Purpose (§ 165.60(a))

1. *Final regulations.* The purpose of the repackaging standards is to establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

2. *Changes.* This is nearly the same as the proposed purpose (in § 165.120(b)). One minor change was to acknowledge the reduced number of products that are subject to the final regulations by stating that the rule applies only to repackaging *some* pesticide products. The proposed regulations would have applied to all products. Another insignificant modification was to delete the term ''standards'' from the phrase ''establish standards and requirements'' because it is redundant.

C. Who Must Comply (§§ 165.60(b), 165.65(a), 165.67(a), and 165.70(a))

1. *Final regulation.* You must comply with the repackaging regulations if you are a:

- Registrant who distributes or sells a pesticide product in refillable containers. This means that you conduct all of the repackaging for a pesticide product and that you do not distribute or sell your pesticide product to a refiller that is not part of your company for repackaging into refillable containers.
- Registrant who distributes or sells a pesticide product to a refiller that is not part of your company for repackaging into refillable containers.
- Refiller of a pesticide product and you are not the registrant of the pesticide product.

As explained in Units VII.J. and VII.K., a registrant may repackage a product directly into refillable containers for sale or distribution *and* distribute or sell that same product to an independent refiller for repackaging. In this case, the registrant must comply with both sets of requirements.

2. *Changes.* The same kinds of businesses that were included in the proposed rule (in § 165.122(a)(1), (2) and (3)) are subject to the final rule. One minor modification was to clarify that refillers in the last two categories are refillers that are not part of the registrant's company. Registrants can also be refillers, which is the situation described in the first category; the registrant conducts all of the packaging and repackaging. Therefore, the changes are intended to clarify that the second and third category refer to independent refillers, i.e., refillers that are not part of the registrant's company.

D. Compliance Dates (§ 165.60(c))

1. *Final regulations.* The final regulations provide a 5–year period after the date of publication of the final rule in the **Federal Register** before compliance with the repackaging standards is required. Specifically, within 5 years from today's date, all products sold in refillable containers must be distributed or sold in compliance with these regulations.

2. *Changes.* Based on the comments relating to refillable container design as described in Unit VI.D., EPA decided to extend the compliance period for the refillable container regulations from the 2–year time frame that was proposed in § 165.139. The longer time frame is to provide for a smoother and less burdensome transition for companies. Because the repackaging regulations require pesticide product to be repackaged only into containers that meet the refillable container standards, the compliance date for these regulations needed to be changed for consistency.

E. Pesticide Products Included (§ 165.63(a) - (g))

1. *Final regulations.* As described in detail in Unit III., only certain products have to comply with the repackaging standards. MUPs, plant-incorporated protectants, and certain antimicrobial products are completely exempt from the repackaging requirements. All other pesticide products are subject to the repackaging regulations. This is identical to the scope of the refillable container regulations.

Some of the antimicrobial pesticides that are subject to the repackaging regulations are subject to a reduced set of regulations. In particular, antimicrobial pesticides that are used in swimming pools and closely related sites (such as hot tubs, spas and whirlpools) are exempt from certain recordkeeping requirements, as well as the parts of the standards for inspecting and cleaning containers that relate to serial numbers, one-way valves, and tamper-evident devices.

2. *Changes.* In the proposed rule, only MUPs were exempt from the repackaging requirements, which were included in the refillable container regulations (see § 165.122(b)(1)). All other products would have been subject to the standards. The 1999 supplemental notice discussed regulatory options for exempting some products (antimicrobials and non-antimicrobials) from the full set of refillable container regulations including the repackaging requirements and for exempting certain antimicrobial products from specific requirements.

The criteria in the final rule for exempting antimicrobials are different than those discussed in the supplemental notice and the final rule exempts plant-incorporated protectants. The final repackaging regulations do not incorporate the toxicity category, container size or environmental hazard criteria from the supplemental notice. Also, the final rule changes some aspects of the supplemental notice approach of subjecting antimicrobial swimming pool products to a reduced set of requirements.

The following table describes the provisions for determining which pesticide products are subject to the repackaging regulations and a brief explanation of how (or if) this provision changed from the proposal and/or the supplemental notice.

TABLE 15.—CHANGES TO THE SCOPE OF THE REPACKAGING REGULATIONS

Regulatory Provision	Changes
Manufacturing use products are exempt.	No change from proposed rule or supplemental notice.

TABLE 15.—CHANGES TO THE SCOPE OF THE REPACKAGING REGULATIONS—Continued

Regulatory Provision	Changes
Plant-incorporated protectants are exempt.	Plant-incorporated protectants would have been subject to the proposed rule. The regulations for plant-incorporated protectants were finalized in 2001. We are exempting them from the final rule because of their unique nature.
Certain antimicrobial products are exempt.	Antimicrobial products would have been subject to the proposed rule. The final rule implements an approach similar to option 1 in the supplemental notice, although some of the details are different.
All other products are subject to all of the repackaging requirements, except for certain antimicrobial swimming pool products.	All products other than manufacturing use products would have been subject to the proposed rule. The final rule is different than the approach discussed in the supplemental notice, which would have exempted products in Toxicity Category III or IV in small containers and outdoor use products without the specified environmental hazard statements on their label.
Antimicrobial products used in swimming pools and closely related sites are subject to a reduced set of repackaging requirements.	Antimicrobial products used in swimming pools would have been subject to the proposed rule. The final rule is the result that was intended in the supplemental notice, although the specifics of how it is implemented in the final rule are different than in the supplemental notice.

F. Other Exemptions (§ 165.63(h))

1. *Final regulations.* The repackaging regulations do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide or to containers that hold gaseous pesticides. In addition, the final rule includes a statement that clearly exempts custom blending from the repackaging requirements.

2. *Changes.* The exemption for transport vehicles is identical to the exemption proposed in § 165.122(b)(2) and the exemption included in the final refillable container regulations. The exemption for custom blending was not included in the proposed regulatory text. It is discussed in Unit VII.L. In addition, the final rule includes a specific exemption for gaseous pesticides, which is necessary to implement our intent from the proposal because the final rule does not use the proposed terms liquid minibulk, dry minibulk, liquid bulk and dry bulk containers, which would have excluded gaseous pesticides.

G. Legal Basis for Repackaging Pesticide Products for Distribution or Sale

Before continuing with a section-by-section analysis of the regulations, EPA believes it is necessary to address three broad issues regarding repackaging pesticide products into refillable containers: (1) The legal basis for repackaging pesticide products (and the related Bulk Pesticides Enforcement Policy); (2) the integrity and purity of products sold or distributed in refillable containers; and (3) whether pesticides can be repackaged at locations other than registered establishments.

1. *Background.* FIFRA section 3(a) provides in pertinent part that ''no person in any State may distribute or sell to any person any pesticide which is not registered under this Act.'' Registration is the principal means of ensuring that a product is brought under the FIFRA regulatory scheme. The registrant must demonstrate to EPA's satisfaction that the product meets the statutory criteria for registration with respect to composition, labeling, and the lack of unreasonable adverse effects. The registrant must take responsibility for quality control of the product's composition and for adequate labeling describing the product, its hazards, and its uses. Repackaging a pesticide produces a new pesticide product that must be registered before it can be distributed or sold.

Before a pesticide product that is not included within the terms of an existing registration enters the channels of trade, a separate registration must be obtained. Changes in the formulation of a registered product, changes in accepted labeling, as well as any repackaging of a pesticide into another container activate the registration requirement, unless the purposes of product registration would be fully met by carrying forward the Federal registration of the constituent product.

In 1977, EPA issued an enforcement policy for bulk shipments of pesticides. (Ref. 75) The policy describes certain conditions in which EPA allows the transfer and repackaging of bulk pesticides to occur without requiring registration of the repackaged pesticides. The 1977 Bulk Pesticides Enforcement Policy (the Policy) defined ''bulk'' for the purposes of the Policy as ''any volume of pesticide greater than 55 gallons or 100 pounds held in an individual container.'' EPA developed the Policy to accommodate business practices of manufacturers and distributors who handle pesticides in large undivided quantities rather than in small individual containers because of the environmental and logistical benefits associated with refillable containers.

In the Policy, EPA determined that repackaging of bulk pesticides could occur without a separate registration if certain conditions were met that would assure that the purposes of registration would be satisfied. The conditions are that repackaging of the registered bulk pesticides could involve nothing more than changing the product container; i.e., no change in: (1) The pesticide formulation, (2) the pesticide's labeling except to add an appropriate statement of net contents and a registered establishment number, and (3) the identity of the party accountable for the product's integrity.

The Policy elaborated on the accountability requirement and set out that the pesticide had to be: (1) transferred at an establishment owned by the registrant; or (2) transferred at a registered establishment operated by a person under contract with the registrant; or (3) transferred at a registered establishment owned by a party not under contract to the product registrant, but who had been furnished written authorization for use of the product label by the registrant. The requirement for written authorization assures that the registrant remains responsible for quality control of the product's composition and adequate labeling describing the product, its hazards, and its uses.

The 1977 Policy only addressed the transfer of a volume of pesticide greater

than 55 gallons or 100 pounds held in an individual container. In March 1991, the Policy was amended (Ref. 71) to allow repackaging of any quantity of pesticides into refillable containers, provided that all three conditions below are met:

(1) The container is designed and constructed to accommodate the return and refill of greater than 55 gallons of liquid or 100 pounds of dry material.

(2) Either: (a) The containers are dedicated to and refilled with one specific active ingredient in a compatible formulation; or (b) the container is thoroughly cleaned according to written instructions provided by the registrant to the dealer prior to introducing another chemical into the container, in order to avoid cross-contamination.

(3) All other conditions of the July 11, 1977 Policy are met.

As discussed in the preamble of the proposed rule, EPA is replacing the Bulk Pesticides Enforcement Policy with these regulations, specifically §§ 165.67(b) - (c) and 165.70(b) - (c). These regulations provide that a registrant may allow an independent refiller to repackage the registrant's pesticide product into any size refillable container and to distribute or sell such repackaged product under the registrant's registration (i.e., the product's EPA registration number stays the same), provided all conditions set out in the rule are met.

These regulations do not change the existing law; the Bulk Pesticides Enforcement Policy would be replaced by a regulation. The registrant remains responsible for the integrity, labeling, and packaging of the repackaged product. Both the registrant and independent refiller may be held liable for violations pertaining to the repackaged product. The repackaging regulations set out the requirements for both registrants and independent refillers, because they have different roles and responsibilities in distributing pesticide products in refillable containers.

The conditions set out in §§ 165.67(b) - (c) and 165.70(b) - (c) do not apply to registrants repackaging their own pesticide products solely at their own establishments. As described in Pesticide Registration (PR) Notice 98–10 ''Notifications, Non-notifications and Minor Formulation Amendments,'' the registrant generally can modify the package size and label net contents statement without notifying EPA. (Ref. 56) This would be an amendment to the registration not requiring EPA notification or approval.

2. *Final regulations*. The regulations implementing the legal basis for repackaging are similar to the provisions in the proposed rule with two significant changes, described in the next section, and some minor formatting modifications. Specifically, §§ 165.67(b) and 165.70(b) specify that a registrant may allow a refiller to repackage a pesticide product into refillable containers and to distribute or sell such repackaged product under the existing registration if all of the following conditions are satisfied:

- The repackaging results in no change to the pesticide formulation.
- One of the following conditions regarding a registered refilling establishment is satisfied:

(1) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(2) The pesticide product is repackaged at the site of a user who intends to use or apply the product by a refilling establishment registered with EPA as required by § 167.20.

- The registrant has entered into a written contract with the refiller to repackage the pesticide product and to use the label of the pesticide product.
- The pesticide product is repackaged only into refillable containers that meet the standards of subpart C.
- The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

In addition, the regulations (§§ 165.67(c) and 165.70(c)) state that repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions listed above is a violation of section 12 of FIFRA. Both the registrant of the product and the refiller that is repackaging the pesticide product under contract to the registrant may be liable for violations pertaining to the repackaged product.

3. *Changes*. One significant change to these conditions for repackaging pesticide products for distribution or sale is to add the specification that the pesticide product can be repackaged by a registered refilling establishment at the site of a user who intends to use or apply the product as an acceptable alternative to the condition that the product must be repackaged at a registered refilling establishment. This change is discussed in detail in Unit VII.I. below. Another change is that the final rule specifies that the registrant must enter into a written contract with the refiller. The proposed option for the registrant to enter into a ''written authorization'' with the refiller is not being finalized for several reasons. First, EPA believes it is not necessary to have two different mechanisms. It is more straightforward to specify one method, which should facilitate compliance and minimize confusion. Second, EPA believes that a ''written contract'' is more familiar to the regulated community and more defined in law than a ''written authorization,'' which is why we chose to specify contracts as the mechanism for establishing a repackaging relationship between the registrant and refiller in the final rule. Third, in the years since the Bulk Pesticides Enforcement Policy was issued, the ''written authorizations'' have become virtually indistinguishable from ''written contracts'' in format, length and level of detail. Therefore, EPA anticipates that specifying a contract (and not an authorization) in the final rule should not cause a substantial impact to the way repackaging is currently being conducted, particularly considering the 5–year implementation period for the refillable container and repackaging regulations. The other modifications were minor formatting changes that were needed to accommodate: (1) the revision to plain language; (2) needing to include the conditions in the requirements for registrants who distribute or sell to independent refillers and in the requirements for independent refillers; and (3) clarifying that the EPA establishment number added to the label is the refiller's EPA establishment number.

4. *Comments - implementation*. One registrant urged EPA not to eliminate the ability of manufacturers and distributors that are not registrants of an MUP to repackage that product for distribution and sale.

5. *EPA response - implementation*. In the preamble to the proposed regulations, EPA stated that the Bulk Pesticides Enforcement Policy would remain in effect until the date specified for compliance with the refillable container and repackaging regulations, at which point it would be rescinded. EPA will implement this as discussed in the preamble to the proposal. The refillable container and repackaging regulations will supersede the Bulk Policy for products that are subject to these regulations. Pesticide products that are exempt from the refillable container and repackaging regulations--MUPs, plant-incorporated protectants, and some antimicrobials--can only be repackaged under the limitations established by FIFRA, the registration requirements in 40 CFR part 152, and the applicable OPP policies. A key

limitation is that the products that are exempt from the refillable container and repackaging regulations must be repackaged by the registrant or a person under written contract to the registrant. EPA believes this constraint will not be a problem for MUPs and exempt antimicrobials because we have received information that these products are repackaged by the registrants if they are sold or distributed in refillable containers. In addition, refillable containers are not appropriate for distributing plant-incorporated protectants, so these products will also not be adversely affected.

One issue that has been raised is whether registrants and independent refillers can comply with the regulations (and specifically the conditions for repackaging pesticide products for distribution or sale) before the compliance date. This is appealing to registrants and independent refillers because the regulations allow pesticides to be repackaged under written contracts into refillable containers of any size (compared to the 55 gallon container size limit established in the Bulk Policy and maintained in the 1991 amendment). EPA believes that it is acceptable for registrants and independent refillers to repackage pesticide products under the regulations before the 5 year compliance date as long as they are in full compliance with the refillable container and repackaging regulations. In other words, registrants can enter into contracts with independent refillers to refill containers only if: (1) The containers comply with the refillable container regulations, i.e., they meet the specified DOT standards, have a durable serial number or other identifying code, and have one-way valves and/or tamper-evident devices; (2) the registrant meets the repackaging conditions and develops and provides the necessary information, including a description of acceptable containers and a cleaning procedure; (3) the refillers meet the repackaging conditions and comply with the operational procedures, including inspecting, cleaning (if necessary), and labeling the containers; and (4) all other requirements specified in the refillable container and repackaging regulations are followed.

H. Product Integrity

1. *Background*. The Bulk Pesticides Enforcement Policy and both the proposed and final rules hold the registrant and the refiller (if different than the registrant) responsible for product integrity of the pesticide product repackaged by the refiller. ''Product integrity'' means that the pesticide product is not adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3. This requirement reflects current law. Under FIFRA section 12(a)(1), it is unlawful for any person to distribute or sell to any person a pesticide which is adulterated or whose composition differs from the composition described in its confidential statement of formula.

FIFRA Section 12(a)(1) applies to pesticide distributed or sold in nonrefillable containers and in refillable containers. For pesticides distributed or sold in nonrefillable containers, it is clear that the registrants are responsible for product integrity because there are no other parties involved (except for supplemental registrants, as regulated by 40 CFR 152.132, and parties acting as agents under contract to the registrant). Similarly, when a registrant repackages a product directly into a refillable container for distribution or sale, it is also clear that the registrant is responsible for product integrity.

The situation is less clear when a registrant distributes or sells a product to an independent refiller for repackaging into refillable containers. Both the registrants and the independent refillers are selling or distributing the product, so both parties are responsible for product integrity. The registrant is responsible because the registrant has authorized the independent refiller to repackage the registrant's pesticide product and to use the registrant's label according to the terms of the written contract (or authorization under the Bulk Policy). The registrant remains accountable for its repackaged product which is distributed or sold in the refillable container. EPA believes it is appropriate for registrants to be held responsible for acts by independent refillers because the repackaging is being done under the registrant's registration and the independent refillers are agents of the registrants for purposes of carrying out the written contract. The independent refiller is responsible for product integrity because the refiller is the person who physically places the product into the container for sale or distribution.

In 1996, EPA established a policy on ''Toxicologically Significant Levels of Pesticide Active Ingredients'' in PR Notice 96–8. (Ref. 58) This document describes EPA's interpretation of the term ''toxicologically significant'' as it applies to contaminants in pesticide products that are also active ingredients. The policy provides risk-based concentration levels of such contaminants that are generally considered to be toxicologically significant (and therefore must be reported and accepted as part of product registration according to 40 CFR 158.167). The concentrations are defined according to the type of pesticide that is contaminated (insecticide, herbicide, low dose herbicide, etc.) and the pesticide category of the contaminant. While PR Notice 96–8 applies to all pesticide products in nonrefillable and refillable containers, a driving force in developing the policy was the cross-contamination found in refillable containers in the early 1990's.

2. *Final regulations*. The repackaging regulations clearly hold all parties subject to the repackaging standards to be responsible for product integrity. This includes:

(1) Registrants who distribute or sell a pesticide product in refillable containers (in § 165.65(b));

(2) Registrants who distribute or sell pesticide products to independent refillers for repackaging into refillable containers (in § 165.67(e)); and

(3) Refillers of a pesticide product that are not the registrants of the pesticide product (in § 165.70(d)).

Specifically, all of these businesses are responsible for the pesticide product that they distribute or sell not being adulterated or different from the composition described in the product's confidential statement of formula that is required under FIFRA section 3.

3. *Changes*. The language in the final regulation is nearly identical to the text in the proposed regulation. One slight modification is that the phrase ''described in its confidential statement of formula that is required under FIFRA section 3'' is used in the final regulations because it is more straightforward than the proposed phrase ''described in the statement required in connection with registration under section 3 of the Act.'' EPA considers these two phrases to mean exactly the same thing.

However, one thing that has changed since the proposed rule is EPA's policy on toxicologically significant levels of pesticide active ingredients. PR Notice 96–8 defines risk-based concentration levels of contaminants that are generally considered to be toxicologically significant. Active ingredient contaminants that are present at lower concentrations do not have to be reported by registrants and accepted by EPA as part of product registration. For example, if an herbicide active ingredient is detected at less than 1,000 ppm in any pesticide where the contaminant is accepted for use on all

sites for which the product is labeled, the herbicide active ingredient is not considered to be toxicologically significant. As described in PR Notice 96–8, the purpose of this policy is to: (1) Recognize that cross-contamination is a reality, and that not all cross-contamination is problematic; (2) set a clear standard that can be readily applied by EPA, States and the regulated industry; (3) ensure that allowable cross-contamination does not pose unreasonable adverse effects; (4) minimize the paperwork burden for EPA and registrants; (5) maintain accountability for the product from the registrant to the end user; and (6) not preclude marketplace or private solutions to correct problems that do arise.

I. Delivery and Repackaging at End User Locations

1. *Background*. The 1977 Bulk Policy (Ref. 75) provided the following two examples of acceptable practices for shipping ''bulk'' pesticides to end users:

• A registrant ships a bulk pesticide directly to an end user (custom applicator, farmer, etc.). The label accompanies the shipment and is placed on the user's tank. No new establishment or product registration is needed for the bulk container since the labeled product is fully registered and has been sold intact to the user.

• A tank car of pesticide from which commercial applicators meter off into their own tanks, without being put into a dealer's holding tank, would be exempt from new producer establishment registration. It is considered that the original container has not been changed in delivery to the applicator and the tank car label (placard) will bear the producer's establishment number.

In the preamble to the 1994 proposed rule, EPA stated that repackaging by the registrant must be done at a registered establishment, as required by 40 CFR part 167. In addition, EPA stated that we saw no reason to continue the exemption from the registered establishment requirement described in the second bullet in Unit I.1., above. We requested comments on the effect of discontinuing this exception.

On February 3, 1994, EPA released the ''Bulk Pesticide Repackaging Question & Answer Document'' (Ref. 63) which included the following question and answer that address the issue of making a bulk delivery directly to an end user.

18. May a registrant deliver pesticides in bulk directly to a farm, even if the farm is not registered as a producing establishment? May someone other than the registrant do this?

Under the bulk pesticide repackaging policy, a registrant may deliver pesticides directly to a farm, even if the farm is not registered as a pesticide producing establishment. Someone other than the registrant could not deliver pesticides in bulk to a farm unless the farm was registered as a pesticide producing establishment and that person has received written authorization from the registrant to deliver the pesticide to the specific farm. The registrant of the establishment (i.e., the farmer) would also be required to submit annual production reports. Please note that some States and most registrants require containment structures for the storage of bulk pesticides. Most farmers do not have these containment structures and delivery to these farms may not be allowed under State law.

After discussion and debate on this question among the regulated community and regulatory agencies, EPA reconsidered and revised our position in a memo titled ''Bulk Pesticide Transfers'' dated March 22, 1995. (Ref. 59) The new question 18 supersedes the question in the 1994 Bulk Policy Question & Answer document and is:

18(a). May a registrant deliver pesticides in bulk directly to a farm, even if the farm is not registered as a producing establishment? May someone other than the registrant do this?

A registrant, dealer, or other authorized person pursuant to the ''Enforcement Policy Applicable to Bulk Shipments of Pesticides'' (July 11, 1977) may transfer pesticides in bulk at a farm, even if the farm is not registered as a pesticide producing establishment.

18(b). May a registrant deliver pesticides in bulk directly to end use sites other than a farm, even if such site is not registered as a producing establishment? May someone other than the registrant do this?

Yes. See answer to question 18(a) above. However, the Agency will continue to pursue enforcement actions against all end users that use any registered pesticide in a manner inconsistent with its labeling pursuant to FIFRA 12(a)(2)(G).

The March 22, 1995 memo explained that this revision was made because end users are not the persons repackaging shipments of bulk pesticides at the farm and other end use sites. The memo further stated that the terms and conditions of the 1977 Bulk Policy and 1991 amendment are unchanged. Since the pesticide that is transferred at the farm or other end use site is not being transferred and held for further sale, final accountability for meeting the terms of the Bulk Policy remains with the registrant and the last establishment making a transfer associated with a pesticide sale, the dealer. Registrant and dealer establishments are responsible for reporting repackaging as production pursuant to 40 CFR 167.85. In the memo, EPA recommended (but did not require) that pesticides be transferred into stationary bulk containers protected by a secondary containment structure at end user sites.

2. *Final Regulation*. One of the requirements specified in §§ 165.67(b) and 165.70(b) for when a registrant may allow a refiller to repackage its pesticide product into refillable containers and to distribute or sell such repackaged product under the existing registration is:

One of the following conditions regarding a registered refilling establishment is satisfied:

(1) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20.

(2) The pesticide product is repackaged at the site of a user who intends to use or apply the product by a refilling establishment registered with EPA as required by § 167.20.

3. *Changes*. The first condition listed above (Unit I.2.(1)) (the product is repackaged at a registered refilling establishment) is the same as the proposed regulation. The second condition--the product is repackaged at the site of a user who intends to use or apply the product by a registered refilling establishment--was added to the final rule to be consistent with EPA's revised policy as described in the March 22, 1995 ''Bulk Pesticide Transfers'' memo. The final regulation is consistent with EPA's 1995 position that final accountability for meeting the terms of the Bulk Policy remains with the registrant and the last establishment making a transfer associated with a pesticide sale (an independent refiller in this case), because the pesticide that is transferred at the farm or other end use site is not being transferred and held for further sale.

EPA has received anecdotal evidence that the practice of refilling containers (bulk containers, minibulks, application tanks, nurse tanks, etc.) at end user sites has increased over the past few years and may continue to increase in the future. Therefore, EPA is concerned about the potential for spills, leaks and other releases during transfers at end user sites to cause soil and water contamination. As described in the preamble to the proposed rule, EPA decided to require containment structures at dealers, commercial applicators and custom blenders with bulk storage tanks, largely because these were the kinds of sites where contamination had been documented. EPA did not and still does not have documentation of end user site contamination due to repackaging pesticide product. Therefore, the final pesticide container and containment

regulations do not require repackaging at end user sites to be done within a containment structure. However, EPA strongly recommends that repackaging at end user sites be conducted over some kind of containment--whether it is a permanent concrete containment pad or a portable containment structure. In the future, EPA may revise the repackaging regulations to require all repackaging (including at end user sites) to occur over a containment structure if we become aware of a pattern of end user site contamination being caused by repackaging.

J. Registrants Who Distribute or Sell Pesticide Products in Refillable Containers - Overview (§ 165.65)

1. *Final Regulation*. The regulations in § 165.65 apply to registrants who distribute or sell pesticide products in refillable containers. This means that the registrant conducts all of the repackaging for the product and does not distribute or sell the product to a refiller that is not part of its company for refilling.

Of course, a registrant may repackage a product directly into refillable containers for sale or distribution *and* distribute or sell that same product to an independent refiller for repackaging. In this case, the registrant must comply with both sets of requirements: the standards in § 165.65 for those quantities the registrant distributes or sells directly in refillable containers and the requirements in § 165.67 for those quantities that the registrant distributes or sells to independent refillers for repackaging.

A registrant who distributes or sells a pesticide product directly in refillable containers:

- Is responsible for the integrity of the product, as discussed in Unit VII.H.;
- Must develop a refilling residue removal procedure, as discussed in Unit VII.M.;
- Must develop a description of acceptable containers, as discussed in Unit VII.N.;
- Must comply with the requirements for refillers (including having certain information and inspecting, cleaning, and labeling the refillable containers), as discussed in Unit VII.O. through VII.R.;
- Must keep records, including copies of the refilling residue removal procedure and the description of acceptable containers and certain information about each instance of repackaging. The recordkeeping requirements are discussed in Unit VII.S.

2. *Changes*. All of these requirements for registrants who distribute or sell pesticide products directly in refillable containers were included in the proposed regulation. Some of the requirements were modified based on comments and the change to refer to and adopt some of the DOT standards. The specific changes to these requirements are discussed in other sections of Unit VII.

K. Registrants Who Distribute or Sell Pesticide Products to Refillers for Repackaging - Overview (§ 165.67)

1. *Final Regulation*. The regulations in § 165.67 apply to registrants who distribute or sell pesticide products to refillers that are not part of their companies for repackaging into refillable containers. This is the more common form of repackaging, where the registrant ships in bulk to a refiller (normally a retailer) who repackages the product into portable pesticide containers.

As mentioned above, a registrant may repackage a product directly into refillable containers for sale or distribution *and* distribute or sell that same product to an independent refiller for repackaging. In this case, the registrant must comply with both sets of requirements: the standards in § 165.65 for those quantities the registrant distributes or sells directly in refillable containers and the requirements in § 165.67 for those quantities that the registrant distributes or sells to independent refillers for repackaging.

A registrant who distributes or sells a pesticide product to an independent refiller for repackaging:

- Must comply with the conditions for allowing a refiller to repackage his product, as discussed in Unit VII.G.;
- Must provide the refiller with the written contract to repackage before distributing or selling the product to the refiller;
- Is responsible for the integrity of the product, as discussed in Unit VII.H.;
- Must develop a refilling residue removal procedure, as discussed in Unit VII.M.;
- Must develop a description of acceptable containers, as discussed in Unit VII.N.;
- Must provide the refilling residue removal procedure, description of acceptable containers, and the product's label and labeling to the refiller before or at the time of distribution or sale to the refiller;
- Must keep records of the contracts, the refilling residue removal procedure, and the description of acceptable containers. The recordkeeping requirements are discussed in Unit VII.S.

The requirements that are specific to registrants who distribute or sell pesticide products to independent refillers for repackaging are the two that establish standards for the timing of when the registrant provides documents to the refiller. Under § 165.67(d), the registrant must provide the written contract to repackage the product *before* selling or distributing the product to the refiller. Section 165.67(g) specifies that the other information (cleaning procedure, description of acceptable containers, and label/labeling) can be provided earlier but must be provided to the refiller at the time of sale or distribution at the latest. These two provisions are identical to the proposed regulations.

2. *Changes*. All of these requirements for registrants who distribute or sell pesticide products to refillers for repackaging were included in the proposed regulation. Some of the requirements were modified based on comments, modifications to some EPA policies, and the change to refer to and adopt some of the DOT standards. The specific changes to these requirements are discussed in other sections of Unit VII.

L. Refillers Who Are Not Registrants - Overview (§ 165.70)

1. *Final Regulation*. The regulations in § 165.70 apply to refillers who are not registrants of the products that they repackage for sale or distribution.

A refiller who repackages a product for distribution or sale and is not the registrant of the product:

- Must comply with the conditions for allowing him to repackage the registrant's product, as discussed in Unit VII.G.;
- Is responsible for the integrity of the product, as discussed in Unit VII.H.;
- Must comply with the requirements for refillers (including having certain information and inspecting, cleaning, and labeling the refillable containers), as discussed in Unit VII.O. through VII.R.;
- Must keep records, including copies of the contract from the registrant, refilling residue removal procedure, and description of acceptable containers, and certain information about each instance of repackaging. The recordkeeping requirements are discussed in Unit VII.S.

2. *Changes*. All of these requirements for independent refillers were included in the proposed regulation. Some of the requirements were modified based on comments, modifications to some EPA policies, and the change to refer to and adopt some of the DOT standards. The specific changes to these requirements are discussed in other sections of Unit VII.

3. *Comments - whether or not to include custom blending in this rule*. In the preamble to the proposed rule, EPA discussed whether or not the requirements for independent refillers should apply to custom blenders, who provide the service of mixing pesticides with fertilizer, feed, or another pesticide to a customer's specification. The preamble provided two options for the final rule: (1) Issue a regulation on refilling practices that is tailored specifically to custom blenders that distribute pesticide mixtures, or (2) exempt custom blenders from the repackaging requirements. EPA requested comments on these options.

A few commenters showed lukewarm support for applying the repackaging regulations to custom blenders. A registrant was unaware of pressing reasons to exclude custom blenders and pointed out that custom blenders are usually custom applicators. A State regulatory agency stated that custom blenders should be required to meet the refilling requirements if the criteria apply to them. This commenter also pointed out that custom blends are generally placed into a spreader, not a container.

A registrant group stated that custom blenders provide valuable service in reducing pesticide container use and applicator exposure. This respondent recommended developing standards that are specific to custom blenders and that address items such as container integrity and cleaning procedures.

A registrant distinguished between custom blending and selling a pesticide product in a refillable container with a registrant's label on it as two different activities. A few dealer groups strongly urged EPA to exclude custom applicators from the refiller requirements. The retailer-related commenters believe it is inappropriate to address custom blenders in a section that focuses on maintaining the original integrity of repackaged pesticides. They also described current custom blending practices in the Midwest, including the following points:

- Midwest dealers with bulk pesticides are mostly all custom blenders and custom applicators and have become repackagers recently.
- It is common for the volume of bulk pesticides that goes into custom blends to exceed the volume that is repackaged into refillable containers.
- Custom blends may be loaded into custom application and nurse vehicles of that dealer, another for-hire custom applicator, or a customer.
- On the other hand, registered bulk pesticides are: (1) Repackaged into minibulk containers; (2) moved in portable service containers from the bulk container to supply the dealer's custom application operation in the field; and (3) loaded into tanks that are an integral part of application or nurse vehicles for field nursing or to supply injection systems.

4. *EPA response - whether or not to include custom blending in this rule*. In the final rule, EPA decided to exempt custom blending from having to comply with the repackaging requirements. As stated by several of the commenters, EPA determined that there is an inherent difference between custom blending and repackaging pesticide products for sale or distribution. When a product is repackaged for sale or distribution, it must maintain the characteristics of the product and meet the ingredient contents identified on the label and in the product's registration. On the other hand, a custom blend intentionally mixes a pesticide with another substance. While the product's labeling must be consistent with the custom blend (i.e., the labeling directions do not prohibit the use of the product in such a blend) and the product's label must be delivered to the end-user, the material in the custom blend is no longer just the pesticide product identified on the label. In fact, the custom blender must deliver a statement specifying the composition of the mixture.

The exemption for custom blending was added to § 165.63(h) of the final regulation, which asks ''Are there any other exceptions?'' Paragraph (h) in § 165.63 was added to state that custom blending is exempt from the regulations in this subpart. In addition, § 165.3 of the regulations define custom blending as ''Custom blending means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

(1) The blend is prepared to the order of the customer and is not held in inventory by the blender;

(2) The blend is to be used on the customer's property (including leased or rented property);

(3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;

(4) The blend is prepared from registered pesticides; and

(5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.''

This description is based on the definition of ''custom blender'' in 40 CFR 167.3, but was modified to reflect the practice of custom blending rather than the establishment at which it takes place. The § 167.3 definition focuses on the establishment, because the part 167 regulations then exempt custom blenders from the requirements to register their establishments (in § 167.20(a)(1)) and to report production (in § 167.85(a)). The § 167.3 definition of custom blender includes a sixth condition--that no other pesticide production activity is performed at the establishment--because these other activities would subject a custom blender to the establishment registration and production reporting requirements. However, this sixth condition is not relevant to the pesticide product repackaging requirements in 40 CFR part 165 subpart D because the subpart D regulations are tied to the process or action of repackaging. As reported by several commenters, a facility may conduct several different activities, including repackaging pesticide products into refillable containers and custom blending. In this case, the repackaging must be conducted in accordance with the regulations in this subpart, while the custom blending is exempt from the regulations in this subpart.

It is worth noting that the containment regulations in subpart E apply to some custom blenders, specifically ''custom blenders of agricultural pesticides.''

5. *Comments - mixing diluent with pesticides*. Several commenters (dealer groups and a dealer) urged EPA to allow water as a blend component. One retailer described the awkwardness of the situation when such mixing is not permitted — a dealer can put pesticide in a farmer's application equipment at its facility (with a containment pad), but the farmer has to return to his own location to add water and finish preparing the application mixture. The two dealer groups suggested or stated that using water as a custom blend component is currently practiced in the Midwest. The two dealer groups also recommended deleting condition #6 in the § 167.3 definition of custom blender which specifies that ''no other pesticide production activity is performed at the establishment.''

6. *EPA response - mixing diluent with pesticides*. EPA disagrees with the comment to delete condition #6 in the § 167.3 definition of custom blender that specifies ''no other pesticide production activity is performed at the establishment.'' As described above, this condition is intended to distinguish between custom blenders - who are exempt from the part 167 establishment registration requirements - and

producing establishments, who are required to register their establishments. Condition #6 does not prevent a facility from conducting custom blending and repackaging (producing). These facilities must register as establishments because they are producing establishments. Instead, condition #6 is intended to describe the facilities that are exempt from the establishment registration requirements, i.e., facilities that custom blend and do not repackage or otherwise produce pesticides.

However, EPA considered the request from commenters to allow custom blends to be diluted with water. Various offices and Regions within EPA, as well as the States, have not had a consistent policy about whether custom blends can be diluted with water or another diluent. After reviewing this issue, it is appropriate to clarify our position on diluting custom blends. EPA believes that the definition of custom blender in § 167.3 provides flexibility. Custom blenders are defined as ''any establishment which provides the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when'' the six conditions described above are met. In particular, the word ''usually'' in this definition provides flexibility and allows water (or other diluents when specified by the labeling of the pesticide[s] in the blend) to be added to custom blends.

EPA believes that the language of § 167.3 allows custom blends to be diluted with water or a diluent specified on the labels of all pesticides in the blend. In many ways, it is more efficient and possibly more accurate for the facility that is measuring and blending pesticides, fertilizers and/or animal feed to also measure and blend the diluent into the custom blend. In addition, custom blends (with diluents) that are delivered to an end user as a use-dilution (usually in refillable containers) offer worker exposure and environmental protection benefits including eliminating the need for end users to mix, handle and potentially spill the pesticide in the field; eliminating the need for the end user to rinse containers in the field; allowing the use of closed systems; and reducing the number of nonrefillable containers that must be disposed or recycled. However, EPA wants to clarify that custom blends with a diluent added still must comply with all five conditions in the definition of custom blend in § 165.3: ''Custom blending means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

(1) The blend is prepared to the order of the customer and is not held in inventory by the blender;

(2) The blend is to be used on the customer's property (including leased or rented property);

(3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;

(4) The blend is prepared from registered pesticides; and

(5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.''

EPA will monitor the practices and procedures that develop and proliferate in the field with this interpretation. If problems develop, EPA will consider options, including revising its interpretation, adding protective conditions if diluents are added to custom blends, and subjecting custom blending to the repackaging requirements in part 165.

In addition, EPA does not view a difference between custom blending and custom mixing from a regulatory point of view. A custom mixer is a facility that stores materials previously purchased by end-users and that custom mixes the products just prior to application. A custom mixer does not own, sell or apply the product, although the conditions in the § 165.3 definition of custom blending are met. Over the years, there have been different interpretations of whether or not there is a difference between custom blending and custom mixing. At least a few businesses have been established as custom mixers under the determination that they are not custom blenders. This final rule does not distinguish between custom blenders and custom mixers. Similarly, the policy of allowing diluents to be added to custom blends applies to both custom blenders and custom mixers. As discussed above, custom blending is excluded from the subpart D repackaging requirements. However, custom blenders (including custom mixers) would be subject to the subpart E containment standards if they blend (mix) agricultural pesticides.

7. *Comments - service containers.* A few dealer groups noted that the proposed rule does not address service containers, which are used to move pesticides from bulk storage to end-use applications in the field, e.g., the tanks that are an integral part of application or nurse vehicles. These commenters pointed out some advantages of service containers including: reducing the number of nonrefillable containers used, keeping pesticides separate from water or fertilizers during transportation, accommodating on-board injection systems and allowing the applicator to adjust pesticides in the field. These commenters urged EPA and industry to consider providing for the expanded use of service containers, with some exclusions from the refillable container requirements, to increase the use of bulk pesticides. A State regulatory agency supported keeping the Bulk Policy because they don't want to register each facility where bulk pesticides are metered, such as where pest control operators place pesticides into service containers.start here

8. *EPA response - service containers.* The pesticide container and repackaging regulations do not regulate service containers, because the container and repackaging regulations only apply to containers that are used to sell or distribute pesticide products and to the repackaging of products for sale or distribution. For the purposes of this discussion, a service container is defined as ''any container used to hold, store, or transport a pesticide concentrate or a pesticide use-dilution mixture, other than the original labeled container in which the product was distributed or sold, the measuring device, or the application device.''

EPA does not currently regulate service containers. In 1976, EPA issued a Pesticide Enforcement Policy Statement (PEPS) on ''Structural Pest Control: Use and Labeling of Service Containers for the Transportation or Temporary Storage of Pesticides,'' which defined minimal labeling requirements and several other limitations for the acceptable use of service containers by structural pest control operators. (Ref. 76) However, this PEPS was later rescinded. EPA continues to believe that it is a good management practice to ensure that the contents of service containers are identified and that the label of a pesticide product that is in a service container is available to the person handling and/or applying the pesticide. EPA may consider developing a separate policy on service containers while the pesticide container and containment regulations are being phased in.

M. Registrant Refilling Residue Removal Procedure (§ 165.65(c)(1) and 165.67(f)(1))

1. *Final Regulation.* Registrants who sell or distribute pesticide products directly in refillable containers and registrants who sell or distribute products to independent refillers for repackaging must develop a refilling

residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled. Registrants must specify a cleaning procedure for each product sold or distributed in refillable containers, although the same procedure can be used for multiple products. The refilling residue removal procedure must provide instructions for removing residues from all refillable containers. The same procedure can apply to portable and stationary pesticide containers, or the registrant can describe different procedures if it is appropriate and necessary. Finally, the refilling residue removal procedure describes how to remove residue from a refillable container. While this generally involves rinsing the container with water, the regulations do not specifically require rinsing with water. If a different procedure is appropriate for a given formulation, it can be used as long as it meets the following performance standard.

The refilling residue removal procedure must meet the performance standard of being adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula. This standard ensures that the products distributed and sold in refillable containers meet the existing product integrity requirements, as described in Unit VII.H.

The refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations if: (1) The procedure requires the use of a solvent other than the diluent used for applying the pesticide, or (2) there is no diluent used for application. This information is necessary to help refillers manage rinsate that cannot easily be used as make-up water in future applications.

2. *Changes*. This requirement is the same as it was in the proposed rule. Several minor editing change have been made to improve the clarity and the different refillable containers are described as portable and stationary pesticide containers because the definitions of minibulk and bulk are not being finalized. These modifications have not changed the requirement or intent of the requirement.

N. Registrant Description of Acceptable Containers (§§ 165.65(c)(2) and 165.67(f)(2))

1. *Final regulation*. Registrants who sell or distribute pesticide products directly in refillable containers and registrants who sell or distribute products to independent refillers for repackaging must develop a description of acceptable refillable containers (portable and stationary pesticide containers) that can be used for distributing or selling that pesticide product. An acceptable container is one which the registrant has determined meets the refillable container standards in subpart C and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container. The registrant must identify the containers by specifying: (1) The container materials of construction that are compatible with the pesticide formulation; and (2) information necessary to confirm compliance with the refillable container requirements in subpart C. The refillable container requirements include the adopted DOT standards, being marked with a serial number or other identifying code, having a one-way valve or tamper-evident device on each opening (other than a vent) of a portable pesticide container designed for liquids, and the stationary pesticide container requirements.

Similar to the refilling residue removal procedure, registrants must specify a description of acceptable containers for each product sold or distributed in refillable containers, although the same description can be used for multiple products if it meets the standards.

2. *Changes*. This requirement was changed significantly from the proposed rule. The proposal would have required registrants to develop lists (not descriptions) of acceptable containers, which would have been identified by specifying the container manufacturer and model number of the container. This was proposed because registrants are responsible for ensuring that the refillable containers used to sell and distribute their products meet the requirements in the container regulations. When EPA proposed the rule, specifying the container manufacturer and model number seemed like a relatively easy way for registrants to identify acceptable containers for their refillers.

However, the final rule's approach of referring to and adopting some DOT requirements provides an even easier way for registrants to identify acceptable containers to the refillers. Rather than citing specific model numbers, the registrants can provide refillers with a much less prescriptive approach by identifying characteristics, such as the material of construction, how to determine if the container meets the applicable DOT standards, how to comply with the serial number requirement, how to obtain and apply one-way valves and/or tamper-evident devices to the openings of portable pesticide containers for liquids and information for complying with the stationary pesticide container standards.

3. *Comments*. Several commenters (registrants and a registrant group) recommended that instead of a list of acceptable containers, the registrants should identify acceptable containers by providing the compatible materials of construction and the necessary information to apply the DOT standards. The registrant group and a distributor commented that this requirement will be helpful to ensure that formulators and subregistrants know and obtain information about the proper packaging.

4. *EPA response*. In the final rule, EPA changed the requirement for identifying acceptable containers so registrants can describe acceptable containers by specifying compatible materials of construction and the information necessary to comply with the refillable container requirements. This includes information for complying with the adopted DOT standards, but also the other requirements in subpart C.

O. Requirements for All Refillers (§§ 165.65(d) and 165.70(e))

1. *Final regulation*. All refillers, including those at registrant's facilities and those who are not part of a registrant's company must comply with the following provisions regarding repackaging a pesticide product into refillable containers:

*(1) The establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

*(2) The refiller must not change the pesticide formulation unless he has a registration for the new formulation.

(3) The refiller must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product.

(4) The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that can be used.

(5) The refiller must have all of the following items at the establishment

before repackaging a pesticide product into any refillable container for distribution or sale:

*(A) The written contract from the pesticide product's registrant. [Subparagraph A applies only to independent refillers.]

*(B) The pesticide product's label and labeling.

(C) The written refilling residue removal procedure for the pesticide product.

(D) The written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with the cleaning requirements described in Unit VII.Q. The refiller may identify the previous pesticide product by referring to the label or labeling.

(7) The refiller must inspect each refillable container as discussed in Unit VII.P.

(8) The refiller must clean each refillable container, if required, as discussed in Unit VII.Q.

*(9) The refiller must ensure that each refillable container is properly labeled as discussed in Unit VII.R.

(10) The refiller's establishment must maintain records, as discussed in Unit VII.S.

*(11) The refiller's establishment must maintain records as required by 40 CFR part 169.

*(12) The refiller's establishment must report as required by 40 CFR part 167.

(13) Stationary pesticide containers (that meet the specified size criteria) at the establishments of independent refillers must meet the standards in § 165.45(f). [Paragraph 13 is only included in the regulations in § 165.70(e) for independent refillers. The refillable container regulations state that both the registrant and independent refillers are responsible for complying with the stationary pesticide container requirements.]

(14) Refillers may be required to comply with the containment standards in subpart E. [Paragraph 14 applies only to independent refillers.]

These requirements, except for items 5(A), 13 and 14 which apply only to independent refillers, apply to any refiller that repackages a product subject to the regulations regardless of the main business of the refiller (registrant, retailer, etc.). Some of these conditions (indicated by an asterisk) simply refer to or reinforce key requirements in existing regulations, including 40 CFR parts 156, 167 and 169 or incorporate existing standards of the Bulk Policy (having a copy of the registrant's contract). These provisions are included here for the sake of completeness and as a reference for refillers.

In other words, the new provisions for refillers are that each refiller:

- Must repackage a product only into a container identified on the registrant's description of acceptable containers;
- May repackage any quantity of a product into a refillable container (up to its rated capacity) and there are no general limits on the size of the refillable containers;
- Must have certain documents before repackaging;
- Must identify the product previously in the container by its label;
- Must inspect and, if necessary, clean the container; and
- Must maintain certain records.

EPA believes that these provisions are good management practices that are intended to ensure product and container integrity. The second provision actually removes a condition on container size from the bulk policy. In other words, it provides more flexibility to registrants and refillers than currently exists.

2. *Changes*. Regarding the list of requirements for refillers, the final regulations are very similar to the proposed rule. However, the structure and order of the final rule was revised to list these requirements in one section. EPA believes this makes the regulations more clear, which should facilitate compliance. The items that refer to existing requirements in 40 CFR parts 167 and 169 were added to the list to provide a more complete reference for refillers. However, these statements simply refer to existing requirements; they don't add new ones.

Adjustments were made to a few of the provisions. Specifically, the requirements in the proposed rule that referred to the registrant's list of acceptable containers were changed to refer to the registrant's description of acceptable containers (see items 3 and 5 above), to accommodate the changes described in Unit VII.N. Also, the proposed regulatory text did not explicitly allow any size refillable container to be used, although the preamble discussed removing the size limit in the Bulk Policy in some detail. Therefore, a sentence clarifying that there are no general limits for the size of refillable containers was added to the statement allowing any quantity of pesticide (up to the container's rated capacity) to be repackaged. (See item 4.)

Specific modifications made to the inspecting, cleaning, labeling and recordkeeping requirements and comments on these standards are discussed in detail in Units VII.P. - VII.S.

The refillable container regulations were modified to clarify that both registrants and refillers are responsible for complying with the stationary pesticide container requirements in § 165.45(f). The final repackaging rule includes this provision in the list of requirements as a reminder for independent refillers.

P. Inspecting Refillable Containers (§§ 165.65(e)and 165.70(f))

1. *Final regulation*. Before repackaging pesticide products into refillable containers, refillers must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings and openings (tamper-evident devices or one-way valves). As with the proposed regulations, inspecting the containers is the responsibility of the refillers, since they are the ones who are actually handling and refilling the containers. If any of the failure conditions in this section are observed during the inspection, the container cannot be refilled unless the problems are rectified and the associated acceptability criterion (either reconditioning according to DOT's requirements or coming into compliance with the refillable container standards in subpart C) is satisfied.

The container fails the inspection and must not be refilled (unless the applicable DOT standards for reconditioning are met) if the integrity of the container is compromised in any of the following ways:

- The container shows signs of rupture or other damage which reduces its structural integrity. [Based on the criterion in 49 CFR 173.28(a)]
- The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects. [Based on the criterion in 49 CFR 173.28(c)(1)(iii)]
- The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation. [Based on the criterion in 49 CFR 180.352(b)(2)(iii)]
- There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container. [Similar to the criterion in

49 CFR 180.352(b)(2)(ii) for service equipment.]

If either of the following conditions exists (or both), the container fails the inspection and must not be refilled until the container meets the refillable standards specified in subpart C. The conditions are:

- The container does not bear the markings required by subpart C or such markings are not legible.
- The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

Note that these two conditions are written so refillers of antimicrobial products used in swimming pools and related sites would not have to inspect for a serial number (because it's not a marking required by subpart C for these products) or for an intact and functioning one-way valve or tamper-evident device on each opening, because neither is required for these products.

2. *Changes.* The general obligation to inspect refillable containers before repackaging pesticide products into them is the same as the proposed rule. However, EPA made several changes to the details of the inspection. First, we based the conditions for failing the inspection on conditions specified in the DOT regulations in 49 CFR 173.28 and 180.352(b)(2). A commenter suggested this change and EPA believes it is an appropriate modification and is consistent with other changes in the regulation to refer to and adopt the DOT standards for container design, construction and marking. While we don't think the criteria in the final rule are necessarily more stringent than those in the proposed rule, we believe that consistency with DOT is beneficial. Second, the inspection requirement was modified to clarify that if problems found during the inspection are fixed and certain criteria are met, the container can be refilled. Under the proposed standard, it was not clear that a container could be reconditioned or brought into compliance with the refillable container standards and then refilled. Several other minor modifications were made to account for changes in the regulations, including: (1) removing the reference to a standard for the age of the container and (2) clarifying that vents do not need to have one-way valves or tamper-evident devices. Because the refillable container regulations in subpart C exempt antimicrobial products used in swimming pools and related sites from the serial number requirement and the standard requiring a one-way valve or tamper-evident device, the final rule was written so that refillers of these products are not subject to the failure criteria that address serial numbers, one-way valves, or tamper-evident devices.

Q. Cleaning Refillable Containers (§§ 165.65(f) - (g) and 165.70(g) - (h))

1. *Final regulation.* Refillers must clean refillable containers by conducting the pesticide product's refilling residue removal procedure before repackaging the product into the refillable container, unless condition #1 and either condition #2 or #3 are satisfied:

(1) Each tamper-evident device and one-way valve is intact (if required).

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied.

(A) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(B) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container. If a tamper-evident device or one-way valve is not intact, the refiller must clean the container according to the product's refilling residue removal procedure. In addition, the final regulations state in § 165.65(g) for registrants who refill and in § 165.70(h) for independent refillers that other procedures may be necessary in this case to assure that product integrity is maintained.

The first condition is written so it would not apply to refillers of antimicrobial products used in swimming pools because neither a one-way valve or tamper-evident device is required.

2. *Changes.* The biggest change from the proposed regulations is adding the condition where the container is being refilled with the same pesticide product as a case for not needing to clean the container. Some commenters pointed out that the conditions in the proposed regulation and the 1991 amendment to the Bulk Pesticides Enforcement Policy (Ref. 71) would require a refillable container holding a product with multiple active ingredients to be cleaned even when it was refilled with that product. This is true because the proposed rule, based on the 1991 amendment to the Bulk Policy, specified a product with a single active ingredient in a compatible formulation as an acceptable condition for refilling without cleaning. EPA corrected this oversight in the final rule, because refilling with the same product (regardless of how many active ingredients there are) is certainly the most clear way to ensure product integrity and should be allowed (assuming any tamper-evident devices and one-way valves are intact).

Several other minor changes include:

(1) Changing the first condition so it includes one-way valves and not just tamper-evident devices like in the proposal;

(2) Adding ''if required'' to the first condition, since one-way valves or tamper-evident devices are only required on portable pesticide containers for liquids and are not required on the containers of antimicrobial products used in swimming pools;

(3) Using the phrase ''described in its confidential statement of formula that is required under FIFRA section 3'' because it is more straightforward than the proposed phrase as described in Unit VII.H.;

(4) The condition in criterion 3(B) was modified to be more general to account for situations other than reactions or interactions between the two products such as very different active ingredient concentrations that could cause the repackaged product to differ from the confidential statement of formula; and

(5) Splitting the situation of a broken tamper-evident device or one-way valve into a separate paragraph for clarity.

R. Labeling Refillable Containers (§§ 165.65(h) and 165.70(i))

1. *Final regulation.* Before distributing or selling a pesticide product in refillable containers, refillers must ensure that the label of the product is securely attached to the refillable containers such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of 40 CFR part 156. In particular, refillers must ensure that the net contents statement and EPA establishment number appear on the label. This part of the regulations simply re-states requirements from 40 CFR part 156 and FIFRA for clarity.

2. *Changes.* The major change to the labeling requirement was to change it

from an ''active'' standard (i.e., the refiller must securely attach the label) to a ''passive'' standard (i.e., the refiller must ensure that the label is securely attached). Also, the regulatory text was modified to state that the net contents and EPA establishment number appear on the label (rather than the new label as proposed). Both of these changes account for situations where the label is embossed on the container or the container already has an intact label that meets all the requirements. For example, a commenter said that 1–gallon refillable containers for the swimming pool market are embossed with label information because they are refilled automatically at a rate of 100–120 bottles per minute.

S. Recordkeeping (§§ 165.65(i), 165.67(h), 165.70(j))

1. *Final regulation.* All of the companies subject to the repackaging standards must keep certain records, although the specific records vary according to who the company is and what it does. These records must be furnished and made available for inspection and copying upon request of EPA or our designee, such as a State or Tribe. Informational records (listed in the first few rows of Table 16) must be maintained for the current operating year and for 3 years after that. The repackaging records (listed in the last three rows of Table 16) must be generated each time a product is repackaged into a refillable container for distribution or sale and must be maintained for at least 3 years after the date of repackaging. All of the records are product-specific. In other words, this information must be kept for each product distributed or sold in refillable containers. The same cleaning procedure or description of containers can be used for different products, but there must be a record documenting a procedure and a description for each product distributed or sold in refillables.

TABLE 16.—RECORDKEEPING REQUIREMENTS IN THE REPACKAGING REGULATIONS

Product-Specific Record	Registrants who d/s directly in refillables[1]		Registrants who d/s to refillers for repackaging into refillables [1]	Refillers who aren't registrants	
	Swim pool products[2]	All other products	All products	Swim pool products[2]	All other products
Informational Records					
Contract to repackage	No	No	Yes	Yes	Yes
Refilling residue removal procedure	Yes	Yes	Yes	Yes	Yes
Description of acceptable containers	Yes	Yes	Yes	Yes	Yes
Repackaging Records					
EPA registration number of the product distributed or sold in the container	No	Yes	No	No	Yes
Date of the repackaging	No	Yes	No	No	Yes
Serial number of the container	No	Yes	No	No	Yes

[1] "d/s"= distributed or sold.
[2] Swim pool products = antimicrobial products used in swimming pools and closely related sites, that are subject to the pesticide container-related regulations.

EPA reminds registrants and refillers that the records identified in §§ 165.65(i), 165.6(h) and 165.70(j) of the repackaging regulations do not change other recordkeeping requirements that currently apply to them, such as restricted use product records or applicable records required in 40 CFR parts 167 and 169.

2. *Changes.* EPA made the following significant changes in the recordkeeping requirements in the final regulations:

- The informational records must be kept for the current operating year and for 3 years after that rather than the proposed time period of as long as the pesticide product is distributed or sold in refillable containers and for 3 years thereafter. The specific informational records kept by each of the three categories of businesses is the same in the final rule as in the proposal, although the list of acceptable containers was changed to the description of acceptable containers.
- The repackaging records in the final rule are a subset of what was included in the proposed rule. The final regulations do not include the name or quantity of the product, the name and address of the consignee, a record that the refiller has inspected the container (and the results), and a record of whether a refilling residue removal procedure was conducted (and, if not, why not). Additionally, the date of the distribution or sale (in the proposal) was changed to the date of the repackaging in the final rule.
- Refillers that repackage antimicrobial products used only in swimming pools or closely related sites would not have to comply with the repackaging recordkeeping. However, these refillers would have to comply with the informational recordkeeping.
- The proposed regulations would have required refillers to maintain certain records of containers that were received by them to be refilled, including the name and address of the person providing the container, its serial number, the date it was received and the name and EPA registration number of the product that was last distributed or sold in the refillable container. These records are not being finalized in today's final regulations.

3. *Comments - refiller records*. Many commenters (registrants, registrant groups, State regulatory agencies, a dealer, a dealer group, and an equipment manufacturer) opposed the recordkeeping requirements for refillers. Most of these respondents commented that the proposed recordkeeping requirements were too burdensome and several stated that these standards will discourage the use of refillable containers. A registrant group recommended requiring refillers to maintain records of the serial number, the amount of product placed in the container and the date the refilling took place.

4. *EPA response - refiller records*. EPA modified the refiller recordkeeping requirements to minimize the paperwork burden of maintaining these records. However, EPA believes that some records are necessary to ensure safe repackaging and compliance with these requirements. First, the refiller must have the informational records, including the registrant's contract (if applicable), the refilling residue removal procedure and the description of acceptable containers. These records are necessary so the refiller has the information needed to properly repackage a product into refillable containers and to ensure that an independent refiller has the proper approval from a registrant to repackage the product.

Second, certain information about when a product is repackaged into a refillable container is needed in case there is a problem with a product sold in refillable containers, i.e., it is adulterated or contaminated or it causes damage to the site after application. However, EPA pared the repackaging records down to the minimum amount of information that would allow the refiller and investigators to identify the product, the container, and the date of the repackaging. All of this information is readily available at the time the pesticide product is repackaged into the refillable container, unlike in the proposed rule where the information also included the name and address of the person receiving the container. EPA deleted the requirement to record the results of the inspection and whether the container was cleaned because these records would probably not be useful in enforcement cases. We will be able to determine that a container was not inspected if a container in poor condition (that did not just sustain recent damage) is found and, similarly, we'll be able to tell if a container was not properly cleaned if we find high levels of contamination in the product in that refillable container.

5. *Comments - sodium hypochlorite*. Several respondents from the sodium hypochlorite industry commented on the proposed rule and stated that the refiller recordkeeping requirements would be especially burdensome for this market. One registrant group described a typical sodium hypochlorite delivery, where a truck holding up to 4,000, 1–gallon refillable containers stops at several locations, delivers various volumes of product, and picks up empty containers. This commenter estimated all the recordkeeping standards could triple the time for deliveries and increase the cost of the product by 100 percent. An association representing many businesses involved with swimming pools commented that the requirement for individual serial numbers and the recordkeeping requirements attendant to the serial number marking would be completely unworkable for refillable pool chemical containers. These respondents and a swimming pool supply company stated that the recordkeeping would discourage the use of refillables in the pool chemical industry.

When commenting on the supplemental notice, the registrant group representing the sodium hypochlorite industry reiterated its estimate of the increase in time and costs that could be attributed to the proposed recordkeeping. In addition, a sodium hypochlorite manufacturer requested EPA to exempt all refillable plastic containers of sodium hypochlorite from the requirements for serial numbers, one-way valves, tamper-evident devices and burdensome recordkeeping that would negatively impact the currently used refillable container system.

6. *EPA response - sodium hypochlorite*. EPA was persuaded by the arguments from the companies who repackage sodium hypochlorite into refillable containers for use in swimming pools. Because of the huge number of small (1– and 2.5–gallon) refillable containers used in this market segment, EPA acknowledges that compliance with this recordkeeping would be burdensome. Therefore, the final rule exempts refillers of antimicrobials used in swimming pools and similar sites from the repackaging recordkeeping, although they must comply with the informational recordkeeping.

T. Proposed Standards That Are Not Being Finalized

Final regulation/changes. The following proposed requirements relating to repackaging are not being finalized in today's final rule:

- § 165.134(f): Age of plastic liquid minibulk containers; and
- § 165.136(b): Records on the return of refillable containers to refillers.

The proposed rule would have prohibited a refiller from repackaging a product into a plastic liquid minibulk container more than 6 years after the container's date of manufacture. EPA decided not to finalize this provision to be consistent with the DOT regulations, which do not establish a life limit for plastic nonbulk containers (which may be portable pesticide containers under our regulations) or for plastic intermediate bulk containers (which also may be portable pesticide containers under our regulations).

As discussed in Unit VII.S., EPA is not finalizing the requirement for refillers to keep records on the return of refillable containers to minimize the burden on refillers. Also, this information would have been of limited use because it would not have been sufficient to conclusively identify where a container had been and who had had possession of it.

VIII. Containment

A. Introduction

1. *Regulatory background*. In 1994, EPA proposed standards in subpart H of 40 CFR part 165 for containment of large pesticide containers and procedures for container refilling operations. Standards for pesticide containers, including large storage containers, are covered in Units III. through VII. of this notice, and apply to all pesticides unless specifically exempted. The requirements for a secondary containment unit (either a containment structure around a stationary container, or a containment pad under a container refilling operation) only apply to agricultural pesticides. The requirements are intended to protect human health and the environment from contamination by spills and leaks which may occur during container filling or when a stationary container fails. Affected facilities are required to have structures which intercept and contain spills and leaks of agricultural pesticides in areas where stationary containers are stored and agricultural containers are refilled or cleaned.

Secondary containment means a structure, such as rigid diking, berms or walls, designed to intercept and contain leaks and spills from the enclosed containers. Some States define bulk quantities as a pesticide container with a volume exceeding 55 gallons; others use 210, 300, or 500 gallon criteria. EPA's proposed definition of bulk quantities was 3,000 liters (793 gallons)

for liquid pesticides and 2,000 kilograms (4,409 pounds) for dry pesticides. The final rule establishes quantities of 500 gallons (1,890 liters) for liquids and 4,000 pounds (1,818 kilograms) as the threshold for requiring secondary containment. Thus, EPA's regulations cover only relatively large containers which pose the greatest risk of catastrophic contamination in case of failure.

EPA believes the Federal containment standards, together with requirements for container design and residue removal, are essential for ensuring the safe use, reuse and refill of containers as required by FIFRA section 19. The regulations promulgated today will be located in 40 CFR part 165 in § §165.80 - 165.97.

2. *Summary of proposed and final containment standards*. The proposed and final standards include criteria for design, maintenance and operation of containment structures (units and pads) at certain facilities. The design criteria include standards for material of construction, capacity, and protection from stormwater and precipitation. The facilities subject to the requirements are agricultural pesticide refilling establishments and custom blenders (as defined in § 167.3), and facilities of businesses that apply agricultural pesticides for compensation (also referred to as for-hire applicators in this preamble). In the preamble to the proposal, the Agency explained its rationale for choosing these facilities. Although spills can occur throughout the chain of pesticide commerce (from manufacturer to user), the accumulated evidence points to agrichemical dealerships, custom blenders, and for-hire applicators as facilities where pesticide contamination of soil and water is most frequently documented. (See 59 FR 6750 (Ref. 66) and Unit VIII.C. for a detailed discussion.) The agricultural chemical distribution system has the most potential for spills and a requirement for reporting spills, and is uniquely characterized by the use of large tanks and container refilling operations, often outdoors, while other sectors generally use smaller containers, pre-packaged indoors by a manufacturer.

Standards which are considered critical are required for all existing and new containment units and pads, and some additional criteria are imposed for new containment structures. For this final rule, the criteria identified as critical reflect the comments received and new information, and are not necessarily the same criteria used in the proposed rule. For example, hydraulic conductivity criteria were considered critical in the proposed rule, but, as a result of comments we received on hydraulic conductivity, are not being finalized in the final rule (see discussion in VIII.H).

Many respondents provided comments on specific provisions of the containment regulations. EPA has made certain revisions to the proposed regulations based on these comments. The following units of the preamble discuss the comments received on each of the major issues raised in the proposed rule, any differences between the proposal and the final rule, and the Agency's reasons for making the changes.

Costs and benefits of the rule have been revised from those projected at the time of the proposed rule. Total costs are predicted to be less than estimated in the proposal, due to the changes made as a result of comments and new information.

3. *State secondary containment regulations*. At least 19 States have already promulgated and begun implementing their own secondary containment regulations for bulk storage of pesticides. The 1992 State of the States Report (*Pesticide Storage, Disposal and Transportation*, Ref. 70) cited in the proposed rule showed the wide variety of containment regulations among States. There are variations in the facilities affected, the container volume triggering the requirement for secondary containment, etc. The economic assessment for the proposed rule estimated the number of facilities with bulk pesticide storage in each State based on commercial, State and government business census data. EPA estimated that a total of 5,214 agrichemical dealers in all States and the District of Columbia have containers of a size defined in the proposed rule as bulk (greater than 3,000 liters liquid or 2,000 kilograms dry). (Ref. 21) EPA has reviewed the secondary containment regulations in all 19 States and has found that they are generally comparable to or more stringent than the requirements in today's final rule. These 19 States contain 81 percent (4,220) of the agrichemical facilities regulated by this final rule.

EPA received many comments on the negative impact of the proposed regulations on facilities in States with preexisting regulations. Today's containment standards are intended to introduce basic safeguards in States that currently lack containment regulations and to harmonize with containment requirements in States where adequate containment safety programs already exist. While EPA believes a national standard must provide baseline environmental protection, a mechanism is being provided to accommodate States that are already successfully implementing pesticide containment programs.

4. *Key terms for understanding the requirements of subpart E*. The following terms, defined in § 165.3 of subpart A, are key to understanding the containment standards in subpart E:

(1) Agricultural pesticide.
(2) Appurtenances.
(3) Container.
(4) Containment pad.
(5) Containment structure.
(6) Dry pesticide.
(7) Establishment.
(8) Facility.
(9) Owner.
(10) Operator.
(11) Pesticide compatible.
(12) Pesticide dispensing area.
(13) Refillable container.
(14) Refilling establishment.
(15) Rinsate.
(16) Secondary containment unit.
(17) Stationary pesticide container.
(18) Transport vehicle.
(19) Washwater.

i. *Changes*. Based on commenters' suggestions and additional research, the definitions of the following terms were added to the final rule to clarify the requirements: facility, pesticide compatible, and rinsate.

ii. *Comments*. A regulatory agency in a State with many bulk containment facilities commented that the definition of a stationary bulk container uses the words ''facility'' and ''establishment,'' but only defines the latter. The State agency advised that those trying to avoid the costly container and containment requirements might choose to view this as a legal loophole, and that the term facility should also be defined.

Several State agencies requested that EPA clarify the phrase ''resistant to pesticide,'' because its meaning could be either compatible or unreactive and could be difficult or burdensome to enforce. Alternatives were proposed, including ''chemically compatible,'' defined as the ability of the containment structure materials to withstand anticipated exposure to stored or transferred materials without losing the ability to provide the required secondary containment of the same or other materials within the containment area.

Several State regulatory agencies commented that their regulations require containment of rinsate, and recommend containment for wash waters, because hazardous waste violations at pesticide facilities are often linked to problems with rinsate/wash waters. One State agency asked if a 300–

gallon spill mixed with 600 gallons of cleanup water can be considered rinsate. Another State agency has an expanded definition of rinsate to include recovered sedimentation, washwater, contaminated precipitation, or other contaminated debris.

iii. *EPA response*. The word facility has been added to the list of definitions. The Agency agrees that the phrase pesticide compatible is clearer than pesticide resistant and has changed the regulation accordingly. For the purpose of this regulation, rinsate is being defined as the liquid (usually water) used to rinse the interior of any equipment or container that has come in direct contact with any pesticide. The Agency agrees that it is a good management practice to place rinsate tanks within containment and is recommending that practice, but does not have information on the risks of storage of such dilute pesticides.

B. Purpose (§ 165.80(a))

1. *Final regulations*. The purpose of the containment standards is to protect people and the environment from exposure to agricultural pesticides from spills and leaks, and to reduce wastes produced during pesticide storage, handling or refilling of pesticide containers.

2. *Changes*. This is the same as the proposed purpose in § 165.140.

C. Who Must Comply (§ 165.80(b))

1. *Final regulations*. You must comply with these regulations if you are the owner or operator of a facility that stores pesticides in a stationary pesticide container or conducts any of the regulated pesticide transferring activities and if you are a retailer, for-hire applicator, or custom blender (as defined in 40 CFR 167.3) of agricultural pesticides.

2. *Changes*. This is the same approach and scope that we proposed in § 165.141. The proposed regulations included only retailers, for-hire applicators, and custom blenders because they are the three categories for which EPA has accumulated the most substantial evidence of soil and groundwater contamination by pesticides. The final rule maintains the same scope. These facilities represent only a subset of the realm of operations where containment requirements might be appropriate. The Agency may consider further containment rulemaking for other elements of the pesticide industry if further information indicates that such requirements are needed. In addition, the final rule revises the regulatory language to clarify that the containment regulations only apply to agricultural pesticides. (See Unit VII.L. for a discussion of custom blending and custom mixing.) Also, a description of ''principal business is retail sale'' — more than 50% of total annual revenue comes from retail operations — was added to the final regulation for clarity.

3. *Comments*. Many commenters (dealer groups, dealers, State regulatory agencies, and a distributor/registrant) responding to both the 1994 proposal and the 2004 reopening of the comment period argued for a level playing field and urged EPA to expand the scope of the containment standards to include manufacturing plants, distributors, farms, and non-agricultural facilities. Commenters argued that there are similar potential risks of environmental contamination at any facility that meets the volume, time or activity criteria, regardless of the location of the facility or the type of pesticide, Many commenters (State regulatory agencies, a dealer, a dealer group, an aerial applicator and an aerial applicator group) stated that there are some farms which store and handle more pesticides than some small retailers, and that the regulations should focus on the activity and/or the quantity stored, not the individual storing it.

Commenters to the 2004 **Federal Register** Notice reopening the comment period stated that there have been changes in pesticide use patterns in the 11 years since the regulations were proposed. They stated that equipment technology developments in the handling and application of bulk agricultural chemicals have advanced dramatically, and that these new technologies coupled with the increase in the number of farms with large acreage have led to end users becoming a dramatic growth sector of purchasers of commercial application equipment. A dealer association stated it had surveyed chemical equipment dealers in Kansas and that 20 to 25 percent of all new large commercial application rigs and 80 percent of all used application equipment is currently purchased by end users, most of whom are farmers. The commenter said that using such equipment requires large quantities of chemicals on site and concluded that on-farm bulk storage is growing.

Another dealer association commented in 2004 that by the end of 2006, 70 percent of all crop protection products, mainly herbicides, will be off-patent, creating a marketing opportunity for non-traditional suppliers and chemical brokers. They noted that end users could become direct crop protection customers without appropriate facilities, resulting in increased environmental incidents. The association also stated that at least 58 percent of U.S. farmland is not farmed by the landowner, countering the belief that farmers are better stewards because they have a vested interest in protecting their farmland from contamination. They commented that retailers are professionals trained in handling hazardous materials compared to end users, who tend to have less knowledge and training in safety, containment, and cleanup procedures. A dealer stated that some farmers have become tool shed dealers who store bulk without containment and repackage for neighboring farmers. This point was reinforced by retailers during a meeting in 2004 following the reopening of the comment period (Ref. 31), where the dealer associations and individual dealers reiterated their submitted written comments and cited a growing problem of cash and carry dealers who repackage product on farms illegally without a license.

Several commenters opposed expanding the scope to include farmers. In 2004, the Farm Bureau and associated grower groups opposed any change in the proposed scope. A registrant group recommended that EPA work jointly with State pesticide regulatory officials and industry to devise a method for obtaining reliable data on the number of farmers storing bulk nationwide. The Association of American Pest Control Officials recommended that EPA not expand the scope to farmers without first researching the number, volumes and other pertinent data regarding on-farm bulk practices, an assessment of the risks of on-farm operations, and an analysis of the costs and benefits of on-farm bulk containment.

Several commenters specifically supported requiring non-agricultural pesticides stored in bulk to be subject to the rule. They state that bulk pesticide storage presents potential hazards regardless of use or activity, and that risk may be even higher due to greater population density compared to rural agricultural settings.

EPA response. Due to the large number of commenters in 1994 and 2004 from all sectors who supported requiring farms to have containment for stationary container pesticide storage, the Agency considered the option of expanding the scope of the rule to include farms and other entities. Although the Agency had solicited data on bulk pesticide storage on farms and at non-agricultural facilities in both the 1994 proposed rule and the 1999 supplemental notice, only anecdotal information was received alleging an

increase of stationary container pesticide storage on farms. (Ref. 27)

The Agency therefore researched the issue of whether pesticide storage on farms is a significant problem. The Agency contacted several commenters to the rule for clarification and was unable to confirm that the use of larger spray equipment relates to increased bulk pesticide storage or only to fertilizer storage and application. In cases where bulk storage of pesticide most likely occurs on large farms, such as with metam-sodium, it is not clear that pesticide remains in the tank for 30 days or more. The Agency asked the USDA to contact its sources in the extension network, and Agency staff contacted regulatory representatives and dealers in several States, particularly those with large areas under field crops. In general, the persons contacted knew of few, if any, farms with bulk pesticide storage, with the definition of bulk as 500 gallon containers or greater.

USDA contacted Colorado, where less than 1 percent of farmers potentially store pesticides in bulk, and where minibulks up to 660 gallons are exempt from the requirement for containment if they are approved by DOT or MACA. USDA also contacted Illinois, Kansas and Nebraska. Illinois has implemented new regulations which require farmers to have secondary containment if they meet the volume criteria, so any farmers with large tanks are taking them out of service. They learned that Kansas has three to six farms with bulk pesticides, and most farmers are using 250 gallon minibulks. Nebraska representatives could not estimate how many farms have bulk pesticide, but the most commonly used containers are 85 to 250 gallon minibulks. The only State with hard data was Indiana, which has 65 farmers with bulk storage (defined as larger than 55 gallons), of which 31 reportedly had tanks larger than 500 gallons.

EPA has no data on the existence of bulk storage in non-agricultural facilities. EPA assumes that at such facilities, pesticides are often stored indoors, where the building itself affords some measure of containment. EPA is aware of some isolated mosquito-control facilities which may store pesticides in large stationary tanks during the treatment period, but does not have any way to estimate the existence of such facilities nationwide.

In short, EPA has not received sufficient evidence of contamination at manufacturing plants, distributors, farms and non-agricultural sites to justify regulating them. In the proposed rule, we outlined the data available to the Agency documenting contamination at agricultural retailers, refilling establishments and commercial applicator sites. At least 30 of the references to the proposed rule were State monitoring studies showing contamination at such sites. Data documenting widespread contamination at other facilities were not submitted, and have not been identified.

The consensus, even from commenters who support expansion of the scope to include farmers, is that on-farm bulk storage is still rare. The Agency does not wish to regulate in anticipation of a potential problem, particularly since it is questionable that such a regulation could be enforced on an equitable basis. We recognize the staff and resource restrictions of State agencies, and do not wish to add to their burden in anticipation of a problem which may or may not occur in the future.

The Agency recognizes that all large, stationary tanks have the potential to leak or burst, and considered requiring all stationary tanks, regardless of location, to conform to the containment standards. However, the Agency also believes that the volume through-put of tanks used for retail sale or commercial application of pesticides is higher than that expected for individual farms, resulting in a higher potential risk associated with their usage. The Agency further believes that an end-user who is not significantly involved in resale of product has less opportunity and motivation to finance the purchase of large tanks and the construction of secondary containment.

EPA added a description of the phrase ''principal business is retail sale'' to the final rule so § 165.180(b)(1) states that refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50% of total annual revenue comes from retail operations) must comply with the containment regulations. EPA's intent of including the phrase principal business in the 1994 proposed rule was to distinguish between refilling establishments whose principal business is retail sale and refilling establishments whose primary function is formulation or manufacturing of pesticides. The description of principal business was added to the final rule to provide clarification on how to make this distinction. In addition, the information we received during the 2004 comment period about some farmers reportedly repackaging pesticides for sale further supported the need to clarify the meaning of principal business is retail sale. For the reasons discussed in this section, EPA decided not to apply the final containment regulations to farmers. We believe that adding the clarification of principal business to the final rule will help identify the retail facilities that we intend to regulate with § 165.180(b)(1). However, EPA wants to clarify that anyone including a farmer - who is repackaging pesticides for sale or distribution must comply with the existing requirements in 40 CFR part 167 to register their establishments and report their production (repackaging) to EPA and must also keep records of pesticide production according to 40 CFR part 169. In addition, such facilities would be regulated as refillers under this final rule and would have to comply with the refiller requirements in subpart D, Standards for Repackaging Pesticide Products into Refillable Containers. These facilities would have to comply with the containment requirements in subpart E if they repackage agricultural pesticides and if more than 50% of their total annual revenue comes from retail operations.

The Agency is willing to amend the regulation to include such sites if a pervasive pattern of contamination or other handling problems appear at other sites in the future. It is recommended that State and local agencies regulate such facilities at the local level as needed.

D. Compliance Dates (§ 165.80(c))

1. *Final regulations*. All containment structures subject to today's rule must comply with all applicable containment regulations for new and existing structures within 3 years of today's date.

2. *Changes*. The proposed rule required new structures to comply with the containment standards beginning 2 years after publication of the final rule. Existing structures would have been required to comply with interim standards for a period of 8 years, beginning 2 years after publication of the final rule, and then existing structures would have to comply with the same standards as new structures. The interim standards were defined as critical to safe containment, and considered readily implemented within 2 years. The interim period was intended to allow existing structures which have design or structural features not amenable to upgrading without major modification to phase in those modifications over time. The final rule has no provision for an interim period; the final rule applies only one set of requirements to existing structures over their life spans. Both new and existing structures must comply with applicable standards beginning 3 years after publication of the final rule.

3. *Comments*. Many commenters had objections or changes to propose on the interim period. Several respondents commented specifically on the length of the interim period. A registrant thought it should be longer and a State regulatory agency said it should be shortened to 5 years and be based on the structure's age and performance. A State regulatory agency said that the nine critical standards were sufficient and that the only distinction between new and existing facilities should be the compliance date. A dealer opposed the interim period because States already have containment standards and would have to learn two new sets of standards above and beyond existing State rule. Several respondents commented on the different possibilities for an interim period discussed in the preamble. A State regulatory agency supported an age-based approach of setting the compliance date on a formula using 20 years minus the existing containment facility's age. Many commenters (dealers, a dealer group and a State regulatory agency group) opposed setting any standards that are more stringent than existing State standards. A principal reason for opposition was that interim requirements would comprise an extra, unnecessary set of requirements to be learned by regulators and regulated parties, particularly in States with containment programs in place. It would also be costly for existing structures to have to retrofit, particularly in States where facilities had already been constructed to conform with State requirements. Several commenters (State regulatory agencies, a dealer, and a grower group) recommended that EPA grandfather existing containment facilities that are already in compliance with State standards. A State regulatory agency group requested EPA to seriously consider accepting small discrepancies in some standards due to differences in existing State rules and legislation. This commenter said that national uniformity in regulation is desirable, although progress toward this goal should not be at the expense of States that have already enacted rules and statutes that vary slightly from the proposed Federal regulations. A dealer group suggested that EPA set the Federal standards as a baseline, which would allow the proactive work of some States to stand. Many dealers recommended that EPA adopt the Iowa standards in lieu of those in the proposal. A dealer said that making States enforce standards different from their own would cause difficulties for enforcing agencies, distributors, retailers and end users, and a State regulatory agency elaborated, stating that States with containment requirements would have to reinitiate their compliance efforts and would lose credibility and trust of the regulated community. A few State regulatory agencies suggested adding a provision that would use the time during the interim period to collect data about the adequacy of State regulations. If the collected information indicated a State's requirements weren't adequate, EPA could justify compliance with the Federal standards.

4. *EPA response*. The interim period was intended to allow substandard facilities sufficient time to retrofit and come into full compliance with the regulations and for owners to recoup the benefits from the depreciation of their capital investment and financially prepare to upgrade their structure. EPA has maintained a dialogue and information exchange with States and the regulated community (facilities and their associations) since the rule was published in 1994. EPA has decided not to finalize the most onerous and contentious standards from the requirements for existing facilities, such as a hydraulic conductivity standard, thereby significantly reducing the effort and expense needed to comply. EPA believes that 33 months between the reference date for new structures (3 months after publication) and the compliance date (36 months after publication) would provide a reasonable period of time for new structures to be planned and built in compliance with the full requirements of subpart E. If an existing structure does not already comply with the standards for existing structures, EPA believes that the remaining modifications can be readily implemented at existing structures within 3 years. The proposed period of 2 years before compliance may not have provided ample time for facilities to meet the requirements, particularly facilities in locales with significant seasonal constraints on construction. In addition, allowing 3 years as a compliance date for both new and existing structures will allow one year for States with their own containment regulations to apply for an equivalency determination, and still avoid confusion by retaining the same compliance date for all facilities. EPA believes that allowing one more year before implementation will not have a significant adverse impact on the environment, particularly given the many State regulations that are already in effect. This is a shorter time frame than the 5–year phase-in period allowed for the refillable container and repackaging regulations, but given that most States with dealerships have already implemented containment regulations, the Agency considers 3 years sufficient time for facilities to comply. The Agency is allowing 5 years for compliance with the refillable container standards because registrants need to phase out existing containers without recalling them prior to the completion of their normal usable life. The transition period helps distribute costs over time and improve regulatory compliance.

The critical standards cited in the preamble of the proposed rule (59 FR 6765, February 11, 1994) for implementation during the interim period have been modified based on comments, additional research, and evaluation of existing State regulations. The modified standards for existing structures are considered crucial to safe containment and comprise the basic standards demonstrated to be effective for existing structures in States with containment regulations. The following table compares standards in the proposed rule to today's final standards for existing structures. New structures are subject to these standards plus additional standards representing further protectiveness.

TABLE 17.—COMPARISON OF STANDARDS FOR PROPOSED AND FINAL RULE

Standard in Proposed Rule for Existing Structures	Standard in Final Rule for Existing Structures	Additional Standard in Final Rule for New Structures
Construction with rigid materials.	Same.	NA
Use of pesticide-resistant materials.	Use of pesticide-compatible materials.	NA

TABLE 17.—COMPARISON OF STANDARDS FOR PROPOSED AND FINAL RULE—Continued

Standard in Proposed Rule for Existing Structures	Standard in Final Rule for Existing Structures	Additional Standard in Final Rule for New Structures
Hydraulic conductivity no greater than 1 x 10^{-6} cm/sec during interim, 1 x 10^{-7} cm/sec after 10 years.	None. Liquid-tight.	NA
Withstand full hydrostatic head.	Same.	NA
Stormwater run-on protection for a 25-year, 24-hour storm.	Sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it.	NA
Protection of appurtenances and containers.	Same.	Appurtenances configured so leaks can be observed.
Seal joints and cracks and repair any visible damage.	Same.	NA
Inventory reconciliation of liquid remaining in tank during interim only.	None.	NA
Pad capacity 1,000 gallons.	Pad capacity 750 gallons.	Sloped to liquid-tight sump.
Liquid stationary containers - unit capacity 100 percent/110 percent indoor/outdoor minimum during interim, 110 percent/125 percent indoor/outdoor after 10 years.	Liquid stationary containers - unit capacity 100 percent indoor/outdoor minimum.	Liquid stationary - outdoor capacity 110 percent minimum.
Anchoring liquid stationary containers.	Anchoring or elevating liquid stationary containers.	NA
Prevent pesticide-containing material from escaping from containment.	Seal appurtenances, discharge outlets and gravity drains through base or wall of containment unit, including sump. Containment pads may drain to a watertight sump with method of removing accumulated liquids, such as a pump, which transfers contents to aboveground container.	Appurtenances must be configured in such a way that spills or leaks are easy to see.
Dry product stationary container - no capacity requirement during interim, 100% after 10 years.	Dry product stationary container protected from wind/rain with 6-inch berm at least 2 feet from container.	NA
Attended transfers; locked valves; cleanup by the end of day of spill; monthly inspection.	Same.	NA

E. Stationary Containers Included (§ 165.81)

1. *Final regulations.* Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the containment regulations. Containers of less than these volume/weight capacities are not required to be protected with a secondary containment unit. The definition of stationary pesticide container includes transport vehicles that are fixed or remain at a facility for at least 30 consecutive days.

A stationary pesticide container is subject to the containment regulations and must have a secondary containment unit unless it satisfies any one of the following conditions:

- The container is empty, which means that it has been cleared of all pesticide that can be removed by customary methods such as draining, pumping, or aspirating (whether or not residues have been removed by washing or rinsing).
- The container holds pesticide rinsates or wash waters and is so labeled.
- The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
- The container is dedicated and labeled for non-pesticide use.

2. *Changes.* This is not the same subset of stationary containers proposed in § 165.142(a) as subject to, or exempt from, the standards. The three differences are that the: (1) Liquid container size subject to the rule is 500 gallons rather than 793 gallons; (2) dry container size subject to the rule is 4,000 pounds rather than 4,409 pounds; and (3) period of time that a container can remain fixed or at a single facility in order to be considered stationary is 30 days, rather than the 14–day period in the proposed rule.

3. *Comments - holding capacity.* Many commenters (State regulatory agencies, dealer groups, and another government agency) urged EPA to reduce the capacity threshold for containers for which secondary containment is required. Specific alternative suggestions included: (1) 300 gallons for liquids or 100 pounds for dry products; (2) 300 gallons for liquids or 500 pounds for dry products; (3) 500 gallons for liquids or 2,000 pounds for dry products. A registrant group commented in 2004 that packaging experts believe plastic containers larger than 330 gallons would not meet DOT

Packing Group III standards, which they cite as further evidence that containers that size and larger need secondary containment. A State agency stated that they are already seeing a shift in container size (below the regulatory cut-off) in order to be exempt from the State's containment regulations. Another State agency suggested that States have geographical differences and that perhaps EPA should allow individual States to mandate storage limits based on their individual situation. A dealer group and a registrant group jointly commented that containers with a liquid capacity of greater than 330 gallons should be protected by containment. There were no commenters who thought the container size of 793 gallons was appropriate or that it should be larger.

4. *EPA response - holding capacity - liquids*. The Agency recognized that the liquid capacity proposed was substantially greater than volume criteria adopted by many States with containment regulations. These States use lower limit ''bulk'' criteria ranging from 55 to 500 gallons to trigger secondary containment requirements for liquid pesticides. The reasoning for the proposed definition (793 gallons) of liquid bulk container was to be consistent with the DOT definitions in distinguishing between intermediate bulk containers and bulk containers. Since the final containment regulations do not use definitions of bulk or intermediate bulk, the DOT definitions are irrelevant here. As discussed in Unit VI.A., EPA is not finalizing the definitions of minibulk and bulk containers in the final rule. The Agency's intent for the secondary containment requirement is to prevent the most catastrophic spills, and the larger the container, the greater the risk of contamination. The Agency believes contamination from failure of a 500–gallon container would be significant, and agrees with commenters that a 330–gallon container is generally considered the largest size container that can be moved by a fork lift and can be considered mobile. The next most common size used in the field is 500 gallons. The Agency agrees with States that those 500 gallon tanks should be required to have secondary containment, and is lowering the size cut off to capture those tanks and harmonize with existing regulations. The Agency has confirmed by personal communication with some State regulators and extension staff (Ref. 28) that there are few, if any, containers between the sizes of 500 and 793 gallons, (the next most common size after 500 gallons is 1,000 gallons) and expects that today's rule will discourage demand for container sizes in that range in an attempt to be exempt from the containment regulations. The Agency confirmed that 500–gallon tanks are common in the field, and recognizes that the regulations may prompt some demand for tanks slightly smaller (e.g., 450 gallons) in order to be exempt from the Federal requirement. There may always be facilities which try to skirt the law in such ways, but the Agency intended the containment regulations to prevent the environmental consequences from the most catastrophic spills. The smaller the tank size, the less contamination will result from leaks or spills. The Agency also reviewed containment regulations in the 19 States which have them, and determined that the size cut-off which triggers the requirement for secondary containment varies from 55 to 550 gallons, with many states selecting 300– or 330–gallon tanks as the cut-off size. The Agency believes that selecting a volume cut off between 55 and 500 gallons would conflict with some State regulations at a cost to both States and facilities, with no measurable benefit to the environment (Ref. 25) and has therefore selected 500 gallons as a realistic, practical and protective size which triggers the need for secondary containment.

5. *EPA response - holding capacity - dry pesticides*. As with liquid pesticides, the Agency's goal in proposing larger weight criteria for dry pesticides, was to target containers that pose the greatest risk of catastrophic consequences in the event of failure. The proposed size criterion for dry pesticide containers was 4,409 pounds (2,000 kilograms). There were many comments on the size criterion for dry pesticide containers in 1994. Those comments objected specifically to the proposed standard for 100 percent containment capacity for such containers based on the physical nature of a dry spill. The Agency has confirmed with the packaging industry (Ref. 29) that dry pesticides are not packaged in containers between the sizes of 4,000 and 4,409 pounds. Therefore, EPA is lowering the size of the container for which containment is required to 4,000 pounds (1,818 kilograms) for simplicity and clarity, since 4,000 is an easier number to remember for compliance and enforcement purposes, and there is no functional difference between 4,000 and 4,409 pounds for refillable dry bulk containers, since neither size exists. In addition, EPA has replaced the requirement for 100 percent containment capacity for dry pesticides with a requirement for a 6–inch berm in the final rule.

6. *Comments - 14–day residence*. Several commenters suggested increasing the time criterion to 30 days to account for factors beyond the control of the facility. One commenter questioned the associated recordkeeping as burdensome and unclear as to what was required. A registrant requested that EPA exempt packaged product in nonrefillable containers from the 14–day time trigger because it would burden small facilities.

7. *EPA response - 14–day residence*. Although most large containers used at commercial agrichemical facilities are stationary, some containers are actually vehicles (such as tank trucks) used for prolonged storage or repeated on-site dispensing of pesticide at one location. In this case, the primary function of the vessels shifts from pesticide transport to pesticide storage or handling, and therefore containment is required. Since monthly inspection is required at such facilities, EPA believes that it would be reasonable to allow a 30–day maximum residence time without containment requirements, since any transport vehicles temporarily stored would have to be inspected by the owner or operator within that period. The recordkeeping required for stationary containers which do not have secondary containment could simply be a signature of the driver and/or facility owner/operator on a paper listing the driver's arrival date. The regulation is not intended to impose burdensome recordkeeping. The regulations will not affect packaged pesticide in small quantities used by small entities, since the quantities required that would trigger containment requirements are 500 gallons liquid or 4,000 pounds dry pesticide.

F. Pesticide Dispensing Areas Included (§ 165.82)

1. *Final regulations*. Dispensing areas are subject to the requirements for a containment pad if one of the following activities is conducted in the dispensing area:

- Emptying, cleaning, and rinsing of refillable containers that hold agricultural pesticides.
- Dispensing of an agricultural pesticide from a stationary pesticide container of a size holding 500 gallons or more of liquid or 4,000 pounds or more of dry pesticide for any purpose.
- Dispensing of an agricultural pesticide from a transport vehicle to fill a refillable container.
- Dispensing of an agricultural pesticide from any other container for

the purpose of refilling a refillable container for sale or distribution.

A dispensing area is exempt from subpart E requirements for a containment pad if it satisfies any of the following conditions:

(1) The only pesticides handled in the pesticide dispensing area are pesticides which would be gaseous if released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled within the pesticide dispensing area are stationary pesticide containers protected by a secondary containment unit that complies with the requirements of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car that is not a stationary pesticide container. However, if a rail car is used as a stationary pesticide container, secondary containment is required.

2. *Changes*. This is the same approach and scope that was proposed in § 165.142(b) for including and exempting pesticide dispensing areas from the requirement for a containment pad. The language in § 165.82(a)(2) has been slightly revised to reflect the lower container sizes, and all of the conditions have been slightly revised to be clearer.

3. *Comments*. As with the scope of facilities subject to the containment requirements above, many commenters responding to both the 1994 proposal and the 2004 Notice (State regulatory agencies, a few dealer groups and a registrant) urged EPA to expand the scope to all permanent areas where the transfer of pesticides from any container occurs, regardless of container size or pesticide type. In particular, they argued for requiring containment pads for mixer/loader activities by farmers or for-hire applicators, citing significant soil and groundwater contamination in agricultural States, and equivalent risk whenever large quantities of pesticides are handled. They noted the possibility that farmers are less well-trained in pesticide management than commercial dealers. State agencies supported including farmer mixer/loader pads in order to strengthen their own regulations.

Arguments by State regulatory agencies, user groups, a registrant, and a registrant group against including farmers in the scope cited the difficulty of monitoring numerous individual farms and lower quantities of pesticides used. Two user groups opposed including farmers because the costs would be significant to farmers and could not be passed on; the costs of monitoring the large number of farm sites would be burdensome; and farm sites generally handle less material, which should result in fewer spills.

4. *EPA response*. As discussed above in Unit VIII.C., *Who Must Comply*, EPA focused on commercial agrichemical facilities because these have the clearest pattern of soil and ground water contamination by pesticides. EPA did not include farms because farms conduct operations on an occasional basis and would not have the same environmental impacts as refilling establishments. Containment on a farm would also be expensive and require year-round maintenance but only be needed on a seasonal basis. EPA does not have a good estimate of the number of farms with stationary bulk storage, nor evidence that significant contamination is occurring at farm sites. Although it follows logically that any area where pesticides are transferred between containers and application equipment may become contaminated, the quantities transferred at dealer and commercial sites for sale to multiple customers are expected to far exceed quantities transferred at individual farms.

EPA noted that the language in § 165.82(a)(4) did not fit the plain-English standard for simplicity and revised it to clarify that the activity of refilling refillable containers for sale or distribution, even if the source container is smaller than the size requiring secondary containment, requires a secondary containment pad. For example, refilling a 15–gallon minibulk from a 400–gallon stationary tank would still require a containment pad if the product was intended to be sold or distributed.

G. Definition of New and Existing Structures (§ 165.83)

1. *Final regulations*. A new containment structure is one whose installation begins more than 3 months after the final rule is published. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations for physical construction of the containment structure. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

An existing containment structure is one whose installation began on or before the date 3 months after the final rule is published.

2. *Changes*. This is identical to the definitions of new and existing containment structures proposed in § 165.144. However, the general structure of the final rule is different from the proposal, as explained in more detail in Unit VIII.K. The proposed rule would have required existing structures to comply with interim standards for a period of 8 years, beginning 2 years after publication of the final rule, and then existing structures would have had to comply with the same standards as new structures. Instead, the final rule establishes critical design standards for both new and existing structures, and several additional standards for new structures. In other words, certain standards in the final rule apply to all existing structures for their lifetimes. Similar but slightly different standards apply to all new containment structures. As noted earlier, these standards would not apply in States that show that their regulations afford environmental protection at least equivalent to that provided by EPA's regulations.

Also, EPA reorganized the regulatory text so all the design and capacity standards for new structures are grouped together in § 165.85. (See Unit VIII.H.) All the design and capacity standards for existing structures are grouped together in § 165.87. (See Unit VIII.I.) The regulations that follow these two groupings of standards, including but not limited to operational, inspection, maintenance and recordkeeping requirements, apply to both new and existing structures. EPA believes this format is clearer and should facilitate compliance compared to the structure of the proposed rule, which intermingled requirements for the interim period and for new structures.

H. Design and Capacity Requirements for All New Structures (§ 165.85)

1. *Construction materials for new containment structures (§ 165.85(a))*—i. *Final regulations*. New containment structures must be made of steel, reinforced concrete or other rigid material which will withstand the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The construction material must not be natural earthen material, unfired clay, or asphalt, and must be compatible with the stored pesticide.

ii. *Changes*. The proposed rule stated that the construction material had to be

resistant to pesticide. The final rule states that the material must be compatible with the pesticide. The proposed rule also had the following additional requirement for new structures, which is not being finalized in the final rule:

Each new containment structure must have a hydraulic conductivity less than or equal to 1 x 10^{-7} centimeters per second. During the interim period, each existing structure must have a hydraulic conductivity standard less than or equal to 1 x 10^{-6} centimeters per second.

iii. *Comments - rigid structures.* A few State regulatory agencies supported requiring rigid structures. One recommended allowing flexible synthetic liners in the base. A university and a registrant supported the use of steel structures. A few State regulatory agencies and a containment materials supplier supported portable rigid or non-rigid structures.

iv. *EPA response - rigid structures.* EPA does not believe that flexible, portable, or non-rigid structures can adequately ensure the permanent and continuous liquid-tight containment of large quantities of agricultural pesticides or of areas where pesticides are transferred and handled regularly. Years of State experience with secondary containment has shown that structures of concrete, steel or other rigid material are effective in containing spills and leaks. Furthermore, as stated in the proposed rule, key technical guidance documents recommend that rigid materials, especially reinforced concrete, be used for structural support in pesticide containment facilities. Industry guidance (Ref. 11) indicates that water-tight concrete can be achieved with nonporous aggregate, high-quality cement paste, proper curing, etc., and that maintenance plays an important role in keeping the structure impermeable to liquids. Although flexible, portable containment structures may be appropriate in certain other situations, EPA believes that durable, rigid materials should be required for stationary pesticide containment at facilities covered in today's final rule.

v. *Comments - hydraulic conductivity.* Several State regulatory agencies supported the hydraulic conductivity standard as proposed. Many commenters (including State regulatory agencies, another agency, registrants, a registrant group, dealer groups, and a dealer) commented that a hydraulic conductivity standard would be difficult to implement, generally citing a lack of methods to verify compliance with such a standard. Some respondents (dealers, State regulatory agencies, registrants and a registrant group) commented that there are no on-site, non-destructive tests to verify hydraulic conductivity. Respondents from a variety of commenter categories opposed the standard as too restrictive, unnecessary, unachievable, and too costly. Some commenters (registrants, a registrant group, and State regulatory agencies) pointed out that RCRA-mandated wood preservative drip pads serve as primary containment, whereas the proposed regulations apply to secondary containment, arguing that the same standard should not apply in both cases. A few State regulatory agencies expressed concern that construction modifications of existing structures to comply with the capacity and hydraulic conductivity standards may not be technically feasible and could penalize proactive States. A few State regulatory agencies and a dealer group commented that there is no evidence of pesticide moving through concrete slabs or unsatisfactory performance by existing concrete structures, and one commenter observed that most releases from secondary containment are through unsealed cracks and installed drains.

Respondents commented on the methods needed to achieve a hydraulic conductivity standard, such as use of coatings, sealants, and liners. A State regulatory agency supported the use of sealants and coatings and a few dealer groups acknowledged that coatings on concrete would extend the useful life of the structure and make it less permeable. Many commenters expressed concerns about the use of coatings and sealants on containment structures, for reasons such as: coatings can cover cracks and problems that would not be visible (dealer, dealer association and a State regulatory agency); abrasion from traffic (State regulatory agency) and deterioration of sealants due to ultraviolet light (registrant group and several registrants) could prevent a structure from maintaining compliance; and high cost of maintenance and replacement. Some commenters (dealer groups, State regulatory agencies) suggested qualitative alternative ways to implement an impermeability standard: liquid-tight with cracks, seams and joints sealed; spill retention; leakproof, coupled with permit and other requirements; leakproof and constructed with materials resistant to pesticides. A State regulatory agency observed that most releases from secondary containment are through unsealed cracks or installed drains.

vi. *Comments - hydrostatic head.* A few State regulatory agencies argued that a requirement for construction to withstand full hydrostatic head would require dike walls to be unreasonably thick in order to withstand a very rare but not impossible tidal wave impact of a large tank rupture. A dealer group urged EPA to replace the standard with the following language from the Association of American Pest Control Officials (AAPCO) model rule: ''Secondary containment shall be constructed of sufficient thickness, density, and composition so as to contain any discharged material...''

vii. *EPA response - hydraulic conductivity and hydrostatic head.* Based on the comments and additional research, EPA agrees that the proposed hydraulic conductivity requirements would be unnecessarily burdensome, and that rigid walls of chemically compatible material have been proven effective in controlling accidental spills. The 1 x 10^{-7} cm/sec standard was based on the hydraulic conductivity requirement found in current RCRA requirements for wood preservative drip pads in subpart W of 40 CFR parts 264 and 265. EPA agrees that secondary containment structures are intended to catch and briefly retain spills and releases, not store them indefinitely, and recognizes the difficulty in verifying hydraulic conductivity. The Agency has therefore decided not to finalize the standards for hydraulic conductivity. The Agency disagrees that the requirement to withstand full hydrostatic head is unreasonable. It is a requirement in many State containment regulations. The final rule was modified slightly to delete the phrase (dynamic or static) because that phrase adds more confusion than clarity. However, EPA believes that the standard of being ''capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation...'' requires the secondary containment unit to be able to contain a catastrophic spill. EPA believes that using industry construction guidance on concrete quality and reinforcement bars will ensure that containment structure's integrity in the case of a catastrophic spill of a large tank.

2. *General design requirements for all new containment structures (§ 165.85(b))*—i. *Final regulations.* These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets, or gravity drains must not be configured

through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit. The volume of the largest container determines the capacity requirement of the unit.

ii. *Changes*. Requirements in § 165.85(b)(1) and (2) are identical to those proposed in § 165.146(b). Paragraph (4) is added to clarify a statement in the proposed rule under § 165.152. The requirement in § 165.85(b)(3) has been changed. In the proposed rule, the requirement was to prevent storm water run-on from seeping into or flowing onto it from adjacent land or structures during a 25–year, 24–hour rainfall event.

iii. *Comments - storm protection*. Several respondents (a registrant and two State regulatory agencies) supported the stormwater control provision. Several others (a dealer group and two State regulatory agencies) suggested alternative language, such as diverts water, no discharge, or constructed to prevent any surface water from moving onto or across the structure. Several commenters (a dealer group, a registrant group and two State regulatory agencies) noted that it would be difficult to comply because (1) a watershed runoff study would be needed; (2) the 25–year, 24–hour criterion would be difficult to determine at different sites; (3) rainfall varies substantially from year to year. A few State regulatory agencies commented that the stormwater control standard doesn't adequately address precipitation and stated that the containment capacity requirements must be based on rainfall volume, such as a 25–year, 24–hour rainfall event. A few dealers recommended the example of the Illinois pesticide containment rule, which requires that stormwater be diverted from containment structures.

iv. *EPA response - storm protection*. A 25–year, 24–hour storm is commonly used as a benchmark for the capacity of secondary containment structures, and is recommended in the National Pollution Discharge Elimination System (NPDES) Best Management Practices Guidance Document.(Ref. 74) EPA believes that, just as a 25–year, 24–hour storm is a reasonable criterion for stormwater retention (prevention of run-off), it would also serve as sufficient freeboard and a reasonable standard for prevention of stormwater seepage and run-on from adjacent lands or structures. Such a standard allows flexibility for varying climatic conditions. It is also the standard required for certain tank systems storing or treating hazardous waste. See, for example, 40 CFR 265.1(e)(1)(ii) and (e)(2)(ii). However, the Agency has decided not to require a 25–year, 24–hour storm criterion here in order to be consistent with the final EPA rule on Oil Pollution Prevention and Response: Non-Transportation-Related Onshore and Offshore Facilities (67 FR 47042, Ref. 47). The Oil Prevention Rule states that while a 25–year, 24–hour storm event standard is appropriate for most facilities and protective of the environment, it may be difficult and expensive for some facilities to secure recent information concerning such storm events at this time. Recent data do not exist for all areas of the United States, or may be costly for small operators to secure. Should recent and inexpensive information concerning a 25–year, 24–hour storm event become easily accessible for every part of the United States, we will reconsider proposing such a standard. Instead, at this time, we are requiring, as a few commenters suggested, that the containment structure have sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures. Most States with containment regulations do not use a 25–year, 24–hour storm criterion, and have indicated that, in their experience, requiring a numerical capacity (110 percent) or sufficient freeboard to accommodate local precipitation conditions provides adequate protection.

3. *Capacity requirements for new stationary liquid pesticide containment units and new containment pads in pesticide dispensing areas (§ 165.85(c))*—i. *Capacity for new stationary liquid pesticide containment units—Final regulations*. These are the capacity requirements:

- New secondary containment units for stationary liquid containers, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary container plus the volume displaced by other containers and appurtenances within the unit.
- New secondary containment units for stationary liquid containers, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary container plus the volume displaced by other containers and appurtenances within the unit.

a. *Changes*. The proposed rule required higher capacity of 110 percent for units protected from precipitation and 125 percent for units exposed to precipitation.

b. *Comments*. Several State regulatory agencies supported the proposed standards, stating that adjusting the standard to reflect variable rainfall would add confusion. Many commenters (dealers, dealer groups and a State regulatory agency) supported instead the standard that EPA had proposed for the interim period for existing structures, namely 100 percent/110 percent capacity (indoor/outdoor). Reasons cited included: (1) Many dikes that meet this standard have been in place for years with no overflows; (2) EPA provides little or no justification that capacity in excess of 100 percent of the volume of the largest container is necessary; (3) modifying a dike to add additional capacity would be expensive; and (4) many Midwestern States have adopted the 100 percent/110 percent standard from the AAPCO model rule.

c. *EPA response*. EPA agrees with comments based on practical field experience and has reduced the volumes needed to 100 percent and 110 percent, respectively for indoor and outdoor units. The 110 percent criterion for storage areas without roofing adds an extra margin of safety for retention of precipitation. An extra 10% is not needed indoors as long as the displaced volume or other containers is added. However, the Agency recognizes that, for enforcement purposes, it may be difficult to reconcile capacity with climatic conditions. For example, in the case of a 2–inch rain, capacity at a new outdoor liquid pesticide facility could be temporarily reduced to less than 110 percent of the largest tank if that tank were full, and the facility would no longer be in compliance. To avoid disputed calculations of capacity, the Agency recommends that facilities make allowances for additional capacity beyond the 110 percent required, such as 125 percent, to build in a margin of error.

ii. *Capacity for new containment pads in pesticide dispensing areas*—i. *Final regulations*. These are the capacity requirements:

- New containment pads in pesticide dispensing areas subject to the regulations in this subpart which have a pesticide container or pesticide-holding equipment with a volume of

750 gallons or greater must have a holding capacity of at least 750 gallons.

• New containment pads in pesticide dispensing areas subject to the regulations in this subpart which do NOT have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

ii. *Changes*. The proposal required that pads have a minimum holding capacity of 1,000 gallons, or, if no equipment used on the pad exceeded 1,000 gallons, at least 100% of the capacity of the largest container or equipment used on the pad. Today's rule reduces the minimum pad holding capacity to 750 gallons in the most likely scenario where large (greater than 750 gallon) containers or pesticide-holding equipment will be on the pad. Additionally, the capacity requirement refers to gravity capacity, as defined in oral comments by Wisconsin state regulatory officials (Ref. 46) in 2003. The gravity capacity of a sump or containment structure is the capacity before any method of removing or transferring the contained liquid by pump or other means is employed. For example, a facility is prohibited from claiming a capacity of 750 gallons if the sump or containment structure has an actual capacity of less than 750 gallons but is serviced by a pump which transfers accumulated liquid into holding tanks such that the effective capacity would be 750 gallons. Since achieving 750–gallon storage capacity under those circumstances relies on the proper and dependable functioning of a pump as well as a continual supply of fuel or electrical current to run the pump, this is not an acceptable way of achieving the required capacity because if these conditions are not met, a spill is more likely.

iii. *Comments*. Indiana state regulators argued that the state had spent three difficult years and had invested considerable resources in implementing its regulations, which require a pad capacity of 750 gallons. They stated that to get the cooperation and voluntary compliance of the impacted industries, they had to suggest to those making the investment that there would be no significant changes in requirements. To reverse themselves now, they stated, would jeopardize their credibility. Illinois, a state with over 1,000 bulk facilities, suggested that the pad capacity requirement should take into account the additional volume of a 6–inch rainfall (the volume expected from a 24–year, 25–hour storm). A few State regulatory agencies did not object to EPA's proposed pad capacity requirements, although their State regulations are slightly more stringent. A State regulatory agency noted that the difference between 750 gallon and 1,000 gallon capacity would do little to accommodate a spill from a 3,000 gallon delivery truck.

iv. *EPA response*. The Agency did not have a technical basis for choosing the 1,000 gallon capacity in the proposed rule, but based it on a review of proposed and actual State containment regulations. Based on comments and subsequent research, we determined that the criteria of 750 gallons used in some States has proven adequate. We believe that in most actual situations of spillage on a pad, 750 gallons would be adequate, especially since product transfers must be attended under the requirements of this subpart. In a catastrophic event, neither 750 gallons nor 1,000 gallons would be sufficient to contain a large spill, and the added cost of increasing capacity to 1,000 from 750 would exceed any marginal environmental benefit. The Agency also agrees with Wisconsin State regulators that a 750–gallon pad may be as small as 12 feet square, and that a top-loaded tank may risk splashing during the refilling process. Consequently, while we are lowering the gallon capacity to 750 gallons of gravity capacity, we are recommending that the pad have a minimum size of 15 feet by 15 feet (or 225 square feet). Additionally, for new operational pads unprotected from precipitation, we recommend constructing a pad with a gravity capacity of 1,000 gallons.

4. *Specific requirements for new stationary liquid pesticide containment units (§ 165.85(d))*—i. *Final regulations*. In addition to meeting the requirements of § 165.85(a), (b) and (c), each new stationary liquid container protected by a secondary containment unit must either be anchored or elevated to prevent flotation in the event that the secondary containment unit fills with liquid.

ii. *Changes*. The proposed rule required that the containment unit had to allow for observation of leakage from the base of any enclosed stationary pesticide container. Thus, a flat-bottomed container would have had to be elevated so that leakage would be visible. In addition, the proposed rule required that flotation of the container, in the event the containment filled with liquid, be prevented by either elevating or anchoring the container. The final rule requires either elevation or anchoring in response to comments that argued that elevating containers is not necessary to detect leaks and may engender risks from inadequate support devices.

5. *Specific requirements for new containment pads in pesticide dispensing areas (§ 165.85(e))*—i. *Final regulations*. In addition to meeting the requirements for § 165.85(a), (b) and (c), each new containment pad in a pesticide dispensing area must:

• Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

• Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

• Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

• Have its surface sloped toward a liquid-tight sump where liquids can be collected for removal.

ii. *Changes*. These requirements are identical to those in § 165.152(b) of the proposed rule. The proposed rule noted that tanker trucks are considerably larger than containers or equipment normally used on the containment pad, but that such deliveries are not expected to be frequent, and did not propose that the pad had to be large enough to accommodate the entire vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides, since the primary function of such a vehicle would be pesticide storage rather than transport. EPA reasons that the full containment requirements imposed on fixed containers would also apply to non-fixed containers that remain at an applicable facility for at least 30 days.

6. *Specific Requirements for new stationary dry pesticide containment units (§ 165.85(f))*—i. *Final regulations*. In addition to the requirements in § 165.85(a) and (b), each new stationary dry pesticide containment must meet the following requirements:

• The stationary dry pesticide containers within the containment unit

must be protected from wind and precipitation.

• Stationary dry pesticide containers must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

• The stationary dry pesticide container storage area must be enclosed by a curb that is a minimum of a 6 inches high and that extends at least 2 feet beyond the perimeter of the container.

ii. *Changes*. The proposal required that dry bulk secondary containment units have a capacity of 100 percent of the largest container plus the volume displaced by other containers and appurtenances within the containment. The Agency was concerned that dry pesticide could still mix with rainwater, fire suppression water, etc., to reach and contaminate groundwater and soil. The proposed rule did not have any provisions for protection from wind and precipitation, nor for elevated storage to prevent water accumulation under the pesticide, but did request comment on such options. The final rule does not have a numerical capacity requirement.

iii. *Comments*. Several commenters (State regulatory agencies and a dealer group) opposed the 100 percent proposed capacity as excessive, since dry materials do not spread and disperse like liquid materials. Several State regulatory agencies suggested that dry bulk secondary containment should be protected by roofing or similar cover from wind and precipitation, which would make 100 percent capacity unnecessary. One State noted that it already has dry bulk containment regulations which require that the containers be raised off the floor, and several States require at least a 6–inch curb around an area extending at least 2 feet beyond the perimeter of the bulk tank. A registrant stated that the typical practice is to store dry pesticides under a roof. Some commenters offered alternative strategies, generally based on existing State regulations, including a curb 6 inches high at least 2 to 3 feet beyond the perimeter.

iv. *EPA response*. EPA has reviewed State bulk storage regulations and best management practices for storing dry bulk pesticides and has noted that States require storage under a roof and, if outdoors, on pallets or raised concrete platforms, and that the most common requirement for dry bulk is a 6–inch berm at least 2 to 3 feet from the container. (Ref. 34) Given that the States with the most experience with dry bulk storage have the most practical experience with dry spill containment, EPA agrees with the common sense arguments of commenters regarding protection from precipitation, elevation, and the flow properties of dry material, and has changed the dry containment requirement accordingly. In regard to roofing, EPA believes that the advantages of keeping rainwater out of containment will outweigh the cost of installing a roof. However, in arid regions, a roof may not be cost-effective, and if EPA provided roofing specifications, it is possible that they would conflict with local construction requirements and building codes. Therefore, the final rule requires protection from wind and precipitation rather than specifically requiring a roof to allow some flexibility. The Agency agrees that 100 percent capacity, given that dry materials spread differently that liquids, would be excessive. We also recognize that significant quantities of dust may be generated during the refilling process, where the dry product is a dust, granules or flowable formulation. While today's rule makes no requirement for dust minimization or collection, we recommend that every effort be made to contain the dust generated, both for the respiratory protection of the persons attending the transfer and for the preservation of air and soil quality in the vicinity of the facility.

I. Design and Capacity Requirements for Existing Structures (§ 165.87)

1. *Construction Materials for all existing containment structures (§ 165.87(a))*—i. *Final regulations*. Existing containment structures must be made of steel, reinforced concrete or other rigid material which will withstand the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The construction material must not be natural earthen material, unfired clay, or asphalt, and must be compatible with the stored pesticide.

ii. *Changes*. The requirements in § 165.87(a) for existing structures are identical to the requirements for construction materials for new containment structures in § 165.85(a). The proposed rule stated that the construction material had to be resistant to pesticide, while the final rule requires the material to be compatible with the stored pesticides. In addition, the following proposed standard for existing structures is not being finalized:

During the interim period, each existing structure must have a hydraulic conductivity standard less than or equal to 1 x 10^{-6} centimeters per second. After the interim period, each new containment structure must meet the hydraulic conductivity standard for new structures of less than or equal to 1 x 10^{-7} centimeters per second.

iii. *Comments*. General comments and EPA's response on construction material are discussed in Unit VIII.H.1. EPA believes that existing structures should easily meet these requirements based on the information we have gathered. We are not aware of secondary containment units being constructed of any of the prohibited materials. We are aware of the existence of some asphalt containment pads, but we believe these are mostly used by aerial applicators that probably are not subject to these regulations because they do not have large stationary pesticide containers.

2. *General design requirements for all existing containment structures (§ 165.87(b))*—i. *Final regulations*. These are the general design requirements for existing containment structures:

(1) Protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Seal (permanently close) all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) Construct the containment structure with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

ii. *Changes*. Requirements are similar to those proposed in proposed § 165.146, except that (4) is added to clarify a statement in the proposed rule under § 165.152. The requirement in paragraph (2) was proposed for existing structures 10 years after the publication date of the rule (at the expiration of an interim period that was proposed for existing units. See discussion on compliance dates in Unit VIII.D. above.) In addition, at the end of the interim period, existing structures had to meet the requirements for new structures, including configuring appurtenances in such a way that leaks and spills could be readily observed. The final rule requires facilities with existing structures to seal appurtenances, discharge outlets and gravity drains at the base and walls. EPA believes it is

necessary for existing structures to comply with this requirement because some studies cited in the proposed rule estimated that 30 percent of the reported pesticide spill incidents resulted from appurtenance failure, and many releases were reported from discharge outlets and gravity drains. Requirements in paragraph (3) have also been changed. In the proposed rule, the requirement was to prevent storm water run-on from seeping into or flowing onto it from adjacent land or structures during a 25–year, 24–hour rainfall event. The requirement has been changed to ensuring sufficient freeboard to prevent run-on. The comments on general design requirements and EPA's responses are discussed in Unit VIII.H.2.

3. *Capacity requirements for existing stationary liquid pesticide containment units and existing containment pads in pesticide dispensing areas (§ 165.87(c))*—i. *Capacity for existing stationary liquid pesticide containment units*—a. *Final regulations*. Each existing stationary liquid pesticide containment unit must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

b. *Changes*. The proposed rule required a capacity of 100 percent for existing liquid bulk containment units protected from precipitation and 110 percent for units exposed to precipitation for the 8–year interim compliance period. At the expiration of the interim period, the capacity requirements would be the same as those proposed for new structures, that is, 110 percent for units protected from precipitation and 125 percent for outdoor, unprotected units. The approach of having an interim period is not being finalized. The final rule requires existing liquid pesticide containment units to have capacities of 100 percent whether protected from precipitation or not.

c. *Comments*. The comments on capacity requirements for new and existing stationary liquid pesticide containment units are discussed in the comment section under Unit VIII.H.3.a. In addition, many commenters noted that changes in capacity requirements for existing structures would require major modification, re-certification by an engineer and significant costs. A few State regulatory agencies noted that little if any additional benefit will be afforded by requiring extra capacity, and that they had never experienced a breach of containment structure based on existing laws.

d. *EPA response*. As discussed in Unit VIII.H.3., EPA agrees, based on field experience, that the proposed capacity requirements were excessive and has reduced the capacity requirements in the final rule. In addition, the Agency is not requiring a numerical standard of 110 percent for existing unprotected units (in contrast to the requirements for new unprotected units) in order to harmonize with existing State containment regulations which have chosen to require unprotected units to have 100 percent capacity plus either a 6–inch freeboard or capacity to withstand a 25–year/24–hour storm. The Agency understands that some existing units would need to retrofit to meet a 110 percent capacity requirement, and that the burden of adding the extra capacity appears to outweigh any benefit of the extra capacity. The Agency recognizes that States may have existing structures in low-precipitation areas, and is allowing them the flexibility to define capacity requirements above 100 percent according to local conditions.

ii. *Capacity for Existing containment pads in pesticide dispensing areas*— a. *Final regulations*. Existing containment pads with pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons. Pads which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

b. *Changes*. The proposal required that existing pads have a minimum holding capacity of 1,000 gallons or 100 percent of the capacity of the largest container or equipment used on the pad. The final rule reduces the minimum pad holding capacity to 750 gallons in the most likely scenario where large (greater than 750 gallon) containers or pesticide-holding equipment will be on the pad. Comments and EPA responses apply as discussed in Unit VIII.H.3. for new containment pads.

4. *Specific design requirements for existing stationary liquid pesticide containment units (§ 165.87(d))*—i. *Final regulations*. In addition to the requirements in § 165.87(a), (b) and (c), each existing stationary liquid pesticide container protected by a secondary containment unit must be adequately elevated or anchored to prevent flotation in the event that the secondary containment unit fills with liquid.

ii. *Changes*. This requirement is identical to that proposed in § 165.148(b)(2). In the proposed rule, existing secondary containment units would have had to allow for the observation of leakage from the base of all stationary bulk containers after the interim period expired. As explained in Unit VIII.H.4., the standard for observing leakage from the base of stationary bulk containers is not being finalized.

5. *Specific design requirements for existing containment pads in pesticide dispensing areas (§ 165.87(e))*—i. *Final regulations*. In addition to meeting the requirements for § 165.87(a), (b) and (c), each existing containment pad in a pesticide dispensing area must:

- Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.
- Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.
- Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

ii. *Changes*. The requirements in the final rule are identical to those in the proposal. The proposed rule noted that tanker trucks are considerably larger than containers or equipment normally used on the containment pad, but that such deliveries are not expected to be frequent, and did not propose that the pad had to be large enough to accommodate the entire vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides, since the primary function of such a vehicle would be pesticide storage rather than transport. In addition, the proposed rule required that, at the expiration of the interim period, each existing containment pad would be sloped to a liquid-tight sump where liquids can be collected for removal. The interim period has been deleted, and the requirement for sloped pads is not being finalized for existing containment pads. The requirement for sloped pads applies only to new containment pads in the final rule.

6. *Specific design requirements for existing stationary dry pesticide*

containment units (§ 165.87(f))—i. *Final regulations*. In addition to the requirements in § 165.87(a) and (b), each existing dry stationary pesticide containment must meet the following requirements:

• The containment must protect stationary dry pesticide containers within it from wind and precipitation.

• Dry stationary pesticide containers must be stored on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

• The container storage area must be enclosed by a minimum of a 6–inch high curb that extends at least 2 feet beyond the perimeter of the container.

ii. *Changes*. The proposal required that dry bulk secondary containment units have a capacity of 100 percent of the largest container plus the volume displaced by other containers and appurtenances within the containment. The proposed rule did not have any provisions for protection from wind and precipitation, nor for elevated storage to prevent water accumulation under the pesticide. The final rule does not have a numerical capacity requirement. All modifications must now be made within 3 years instead of the 10 years in the proposed rule, but the requirements are modified and simplified such that the Agency believes they are feasible within the 3–year period. See Unit VIII.H.6. for a summary of the significant comments and EPA's responses.

J. Operational, Inspection and Maintenance Requirements (§ 165.90)

1. *Operating procedures for all new and existing pesticide containment structures (§ 165.90(a))*—i. *Final regulations*. An owner or operator of a new or existing pesticide containment structure must:

• Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

• Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and ground water) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of each day on which pesticides have been spilled or leaked.

• Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

• Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

• Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked whenever the facility is unattended.

ii. *Changes*. These requirements are substantially the same as those proposed in § 165.146(c). The order of the standards and several minor wording modifications were made to improve the clarity of the requirements.

2. *Inspection and maintenance of all new and existing pesticide containment structures (§ 165.90(b))*—i. *Final regulations*. The owner or operator of each pesticide containment structure must:

• Inspect each stationary pesticide container and its appurtenances at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

• Immediately repair any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed.

• Not store any pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made. Prompt removal of pesticides, including emptying of stationary containers, in order to effect repairs or recovery of spilled material is acceptable.

ii. *Changes*. These inspection and maintenance requirements are substantially the same as those proposed in § 165.146(d). A few minor modifications were made to improve the clarity of the language. In addition, several changes were made to be consistent with other changes in the regulations. In particular, EPA decided not to finalize the hydraulic conductivity standard, so the corresponding inspection and maintenance requirement is also not being finalized. Also, the final rule specifies that the containment structure be compatible with the pesticides, rather than resistant as proposed. The corresponding inspection and maintenance standard was changed accordingly.

K. Combined Pads and Units (§ 165.92)

1. *Final Regulation*. Facility owners and operators may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for pads and units in §§ 165.85(a) and (b), 165.87(a) and (b) and 165.190, and as applicable, §§ 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

2. *Changes*. This provision for allowing integrated containment systems is substantially the same as that proposed in § 165.153.

L. Recordkeeping (§ 165.95)

1. *Final regulations*. Facility owners and operators subject to the requirements of this rule must maintain the following records, and must furnish these records for inspection and copying upon request by any employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

• Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

• name of the person conducting the inspection or maintenance;

• date the inspection or maintenance was conducted;

• conditions noted;

• specific maintenance performed.

• Records for any non-stationary container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting today's regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

• Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

2. *Changes*. The proposed rule required additional recordkeeping of inventory reconciliation for existing bulk liquid containers that were not elevated during the interim period. The proposed rule also required owners and operators to maintain records of written confirmation of hydraulic conductivity and statements of resistance to pesticide for as long as the structure was in use,

and for 3 years thereafter. These requirements are not being finalized, so the corresponding recordkeeping requirements are also not being finalized. Since the standards differ depending on whether the facility was considered existing or new at the time of this final rule, a new recordkeeping requirement has been added: each facility must maintain records of the construction date of the containment structure for as long as the pesticide containment structure is in use, and for 3 years afterwards.

M. States With Existing Containment Programs (§ 165.97)

1. *Final regulations*. States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of today's Federal regulations under certain conditions.

A State that wishes to continue implementing the State's containment regulations must request the authority to do so by August 16, 2007 in the following manner:

- The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to that expected to be provided by the Federal regulations in 40 CFR subpart E.
- The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency (SLA).

EPA's Office of Pesticide Programs (OPP), in collaboration with the EPA Regions and other EPA offices, will review the State's correspondence and determine whether the State's program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. OPP will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

Any State that has received authorization to continue implementing its State containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State containment regulations. EPA will inform the State by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State containment regulations will remain in effect, unless and until EPA sends the State a letter making this determination.

2. *Changes*. The proposed rule made no provision for States to implement their own containment regulations in lieu of EPA's rule.

3. *Comments*. Many commenters to the 1994 proposed rule (dealers, a dealer group, a State regulatory agency group and individual State regulatory agencies) opposed setting any Federal standards that are more stringent than existing State requirements. They requested that EPA accept current State rules and statutes where the discrepancies are not significant from Federal standards. The State regulatory agency group requested EPA to seriously consider accepting small discrepancies in some standards due to differences in existing State legislation, and said that while national uniformity in regulation is desirable, it should not be at the expense of States that have already enacted rules that vary slightly from the Federal rule. A dealer group suggested that EPA set the Federal standards as a baseline, which would allow the proactive work of some States to stand and would preclude dealers from incurring the same economic burdens twice (i.e., to build and then rebuild containment structures).

Several commenters (State regulatory agencies, a dealer, and a grower group) recommended that EPA grandfather existing containment facilities that are in compliance with State standards or that are comparable in function, design, and construction. Similarly, a grower group said that State rules for bulk containment should take precedence over this proposal. A State regulatory agency elaborated on these difficulties, stating that States with containment requirements would have to reinitiate their compliance efforts and would lose credibility and the trust of the regulated industry, with whom they worked closely to develop and implement the State rules.

A dealer commented that forcing States to enforce different rules from their own would cause difficulties for the enforcing agency, distributors, retailers and end users who will have to learn an extra set of requirements. A few State regulatory agencies commented that millions of dollars have been spent by industry on compliance with State regulations, some of which have been in place since 1985, and that containment structures have not had failures when built to State standards. They recommended that the final rule be crafted to harmonize with State or other environmental statutes, and that it should not penalize States which have spent years building effective relationships with the regulated community for safe pesticide handling.

Similarly, many commenters to the 2004 Notice reiterated these arguments and said States have taken a pro-active role and have enacted pesticide containment regulations which have proven to be protective of the environment and which EPA should accept by a grandfather clause. A few commenters in 2004 pointed out that in some States it is not the State lead pesticide regulatory agency (usually, department of agriculture) that has authority for regulating the storage of hazardous materials/pesticides, but instead the State environmental protection or pollution control agency. They argued that situations where one State agency does the comprehensive pesticide regulatory work but another is charged with the containment regulations begs questions about responsibilities for and resources necessary to accomplish expected compliance monitoring and enforcement response.

4. *EPA response*. The Agency agrees that Federal regulations should reinforce, rather than undermine or conflict with the efforts of proactive States. While the Agency believes in the need for national standards, EPA does not want to burden proactive States and facilities in those States with additional expenditures to revise their regulatory implementation system if the differences between their containment regulations and today's rule are minimal, and especially where State standards are more stringent than Federal standards. EPA has evaluated the pesticide containment regulations in those States that have promulgated them, and believes that the regulations in those States have generally brought facilities into compliance with today's regulations, with some potential deficiencies in certain States. EPA recognizes that simply reading regulations without awareness of the field reality, State enforcement discretion, and policy and guidance directives provided to inspectors may provide a less accurate reading of the equivalency of regulations. Consequently, EPA expects that States will be able to readily document their equivalency by providing existing information or pre-existing documents. EPA does not anticipate a significant paperwork burden for States, and is

offering this opportunity in response to States' requests in comments to be allowed to continue to implement their own regulations. EPA believes that in States where the lead pesticide agency is not responsible for enforcing containment regulations, collaboration between the State's agencies will be feasible. State regulators are encouraged to consult with EPA prior to preparing their submission.

IX. Labeling Requirements for Pesticides and Devices

A. Overview

1. *Final regulations*. Today's final rule changes the requirements for labeling pesticides in 40 CFR part 156 in several ways. First, these regulations add a new subpart H, entitled Container Labeling to part 156. The new container labeling regulations include the following requirements:

- A statement identifying the container as nonrefillable or refillable is required on all pesticide labels. In addition, nonrefillable container labels must include several statements providing basic instructions for managing the container and a batch code for the product. (See Units IX.B. - IX.D. for more details.)
- Cleaning instructions for some nonrefillable containers, specifically for dilutable products that are sold or distributed in rigid containers and that are not household/residential. (See Units IX.E. - IX.K. for more details.)
- Instructions for cleaning all refillable containers before disposal. (See Units IX.E. and IX.L. for more details.)

In addition, today's final rule modifies several existing requirements in 40 CFR 156.10 to allow for blank spaces on the labels of some refillable containers for the net contents and EPA establishment number. In addition, the paragraph in 40 CFR 156.10 that requires storage and disposal statements is being changed to be consistent with the label requirements added to 40 CFR part 156 in subpart H and the container regulations being added to 40 CFR part 165 in today's rule. (See Unit IX.M.)

Container-related labeling instructions for plant-incorporated protectants will be determined on a case-by-case basis until specific labeling guidance for plant-incorporated protectants are promulgated under 40 CFR part 174.

Existing EPA guidance on label statements for cleaning, recycling and disposing of pesticide containers, includes:

- The Label Review Manual (Ref. 44);
- PR Notice 83–3, Label Improvement Program — Storage and Disposal Label Statements (Ref. 73);
- PR Notice 84–1, Clarification of Label Improvement Program (Ref. 72);
- PR Notice 94–2, Recycling Empty Aerosol Pesticide Containers (Ref. 65);
- PR Notice 98–10, Notifications, Non-Notifications and Minor Formulation Amendments (Ref. 56); and
- PR Notice 2001–6, Disposal Instructions on Non-Antimicrobial Residential/Household Use Pesticide Product Labels (Ref. 49).

This guidance will be revised, if necessary, to be consistent with the requirements in today's final regulation.

2. *Changes*. The final labeling regulations in today's rule cover the same statements and topics that were included in the proposed rule. However, a number of changes have been made to the regulations, including but not limited to modifying specific statements, adding alternative statements, restructuring the regulations based on the plain language format, and exempting household/residential pesticide products from the requirements for cleaning instructions on nonrefillable container labels. The specific changes are described in the section-by-section discussion below.

B. Identification of Container Types (§ 156.140)

1. *Final regulations*. This section applies to all pesticide products and requires statements that, among other things, identify the container as nonrefillable or refillable. These statements must be placed on the label or container. The regulations in 40 CFR 156.10(a)(4)(i) require the label to ''appear on or be securely attached to the immediate container of the pesticide product.'' Therefore, the statements required by § 156.140 cannot be placed only on labeling that is not attached to the container, because it may become separated. The information may be located on any part of the container except the closure. If the statements are placed on the container, they must be durably marked on the container. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.

2. *Changes*. In the final rule, EPA has changed the word ''permanent'' to ''durable'' to describe the required container marking. In addition, the language from the preamble of the proposed rule that lists acceptable formats of the marking was added to the regulations to clearly establish our intent. Finally, the phrase ''as applicable'' was added to the first sentence to accommodate the fact that the statements in paragraph (a) apply only to labels on nonrefillable containers and the statements in paragraph (b) apply only to the labels on refillable containers.

C. Statements Required for Nonrefillable Containers (§ 156.140(a))

1. *Final regulations*. The final rule requires all nonrefillable containers to have the following four items on the label or the container:

- The phrase ''Nonrefillable container;''
- A statement regarding reuse;
- A statement about recycling or reconditioning; and
- A batch code.

If the first three items are placed on the label, they must be put under an appropriate heading under the heading ''Storage and Disposal.'' If any of the first three items are placed on the container, an appropriate referral statement, such as the statement in § 156.140(a), must be placed on the label under the heading ''Storage and Disposal.''

2. *Changes*. These statements were reorganized by separating each phrase or statement into a different regulatory paragraph to accommodate the addition of alternative statements. The proposed rule included all four items, but included the first three as one statement: ''Nonrefillable container. Do not reuse or refill this container. Offer for recycling if possible.'' Also, the final rule specifies that if the first three statements are placed on the label (rather than on the container), they must be placed under the ''Storage and Disposal'' heading on the label. EPA added this language to reinforce the requirement in § 156.10(i)(2)(ix) for the instructions in subpart H to appear under the ''Storage and Disposal'' heading. These three statements must be under an appropriate heading under the storage and disposal heading, although they may be in any order. EPA believes it is better to provide registrants flexibility in where to place these statements. Some registrants may choose to place them all together, while others may choose to place the recycling statement after the cleaning (residue removal) instructions.

The final rule was revised to require a referral statement on the label if any of the statements except the batch code are placed on the container. Examples of appropriate referral statements are ''See container for handling and recycling statements.''; ''Recycling information is located on the container.''; and ''See the container for refill limitations.'' The

referral statement will provide information to allow users who look for refill prohibitions or recycling statements in the storage and disposal section of the label to find the information.

i. *Statement identifying a nonrefillable container—Final regulations and changes.* The identifying phrase ''Nonrefillable container'' is identical to the identifying phrase in the proposed regulations.

ii. *Reuse Statement—Final regulations.* Registrants must choose to use one of the following reuse statements, as appropriate. Products with labels that allow household/residential use must use the statement in item (1) or (3). All other products must use one of the three statements.

(1) ''Do not reuse or refill this container.''

(2) ''Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsates). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.''

(3) The following statement may be used if a product is ''ready-to-use'' and its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: ''Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.''

iii. *Changes.* The proposed rule required the first statement, ''Do not reuse or refill this container.'' The second statement was added to address a common practice where pesticide applicators use plastic jugs to hold rinsate that contains the pesticide on the label, which could be interpreted as a violation of a ''Do not reuse'' statement. While EPA has some concerns about the widespread storage of rinsate or other pesticide-containing materials in pesticide containers (without proper management practices such as marking the contents and date on the container), we acknowledge the day-to-day reality of pesticide operations that sometimes there are materials such as rinsates or leftover tank mix that must be dealt with. While temporarily storing these materials in pesticide containers can create disposal problems if the material is not managed properly and promptly, temporary storage is better than most of the other low-cost, practical alternatives such as dumping the rinsate or leftover material. Therefore, the second statement was added to provide some flexibility while still prohibiting the reuse of nonrefillable containers for materials other than pesticides, including but not limited to water, food, feed and oil. However, EPA does not believe that household/residential pesticide users are likely to be able to properly manage rinsate and other pesticide-containing materials in this way, so this statement cannot be used on household/residential use products.

The third statement was added in response to comments describing ready-to-use products in containers that are intended to be sold or distributed only once, but that can be refilled by the end user with a concentrate (a different product) and then diluted. The third statement gives registrants the option to continue distributing products in this way, but still provides end users with the message that these containers should generally not be reused or refilled.

iv. *Comments - refill with concentrate.* Several commenters noted that a prohibition on reuse or refill would make a common practice illegal. Specifically, some ready-to-use products are distributed or sold in containers that are intended to be sold or distributed only once (and therefore meet the definition of nonrefillable containers). However, these containers can be refilled by the end user (generally a household user) with a concentrate and then diluted. A few respondents suggested not requiring the reuse statement on ready-to-use product containers and several others offered an alternative statement for these products.

v. *EPA response - refill with concentrate.* EPA agrees that the use of containers of ready-to-use products to be refilled with a different product (that is a similar, but concentrated formulation) and diluted by the end user should be allowed to continue. In a relatively quick search of product labels, EPA found a number of household/residential use herbicides with label directions that allowed this practice. This environmentally beneficial practice reduces the amount of packaging used and packaging waste produced, since a smaller container can be used to distribute the concentrate. Therefore, the final regulation includes an alternative statement that allows this practice to continue. Currently, we believe this situation is most commonly used for household products, although the final regulations were written to allow any products (not just household/residential use products) to be able to use the appropriate refill/reuse statement on their labels.

3. *Recycling or reconditioning statement*—i. *Final regulations.* Registrants must use at least one of the following statements:

(1) ''Offer for recycling if available.''

(2) ''Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site]. For example, this statement could be ''Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact the Ag Container Recycling Council (ACRC) at 1–877–952–2272 (toll-free) or *www.acrecycle.org*.''

(3) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(4) An alternative recycling statement that has been reviewed and approved by EPA.

(5) ''Offer for reconditioning if appropriate.''

ii. *Changes.* The final rule includes options for container recycling statements to account for differences in the process for recycling different kinds of containers (e.g., aerosol cans or plastic jugs) and differences in recycling among markets (agricultural or household). In addition, the proposed rule specified the statement ''Offer for recycling if possible.'' In the final rule, EPA changed the word possible to available. Finally, EPA added a statement ''Offer for reconditioning if appropriate'' as an alternative.

iii. *Comments - recycling.* Several commenters addressed the issue of recycling. A user group supported the continued development of container collection and recycling programs. A registrant endorsed recycling but commented that the language must comply with Federal Trade Commission (FTC) guidance. A registrant group requested that the terms of PR Notice 94–2 ''Recycling Empty Aerosol Pesticide Containers'' as amended by letter on June 9, 1994, be codified into regulation. A State regulatory agency urged EPA to specifically direct users to agricultural pesticide container collection programs to prevent agricultural pesticide containers being offered for household recycling collection. Another State regulatory agency suggested a label statement requiring small rinsed containers to be delivered to State-authorized container collection programs. This commenter stated that use of the word ''possible''

would be problematic because while it is possible for farmers to travel more than 100 miles to a recycling center, it would be unreasonable to expect that. A group of people involved with pesticide container recycling in Washington State submitted suggestions for changing the storage and disposal statements on pesticide containers. These comments specifically supported the efforts of the Ag Container Recycling Council (ACRC) and recommended a statement that refers to the ACRC and provides the ACRC web site.

In response to the 2004 notice, four State regulatory agencies and a registrant group urged the Agency to do more to encourage recycling of pesticide containers and to remove label references to burning or burying containers. A few State agencies noted efforts by ACRC, Earth 911 and the National Pesticide Stewardship Alliance to promote recycling and reform label language. These respondents noted that the Agency needs to go further than what was proposed in the rule in order to improve labeling such that burning and burying of containers is no longer allowed.

iv. *EPA response - recycling*. EPA agrees with intent of the commenter who suggested codifying PR Notice 94–2. The third option included in the final rule, a recycling statement approved by EPA and published in an EPA document, is included to account for PR Notice 94–2, other PR Notices, the label review manual, and other documents.

EPA agrees with the State regulatory agencies and Washington container recycling group that it may be beneficial to provide more specific information about pesticide container collection and recycling programs in this statement, particularly for agricultural pesticide products. Therefore, the final regulations allow the use of a new recycling statement that provides details about how to obtain more information on agricultural pesticide container collection and recycling programs such as the ACRC. The ACRC is a non-profit organization that promotes and supports the collection and recycling of plastic pesticide containers in the U.S. The collection and recycling programs conducted by the ACRC grew significantly during the 1990's, so EPA is adding this statement to reflect currently available programs (that were in the developmental stage when the proposed regulations were being written). For example, in 1993 the ACRC collected about 2.5 million pounds of plastic containers. In 2001, ACRC collected over 7 million pounds of plastic containers, which represents about 25 percent of the plastic containers distributed by the ACRC member companies. (Ref. 1) EPA has been told by ACRC recyclers and member companies and by ACRC's State partners that participation could be increased if the label specifically referred to the ACRC program. EPA hopes to encourage the recycling of pesticide containers by including this recycling statement as an option. EPA also recognizes the need for flexibility in the label instructions, as other, equally effective organizations may come into existence in the future, and that the organization Earth 911 (*www.earth911.org*), a clearinghouse of information on household hazardous waste disposal and recycling, may eventually include information resources specifically for managing agricultural chemicals and containers.

EPA agrees that the word ''possible'' may not be clear, and has replaced it with the word ''available.'' ACRC programs are available that is, accessible for agricultural pesticide users across much of the U.S., but not all areas have local collection programs. EPA believes that a reasonable interpretation of ''available'' is that pesticide containers are collected at a location that is the same distance or closer than the distance the user traveled to purchase the pesticides. It is worth noting that the statement ''Offer for recycling if available'' and the other statements in § 156.140(a)(3) give pesticide users an option for managing the containers. These statements do not require the recycling or reconditioning of containers. EPA believes that recycling or reconditioning pesticide containers is a responsible, preferable way of managing pesticide containers. We encourage these practices to save resources and minimize the amount of material being disposed, although there are other legal ways of managing the containers.

The final rule also includes the option for a registrant to offer an alternative recycling statement. This is intended to allow for the possibility of changes in the extent to which and the manner in which pesticide containers are recycled over time. EPA must review and approve an alternative recycling statement before it can be placed on a pesticide label. One part of our review will involve considering whether the alternative statement is consistent with the FTC guidelines on environmental statements in 16 CFR part 260, ''Guides for the Use of Environmental Marketing Claims.'' (Ref. 5) (*http://www.ftc.gov/bcp/conline/edcams/eande/index.html*)

EPA agrees with commenters that label language regarding burning and burying containers needs to be improved and is engaged in discussions with stakeholders to address this issue. Container disposal instructions were not addressed in the proposed container and containment regulations and therefore are outside the scope of the final regulations. In addition, EPA staff are actively working on improving the label manual.

v. *Comments - reconditioning*. Many commenters on the proposed regulations, including container manufacturer and registrant groups, stated that the regulations do not account for the reconditioning of containers and opposed many proposed provisions because they would be problematic for reconditioning. These respondents also commented that some containers are commonly reconditioned, particularly plastic and steel drums holding non-agricultural pesticides.

vi. *EPA response - reconditioning*. EPA added a statement about reconditioning to the final rule as an alternative for containers that are commonly reconditioned. The statement says ''Offer for reconditioning if appropriate'' because reconditioning is a logical, reasonable option only for certain containers, specifically drums, and not others, such as plastic jugs and aerosol cans. EPA believes this flexibility should alleviate some of the commenters' concerns about the apparent disregard for reconditioning.

4. *Batch code*—i. *Final regulations*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product, is required for each nonrefillable container either on the label or the container.

ii. *Changes*. The text specifying a lot number or other code in the final rule is identical to the text in the proposal. In the final rule, though, the introductory paragraph was modified to clarify that the lot number/batch code could be placed anywhere on the label or durably (not permanently) marked on the container.

D. Statements Required for Refillable Containers (§ 156.140(b))

1. *Final regulations*. For refillable containers, one of the following statements is required on the label or the container:

(1) ''Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.''

(2) ''Refillable Container. Refill this container with *[common chemical name]* only. Do not reuse this container for any other purpose.''

If the statement is on the label, it must be placed under the ''Storage and Disposal'' heading. If the statement is

put on the container, the label must include an appropriate referral statement under the ''Storage and Disposal'' heading.

2. *Changes*. The proposed rule specified only the first statement. In response to comments, the second statement was added to the final rule as an option to accommodate containers that may be filled with a chemical that has both pesticidal and non-pesticidal uses. Also, the phrase ''Refillable container'' was added to both statements to allow pesticide users, registrants and government regulators to clearly identify whether a container is nonrefillable or refillable. The final rule specifies that if the statement is placed on the label (rather than on the container), it must be placed under the ''Storage and Disposal'' heading. EPA added this language to reinforce the requirement in § 156.10(i)(2)(ix) for the instructions in subpart H to appear under the ''Storage and Disposal'' heading. Lastly, the final rule was revised to require a referral statement on the label if the statement is placed on the container. An example of an appropriate referral statement is ''Refilling limitations are on the container.'' The referral statement will provide information to allow users who look for refill prohibitions in the storage and disposal section of the label to find the information.

E. Residue Removal Instructions - General (§ 156.144)

1. *Final regulations*. Unless exempt from these requirements, the label of each pesticide product must have instructions on the removal of pesticide residue prior to disposal, as specified in §§ 156.146 and 156.156. The regulations in § 156.144 include the following specifications:

- Residue removal statements are required for both nonrefillable and refillable containers.
- Residue removal statements must be placed under the heading ''Storage and Disposal.''
- Residential/household use pesticide products are exempt from the residue removal statement requirements.
- EPA may modify or waive the residue removal requirements or permit or require alternative labeling statements.

2. *Changes*. The most significant change to this section is that the final rule exempts residential/household use pesticide products from the residue removal statement requirements. The proposed rule would have applied to the labels of all products, regardless of the pesticide market in which they are sold, distributed and used. EPA also made a few minor changes in the final rule. The proposed rule specified a subheading entitled ''Container Cleaning'' under the heading ''Storage and Disposal.'' In the final rule, EPA deleted this subheading because it is unnecessary. Section 156.144(b) regarding placement of the residue removal statements was shortened by deleting the reference to Directions for Use, which isn't necessary. EPA believes requiring the statements to be placed under the heading ''Storage and Disposal'' is sufficient because § 156.10(i)(2)(ix) requires this heading to be included in the directions for use. Finally, a few editorial changes were made to shorten the phrase ''residue removal statements and instructions'' to ''residue removal instructions'' to be more precise and consistent. The rest of the requirements of § 156.144 are identical to those in the proposed rule.

FIFRA section 19(f) mandates ''regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal'' and says that EPA ''may, at the discretion of the Administrator, exempt products intended solely for household use'' from these requirements. In the proposed rule, EPA chose not to exercise this discretion and proposed to require cleaning instructions on the labels of household products because the preamble of the proposed rule stated that, in many instances, the same pesticide product in the same container is sold for agricultural or industrial use, as well as for use in the home, yard, or garden.

The 1999 Supplemental Notice (Ref. 53) stated that the changes in scope would only apply to the container standards and that:

> EPA believes that it is appropriate to have container cleaning and disposal instructions on the labels of all pesticides because of safety and environmental protection considerations for recycling operations. It is necessary for pesticide containers to be properly emptied and cleaned prior to being recycled to protect workers who handle the recyclable material and to prevent releases of pesticides to the environment. Because pesticide containers from all segments of the pesticide industry are currently being recycled, container cleaning and disposal instructions are needed on the labels of all pesticides. ...

During the development of the final PR Notice 2001–6, ''Disposal Instructions on Non-Antimicrobial, Residential/Household Use Pesticide Product Labels,'' however, EPA decided to change this position for non-antimicrobial, residential/household use pesticide products. (Ref. 49). As stated in PR Notice 2001–6:

> Specific instructions to consumers to rinse their empty containers have been left out of these revised instructions. Experience has shown that many consumers are confused by rinsing procedures and often incorrectly dispose of the rinse water down the drain or down sewers. States have reported some detections of pesticides in drinking water that appear, in some cases, to be linked to disposal or rinsing in residential waste water systems. In addition, storage of rinsate is highly discouraged because of the absence of adequate labeling or packaging. There is also the potential risk of adverse chemical reactions occurring when products are poured down drains, singly, or in combination with other products.

One potential solution that EPA considered but rejected when finalizing PR Notice 2001–6 was to require rinsing of non-antimicrobial, residential/household use pesticide containers and to include instructions on the label for how to manage the rinse water. For example, the label statement in PR Notice 2001–6 could have instructed the user to add the rinse water to the pesticide mixture that will be applied, or if that isn't feasible, the rinse water could be applied to a site on the label in accordance with the other label provisions. EPA rejected this option because it could confuse consumers, it could lead to the storage of rinse water in the absence of adequate labeling or packaging, and it would require several additional sentences on an already crowded label.

Therefore, EPA has decided to omit rinsing instructions from the label directions specified for non-antimicrobial, residential/household pesticide products in PR Notice 2001–6. In markets where empty containers of these pesticides are recyclable, it is assumed that the recycling programs will provide consumers with instructions to rinse the containers if the recycling program believes it is necessary. Additionally, if a manufacturer wants to include a rinsing statement on the labels of these pesticides, EPA would consider such a request. However, if a manufacturer chooses to include a rinsing statement, it should also include instructions about how to manage the rinse water.

In the final rule, EPA is continuing the policy to omit rinsing instructions from the label directions for non-antimicrobial, residential/household pesticide products. In addition, EPA decided to extend this policy to antimicrobial, residential/household pesticide products in the final rule. Antimicrobial products were not included in the scope of PR Notice 2001–6 because of differences of opinions on the disposal statements in the PR Notice, not because of problems

with applying the no-rinsing policy to household/residential antimicrobial products. EPA believes that some of the same concerns about household/residential pesticide users, including users being confused and trying to prevent the storage of rinsate, apply equally to antimicrobial and non-antimicrobial products used by these household/residential pesticide users.

F. Residue Removal Instructions for Nonrefillable Containers - General (§ 156.146)

1. *Final regulations.* Section 156.146 sets out the residue removal instructions for nonrefillable containers. The label of a product must comply with these instructions if all of the following criteria are met:

- The product must comply with the residue removal instructions based on § 156.144 (i.e., it is not a residential/household product, EPA has not waived the requirement, or EPA has not established an alternative requirement);
- The product is dilutable (it could be a liquid or a solid); and
- The product is distributed or sold in a nonrefillable container that is rigid.

The preamble to the proposed rule stated that EPA was holding sections in reserve for residue removal instructions for other formulation/container combinations, such as dilutable products in non-rigid containers. While EPA may address other kinds of nonrefillable containers in the future, the final rule establishes residue removal instructions only for dilutable products in rigid nonrefillable containers.

The labels of dilutable products that are subject to this requirement and that are sold or distributed in rigid, nonrefillable containers must comply with the following standards:

- A statement instructing the user to clean the container promptly after emptying is mandatory;
- Triple rinsing instructions are mandatory;
- Pressure rinsing instructions are optional; and
- A registrant must obtain EPA approval before including a rinsing procedure that specifies a diluent other than water.

These requirements are discussed in more detail in Units IX.G. through IX.K. below.

2. *Changes.* The final regulation includes several changes from the proposal. The most significant changes are that the final rule requires registrants to place the triple rinse instructions on all labels and provides registrants the option to also include the pressure-rinse instructions. The proposed rule gave registrants the option to include either triple rinsing or pressure rinsing or both. Based on comments, EPA changed the final rule because triple rinsing is always possible, whereas pressure rinsing requires specific equipment. Other substantial changes to the residue removal instructions include:

- Adding the phrase ''or equivalent'' as an option so labels allow equivalent means of rinsing containers. This was added to account for systems (such as closed system rinsing or home-made pressure rinsing systems) that are designed to clean containers thoroughly but do not technically triple rinse the containers. This change was made to the statement identifying when containers must be rinsed and is discussed in more detail in Unit IX.G.
- Both the triple rinse and pressure rinse procedures were modified so they would take less time. For example, the intervals of time for draining and shaking the containers were reduced. These changes are intended to make the procedures more practical and therefore more likely to be followed by end users. These changes are discussed in more detail in Unit IX.H.

Numerous other minor modifications, which are described in Units IX.G. - IX.K., were made to the residue removal instructions for nonrefillable containers.

3. *Comments - which procedure*? The proposed rule would have required the placement of either the triple rinse or the pressure rinse procedure on the label, with the option of including both. The preamble requested comments on this approach. The following comments addressed this question.

i. *Both procedures.* Several State regulatory agencies and a registrant group supported including both triple and pressure rinsing instructions on labels. A few of these commenters pointed out that pressure rinsing alone is not available to all applicators.

ii. *Alternative approach.* A few dealer groups recommended using the statement ''Pressure rinse or triple rinse'' so users and dealers will not have to worry about having both rinse systems available.

iii. *Either or both procedures.* A registrant group supported the approach of allowing the registrant to put either or both of the statements on the label, because pressure rinsing would not be appropriate for institutional products and including both would crowd the label.

iv. *Limit pressure rinsing.* Some commenters, including registrants, registrant groups, and a State regulatory agency, expressed concern about household users pressure rinsing small containers. Many of these respondents suggested excluding pressure rinsing from household product labels. A registrant group also added institutional and industrial products to this suggested exclusion. Similarly, another registrant group commented that pressure rinsing is not common in the institutional sector. Alternatively, a few registrant groups and a registrant recommended that pressure rinsing instructions be permitted only on containers with capacities larger than one gallon.

v. *Decision making process.* Some registrants and registrant groups commented that EPA implies that some sort of decision making process must be used to determine if triple rinsing, pressure rinsing, or both should be included and requested EPA to clarify this. For example, does a container have to meet a six 9's standard by a laboratory pressure rinsing test for pressure rinsing instructions to be included on the label? If so, EPA has to specify the pressure rinsing test procedure.

vi. *Effectiveness of procedures.* Several commenters addressed the efficacy of pressure rinsing vs. triple rinsing. A registrant group and two registrants commented that pressure rinsing should be recommended on labels only if it has been shown to be as effective as triple rinsing. Another registrant stated that their studies (in addition to the work of other companies) shows that pressure rinsing is not as effective as triple rinsing. A State regulatory agency commented that pressure rinsing is a more effective method of cleaning containers.

vii. *Advantages of pressure rinsing.* A State regulatory agency and a registrant commented that pressure rinsing is advantageous to the pesticide users because it is a faster procedure.

4. *EPA response - which procedure*? EPA agrees with several of the points made by commenters, in particular, that pressure rinsing alone is not available to all applicators, that pressure rinsing isn't appropriate for certain containers based on the pesticide market and/or container size, and that pressure rinsing is attractive to pesticide users because it is a faster procedure. Therefore, EPA changed the approach so the final regulation requires labels to include the triple rinse procedure and gives registrants the option to also include the pressure rinse procedure. This approach provides a rinse procedure (triple rinsing) that all pesticide users can follow. It also gives registrants the option to include pressure rinsing if they believe it is appropriate (with EPA concurrence during the review of

labels), which is preferable to establishing criteria for appropriate (or inappropriate) pressure rinsing situations in the regulations.

EPA believes that both triple rinsing and pressure rinsing are effective ways for users to clean most containers (with possible exceptions for size and other situations) in the field. This conclusion is based on the rinsing studies described in Reference 40 and on the field experience of people who have inspected containers over the past decade of pesticide container recycling programs. One registrant group provided comprehensive comments during the 2004 reopening of the comment period based on the ACRC's experience over the past 10 years. This commenter described ACRC's efforts to assess and control the risk from using the recycled plastic and noted that, since ACRC's inception in 1992, there have been no reports of incidents where public health or safety has been compromised as a result of exposure to the minimal residues found in recycled plastic pesticide containers. This registrant group also stated that ACRC's experience with recycling clean, rinsed one-way pesticide containers for more than a decade leads them to believe that residue removal is an issue of instructing applicators to triple or pressure rinse containers immediately after use.

EPA's goal is to establish a situation where all containers are adequately cleaned before they are recycled, disposed, or otherwise managed. As stated in Unit V.H.1., one regulatory contribution to achieving this goal is ensuring that pesticide users have access to clear, detailed instructions for how to clean the containers. In the final rule, pesticide labels must include triple rinse instructions and may also include pressure rinse instructions.

Another regulatory contribution is to ensure the use of container designs and formulations that facilitate effective residue removal, which is the intent of the residue removal standard for nonrefillable containers in § 165.25(f). The residue removal test procedure requires containers to be triple rinsed. In this case, triple rinsing is used as an indication of how easily the pesticide can be removed from the container. The residue removal test procedure does not require containers to be pressure rinsed nor is it intended to evaluate whether triple rinsing or pressure rinsing is more effective for a certain container and pesticide formulation. Therefore, the decision of whether or not to include pressure rinsing instructions on the pesticide label is not tied to the results of laboratory residue removal testing. Instead, registrants have the option to include pressure rinsing if they believe it is appropriate (with EPA concurrence during the review of labels).

There are other integral parts to achieving the goal of having clean containers before they are disposed or recycled, including educating pesticide users on the importance of rinsing and the proper procedures, potential spot checks/inspections to ensure that the labels and regulations are being complied with, and creating an incentive for pesticide users to comply (or a disincentive for non-compliance). EPA looks forward to working with all stakeholders, including State regulatory agencies, pesticide registrants, distributors and dealers, pesticide users, pesticide educators, and trade associations in accomplishing this goal.

G. Timing of the Residue Removal Procedure (§ 156.146(a))

1. *Final regulations*. For products that are subject to the requirements for residue removal instructions, the label of each nonrefillable container must include one of the following statements:

(1) ''Clean container promptly after emptying.''

(2) ''Triple rinse or pressure rinse container (or equivalent) promptly after emptying.''

(3) ''Triple rinse container (or equivalent) promptly after emptying.''

The statement about timing must immediately precede the rinsing instructions and must be consistent with the rinsing instructions (triple rinse or both triple and pressure rinse) that are include on the label.

2. *Changes*. This section of the final rule includes three changes from the proposed regulation. First, the proposed requirement to rinse ''immediately'' after emptying was replaced in the final rule by requiring the container to be rinsed ''promptly'' after emptying it. Second, the final rule adds the phrase ''(or equivalent)'' to the two statements that identify a specific cleaning procedure, e.g., triple rinsing. Third, the proposed rule included four options for statements to include on the label. EPA is not finalizing one of these statements in the final rule--''Pressure rinse container immediately after emptying'' --because it is no longer needed. The final rule does not allow pressure rinsing to be the only procedure listed on the label, so this statement is irrelevant.

3. *Comments - clean promptly*. Some State regulatory agencies supported the statement regarding the timing of rinsing, stating that it should improve the management of the containers. Two other State regulatory agencies stated that, based on results from their container collection and recycling programs in the early 1990's, it is obvious that not all containers are rinsed immediately. A registrant group suggested using the phrase ''reasonably promptly'' rather than ''immediately'' to account for industrial situations where its not practical to rinse immediately such as when multiple oil wells are treated from the same drum of an industrial biocide and rinsing equipment is not available. An agricultural pesticide registrant supported immediate rinsing in a farm context so that the rinsate could be added to the application mixture, but noted that clean water may not be available at every loading site.

4. *EPA response - clean promptly*. EPA considers the timing of the residue removal procedure to be a critical factor in effectiveness, and is maintaining the approach in the proposed rule that requires users to rinse containers within a certain (short) time period after emptying them. When rinsing is not performed soon after emptying the container, the residue can dry and adhere to the inside and outside of the container, and is then more difficult to remove. Containers with dried residue are likely to be rejected by pesticide container recycling and collection programs as well as at solid waste landfills.

EPA believes that requiring pesticide users to rinse containers promptly after emptying them is the best approach for the final rule. Specifying that the containers are cleaned promptly accomplishes the goal of rinsing them soon after they are emptied and before the residue dries in the containers. Also, prompt rinsing provides a little more flexibility than immediate rinsing. As an example, consider a pesticide applicator who pours product from one container, sets it down to pour out another container, and then rinses both containers. Technically, this could be considered a violation if the label specified immediate rinsing, because some time passed between the emptying and the rinsing of the first container. However, this example fits within EPA's understanding of prompt action.

Requiring that containers be rinsed promptly gives pesticide users, regulatory agencies and inspectors some discretion in determining appropriate time spans. It is beyond the scope of this preamble to describe every situation that is or is not appropriate, so EPA is relying on the good judgement of applicators, regulatory agencies and inspectors to assess the specific conditions of the situation. However, EPA believes that situations where the

time between emptying and rinsing is days or weeks and where the residue has completely dried inside the container are definitely beyond the boundaries of prompt rinsing. In addition, EPA strongly recommends that pesticide users rinse containers when the application mixture is being prepared so the rinsate can be added to the application mixture. This provides many benefits, including getting all of the value out of the product and avoiding the creation of a potential waste (which could happen if the rinsate was collected separately).

5. *Comments - equivalency*. In commenting on the proposed approach for residue removal instructions, a few commenters (a State regulatory agency and a registrant) supported maintaining the current cleaning statement of ''Triple rinse (or equivalent)'' because it is sufficient if followed and it offers flexibility.

6. *EPA response - equivalency*. EPA agrees with the commenters that including the phrase ''(or equivalent)'' that is on current labels is beneficial and the final rule adds this phrase as an option to the ''rinse promptly'' statement. This phrase was added to account for systems (such as closed system rinsing or home-made pressure rinsing systems) that are designed to clean containers thoroughly but do not technically triple rinse the containers. The alternative rinsing system should be thorough and it is the responsibility of the pesticide user to ensure that it is equivalent to triple rinsing.

H. Duration of Triple and Pressure Rinse Procedures (§ 156.146(b) and 156.146(c))

1. *Final regulations*. As discussed in Unit IX.I. for triple rinsing and Unit IX.J. for pressure rinsing, the rinsing procedures for containers that are small enough to shake that are defined in the final regulation take less time to conduct than the proposed procedures. The key time intervals identified in the procedures are:

- How long to drain liquid product from containers (both triple and pressure rinsing);
- How long to agitate/shake containers during triple rinsing;
- How long to drain rinsate from containers after each shaking interval during triple rinsing; and
- How long to pressure rinse the container during pressure rinsing.

2. *Changes*. The procedures in the final rule specify the following times for each of these intervals for containers that are small enough to shake:

- 10 seconds to drain liquid product from containers for both triple and pressure rinsing (changed from 30 seconds in the proposal);
- 10 seconds to agitate/shake containers during triple rinsing (changed from 30 seconds in the proposal);
- 10 seconds to drain rinsate from containers after each shaking interval during triple rinsing (changed from 30 seconds in the proposal); and
- At least 30 seconds to pressure rinse the container during pressure rinsing. (The proposed rule specified 30 seconds; the phrase ''at least'' was added to compensate for variations in pressure rinsing equipment and in pressure.)

3. *Comments*. A registrant group, a registrant and two State regulatory agencies commented that a shorter rinse time would be better and would encourage user compliance, although the two State regulatory agencies supported a shorter rinse time only if it was demonstrated that the containers are cleaned adequately. Another State regulatory agency stated that, in a 1991 survey, 43 percent of private applicators and 11 percent of commercial applicators responded that they did not rinse containers because it took too much time. A registrant group opposed the initial drain time of 30 seconds as too long and inappropriate for closed systems. This commenter also responded that some states have requirements different than a 30–second drain and urged EPA to consider these alternatives. A registrant commented that the times of the proposed rinsing procedures seemed reasonable and expressed doubts that the triple rinse procedure could be shortened much. This commenter added that a 40–second pressure rinse is inadequate to achieve 99.9999 percent removal.

4. *EPA response*. In the preamble of the proposed rule, EPA estimated that the proposed triple rinsing instructions would take approximately 5 minutes to perform and the pressure rinsing procedure would take approximately 2 minutes. EPA also requested comments on the time burden of the proposed rinsing procedures, and the voluntary submission of data on residue removal, including in particular the cleaning efficiency of any suggested shorter triple rinse and pressure rinse procedures.

EPA agrees with the commenters that a shorter rinse time would be better and would encourage user compliance with the requirement to rinse pesticide containers. In particular, we believe it is relatively unlikely that a pesticide user would spend about 5 minutes triple rinsing each container. The 30–second intervals for the initial container drain time, the shaking time and the rinsate-draining times were based on the rinsing instructions of many States, which were incorporated into the laboratory triple rinse test methodology for the proposed nonrefillable container residue removal standard.

EPA contracted for two studies on the effectiveness of shorter triple rinse procedures. In a study conducted by Formulogics (Refs. 7 and 38), a flowable concentrate product was tested in three containers: 1–gallon and 2.5–gallon plastic jugs and a 5–gallon steel flathead can. Nine different rinsing procedures were conducted for each container size by varying the initial drain, shake and rinsate drain times between 5, 10 and 30 seconds. The shake and rinsate drain times were always the same. For example, the three variations for the initial drain time of 5 seconds were: 5 second shake and 5 second rinsate drain; 10 second shake and 10 second rinsate drain; and 30 second shake and 30 second rinsate drain. These same three shake and rinsate drain times were conducted for the initial drain times of 10 second and of 30 seconds. The pesticide concentration in the second through fifth rinses was measured. EPA concludes that all nine rinsing procedures tested were effective in cleaning all three containers because the active ingredient concentration in the fourth rinse showed at least 99.99% removal in all rinse time iterations. Two of the rinse procedures for the 5–gallon container (5 sec. initial drain/5 sec. shake & rinsate drain and 30 sec. initial drain/5 sec. shake & rinsate drain) resulted in 99.99 percent removal; all other rinse procedures for all containers met at least five 9's percent removal and most resulted in six 9's percent removal.

In a study conducted by the University of Florida (Refs. 14 and 41), two formulations were tested in three containers, 1–gallon, 2.5–gallon and 5–gallon plastic jugs. The flowable concentrate was tested in all three containers and the emulsifiable concentrate was tested in the 2.5–gallon and 5–gallon containers. Four different rinsing procedures were conducted for each container size by varying the initial drain, shake and rinsate drain times between 10 and 30 seconds where the shake and rinsate drain times were always the same. Again, EPA concludes that all four rinsing procedures tested were effective in cleaning both formulations from all of the containers because the active ingredient concentration in the fourth rinse showed at least 99.99% removal in all rinse time iterations.

The triple rinse procedure for labels in the final rule includes 10 second initial drain, shake and rinsate drain

times. EPA believes the data described above shows that this shorter triple rinsing procedure, which should encourage end user compliance with the requirement to triple rinse, will adequately clean containers prior to recycling or disposal.

In addition, EPA has lowered the residue removal requirement in the final nonrefillable container regulations from six 9's (99.9999 percent) to four 9's (99.99 percent), as discussed in Unit V.H. The shorter rinse procedures reached at least 99.99 percent removal in all of the containers and formulations tested. As cited by one of the State regulatory agencies in its comments, the field reality is that many users who do not rinse claim the time factor as the reason. By reducing the time frames in the cleaning instructions, EPA hopes to increase compliance within the pesticide user community.

I. Triple Rinse Instructions (§ 156.146(b))

1. *Final regulations*. For products that are subject to the requirements for residue removal instructions, the label of each nonrefillable container must include triple rinse instructions. There are three different sets of triple rinsing instructions:

- For containers that are small enough for users to shake them, holding dilutable liquid pesticides;
- For containers that are small enough for users to shake them, holding dilutable solid pesticides; and
- For containers that are too large for users to shake.

In general, EPA believes that the largest containers that users can shake during a triple rinse are those with capacities of 5 gallons for liquids and 50 pounds for solids.

The triple rinse instructions for liquid dilutable pesticide products in containers small enough for users to shake are:

> Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank, and drain for 10 seconds after the flow begins to drip. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times.

The final rule specifies slightly different instructions for solid dilutable pesticide products in ''shake-able'' containers, because solid materials do not ''drip'' as liquids do. The only difference for solid dilutable pesticide products is that the first line is ''Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container 1/4 full...'' The rest of the procedure is identical to the one for liquids.

For containers that are too large for users to shake (i.e., containers larger than 5 gallons for liquids or 50 pounds for solids), the triple rinse instructions are:

> Triple rinse as follows: Empty remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times.

2. *Changes*. One significant change from the proposed rule is that the final regulation requires a triple rinse procedure to be on the label, where the proposal gave registrants the option to include triple rinsing or pressure rinsing or both. Another modification is that the final regulations provide a defined procedure for containers that are too large for users to shake. Also, the phrase ''or a mix tank'' was added as an option for where the product or the rinsate can be placed. In addition, the following clarifying changes were made to both sets of instructions for triple rinsing smaller containers that can be shaken:

- The introductory text specifies that the instructions apply to ''containers small enough to shake'';
- The instruction to ''agitate'' was changed to ''shake''; and
- As discussed in Unit IX.H., the time intervals were changed from 30 seconds to 10 seconds for the initial draining of the container (for liquid products only), the time the container needs to be shaken, and for the draining of the rinsate.

3. *Comments - general*. A State regulatory agency pointed out that the directions prohibit preparing the use dilution in a mix tank, which is a common practice. A registrant commented that the degree of agitation needs to be specified, e.g., shake vigorously for 30 seconds.

4. *EPA response - general*. EPA did not intend to prohibit users from pouring a product into a mix tank or diluting a product in a mix tank, and we have amended the triple rinse procedures to address this oversight. The phrase ''or a mix tank'' was added to the instructions for emptying containers and to the rinsate management instructions to allow the product and rinsate to be placed into application equipment or a mix tank.

EPA agrees with the registrant and believes that ''shake'' is a better description of the intended activity than ''agitate.'' We decided not to include the qualifier ''vigorously'' to keep the statement as succinct as possible. This kind of information could be passed along to users during training and outreach.

5. *Comments - large containers*. Several commenters described problems with cleaning drums according to the proposed triple rinse statement. A registrant group stated that it is impractical to fill a 55–gallon drum one quarter full because more than 40 gallons of rinsate would be produced. A different registrant group and a registrant recommended directing the user to place the drum on its side and roll it, because it is extremely difficult to shake a large container that is one-quarter full. Another registrant commented that an additional statement that describes rinsing by recirculation would be helpful, but pointed out that many drum users don't use pumps to empty them.

6. *EPA response - large containers*. EPA agrees with the suggestion by the commenters who recommended directing the user to place a drum on its side and roll it. EPA is hesitant to recommend a cleaning procedure for larger containers that requires equipment that a pesticide user may not have, such as a pump, or an appropriately sized, heavy-duty pressure rinse nozzle. Therefore, we decided to define a triple rinse procedure in the final regulation for containers that are too large to be shaken. This is consistent with the approach in the final rule to require triple rinsing because all pesticide users can comply with these instructions and to allow pressure rinsing as an optional, additional statement.

J. Pressure Rinse Instructions (§ 156.146(c))

1. *Final regulations*. For products that are subject to the requirements for residue removal instructions, the label of each nonrefillable container may include pressure rinse instructions. The decision regarding whether to include pressure rinsing instructions as an option is at the discretion of the registrant, based on the registrant's assessment of the procedure's effectiveness and appropriateness for the formulation/container combination. However, if the statement ''Triple rinse or pressure rinse container (or equivalent) promptly after emptying'' is used on the label as the statement about timing, pressure rinse instructions must be placed on the label. If a registrant

chooses to include pressure rinsing instructions on the label as an option for cleaning a liquid dilutable pesticide product, the statement must immediately follow the triple rinse instructions.

The pressure rinse instructions for liquid dilutable pesticide products are:

Pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.

Slightly different instructions are required for pressure rinsing dilutable liquid and dilutable solid pesticide formulations, because dry materials do not ''drip'' like liquids do. The pressure rinsing procedure specified in the final regulations for dilutable solid pesticides is identical to the one for liquids, except it does not include the initial 10–second draining prior to rinsing.

2. *Changes*. One significant change is that pressure rinsing instructions are optional in the final rule, which requires a triple rinse procedure to be included on the labels of products that must comply. The proposal gave registrants the option to include triple rinsing or pressure rinsing or both. In addition, the following changes were made to both sets of instructions for pressure rinsing:

- The phrase ''or a mix tank'' was added as an option for where the product or the rinsate can be placed.
- As discussed in Unit IX.H., several of the time intervals were changed from 30 seconds to 10 seconds for the initial draining of the container (for liquid products only) and for the draining of the rinsate after the pressure rinse. The length of the pressure rinse interval was changed from ''30 seconds'' to ''at least 30 seconds.''
- Several details about the orientation of the container were added, including that the user must hold the container upside down and insert the rinsing nozzle in the side of the container.
- The pressure requirement was changed from exactly 40 PSI to ''about 40 PSI'' to allow a range of pressures in response to several comments expressing concern about requiring a pressure of exactly 40 PSI in the field.

3. *Comments - container orientation*. A few commenters noted that the instructions are not clear in stating that the container must be inverted and that the rinse nozzle must be inserted on the side (or bottom) of the container. A registrant group suggested inserting the nozzle ''on the side of the container opposite the closure and in a direction towards the bottom of the container.'' A registrant recommended instructing the user to ''Force pressure rinsing nozzle through what was the bottom of the container or through the side of the container and...'' and also recommended that the instructions specify holding the container upside-down during the rinse process.

4. *EPA response - container orientation*. EPA agrees with these commenters that more details about how to hold the container and where the nozzle should be inserted should be included. Therefore, the procedure was modified to instruct the user to hold the container upside down and to insert the rinsing nozzle in the side of the container.

K. Non-Water Diluents (§ 156.146(d))

1. *Final regulations*. A registrant who wishes to require users to clean a container with a diluent other than water (e.g. solvents) must submit a written request to EPA to modify the residue removal instructions of this section. EPA may grant the request if certain conditions are met. The registrant must indicate why a non-water diluent is necessary and must propose appropriate residue removal instructions and disposal instructions that identify the diluent. If the non-water diluent is permitted by the label to be used in application, the instructions may allow the rinsate to be added to application equipment or mix tank. If use of the diluent in application is not permitted, the rinsate must be collected and stored for eventual disposal. EPA must approve, in writing, the modification of the residue removal instructions before the pesticide product can be distributed or sold.

2. *Changes*. The final regulations are almost identical to the proposed regulations regarding non-water diluents. The final rule adds the requirement for the registrant to propose disposal instructions to ensure that end users have information about how to appropriately dispose of rinsate from a diluent other than water. One minor modification was to add ''or mix tank'' as an option for where rinsate may be added if the label allows the non-water diluent to be part of the application mixture. This change was made to be consistent with the changes in the triple rinse and pressure rinse instructions. In addition, several minor editorial changes were made to make this section more clear.

L. Residue Removal Instructions for Refillable Containers (§ 156.156)

1. *General (Introductory Text for § 156.156)*—i. *Final regulations*. The label of each pesticide product packaged in a refillable container must include the residue removal instructions specified in § 156.156. The residue removal instructions must be given for all pesticide products that are distributed or sold in refillable containers, including those that do not require dilution prior to application.

ii. *Changes*. This requirement is substantively the same as it was in the proposed regulation. Some minor editorial and format changes were made to improve the clarity of the regulatory text. In addition, the second sentence, which reinforces that the instructions apply to all products that are distributed or sold in refillable containers, including those that do not require dilution prior to disposal, was moved from the subsection on instructions for residue removal to the introductory text. EPA made this change because the explanatory language applies to the whole section (including instructions on the timing of the procedures).

2. *Timing of residue removal procedures (§ 156.156(a))*—i. *Final regulations*. The label of a pesticide product packaged in a refillable container (and that is subject to this requirement) must have one of the following sets of instructions on the timing of container cleaning:

- ''Cleaning the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller.''
- ''Pressure rinsing the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller.''

The statement must immediately precede the residue removal instructions and must be consistent with those instructions.

ii. *Changes*. These statements were expanded in the final regulation to distinguish between cleaning before disposal and cleaning before refilling in response to comments. The proposed statements simply said ''Clean [or pressure rinse] container before disposal.'' The changes in the final rule include adding ''final'' to the description of disposal, adding that the person disposing of the container is responsible for cleaning it, and including the additional statement of ''Cleaning before refilling is the responsibility of the refiller.''

3. *Residue removal instructions prior to container disposal (§ 156.156(b))*—i.

Final regulations. For pesticide products sold or distributed in refillable containers, the label must include instructions for cleaning the container prior to disposal. The instructions must be appropriate for the characteristics of the product and adequate to protect human health and the environment. The instructions could include any one of the following, as long as the instructions meet the standards described in the previous sentence:

- The refilling residue removal procedure developed by the registrant for the pesticide product.
- Standard industry practices for cleaning refillable containers.
- For pesticides that require dilution prior to application, the following statement:

''To clean container before final disposal, empty the remaining contents from this container into application equipment or a mix tank. Fill the container about 10% full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.''

- Any other statement the registrant considers appropriate.

ii. *Changes*. The final regulations are almost identical to those in the proposed rule, except for a few editorial and format changes. The phrase ''To clean container before final disposal'' was added to the specified procedure to emphasize that users should only clean the container before disposal and not before having the container refilled. The phrase ''into application equipment or a mix tank'' was added to be consistent with the emptying instructions for nonrefillable containers. One sentence that helps clarify the scope of the requirement for residue removal instructions on refillable containers was moved from this section to the introductory text since it applies to the whole section.

M. Amendments to Existing § 156.10

1. *Final regulations*. The final rule modifies the existing regulations in 40 CFR 156.10 in the following three ways:

- A new § 156.10(d)(7) is added that allows the labels for refillable containers to have a blank space to allow the net weight or contents to be marked in by a refiller according to 40 CFR 165.65(h) or 165.70(i);
- The existing § 156.10(f) was modified to allow labels for refillable containers to have a blank space to allow the EPA establishment number to be marked in by a refiller according to 40 CFR 165.65(h) or 165.70(i); and
- The existing § 156.10(i)(2)(ix) regarding storage and disposal instructions was modified to refer to the applicable requirements in the rest of today's final rule.

2. *Changes*. The most significant change to the approach taken in the proposed regulation is that ''shall'' was changed to ''may'' in the two paragraphs establishing blank spaces, thus changing them from requirements to options for pesticide registrants. This change was made to provide flexibility to registrants in response to comments. EPA decided to make several minor revisions to the paragraphs allowing blank spaces to link the 40 CFR part 156 regulations to the 40 CFR part 165 repackaging regulations and to clarify that the blank space does not change the requirement for having the net contents or EPA establishment number on the label. First, the regulatory text allowing blank spaces was modified to refer to the 40 CFR part 165 regulations that require refillers to ensure that the net contents and EPA establishment number appear on the label. Second, the new paragraph in § 156.10(d)(7) was amended to clarify that § 156.10(a)(1)(iii) requires the net contents to be shown clearly and prominently on the label.

The paragraph on storage and disposal instructions was modified to account for changes in the structure of the container-related labeling, so it refers to subpart H of part 156 rather than specific sections. Finally, a requirement about the type size of the storage and disposal heading was added to § 156.10(i)(2)(ix) after the container regulations were proposed in 1994. Today's final rule maintains this requirement and corrects the reference to the child hazard warnings, which are located in § 156.60(b).

N. Compliance Date (§ 156.159)

1. *Final regulations*. The final regulations provide a 3–year compliance period. Specifically, within 3 years from today's date, all pesticide products distributed or sold by a registrant must have labels that comply with the 40 CFR part 156 requirements established in the final rule. This gives registrants a phase in period of 3 years to comply with the labeling requirements in §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146, and 156.156.

2. *Changes*. The most significant change is that the phase-in period was extended from 2 years to 3 years from the publication of the final rule. In addition, the regulatory language was revised to make it more clear. EPA agrees with some of the commenters that a longer compliance period will make it easier and less burdensome to comply with the label standards. To facilitate compliance while trying to minimize the impact on companies, EPA lengthened the compliance period for the label standards to 3 years. EPA believes that a 3–year period is sufficient based on the results of the economic analysis. In addition, 3 years is consistent with the phase-in period for the nonrefillable container regulations.

X. Relationship to Other Programs and Agencies

Certain laws administered by EPA and other agencies may affect the design of pesticide containers or procedures and standards for removal of residue from pesticide containers. This section identifies the laws that EPA considers to have the most significant impact on pesticide containers and containment. The description of these laws is for informational purposes only; no changes are being made in the laws described below. Nothing in this final rule is intended to alter obligations under other statutes.

A. Resource Conservation and Recovery Act (RCRA)

Requirements under RCRA may affect the handling of pesticide containers under certain circumstances. RCRA Subtitles C and I are described briefly below.

FIFRA sections 19(f)(3) and 19(h) specify that FIFRA section 19 does not affect the requirements or authorities of RCRA. Accordingly, today's rule does not alter any existing RCRA requirements, and any applicable RCRA provisions will apply in addition to the provisions of any final rule issued under FIFRA section 19. In addition, FIFRA section 19(f)(1)(B)(iv) specifies that the residue removal regulations may be coordinated with requirements for container rinsing under RCRA. As outlined below, this rule provides for coordination in this area.

1. *Hazardous waste requirements*. Subtitle C of RCRA creates a cradle-to-grave system for managing hazardous wastes. RCRA Subtitle C regulations include requirements for generators, transporters, and others who handle hazardous wastes. The regulations cover any ''solid waste'' (defined at 42 U.S.C. 1004 and 40 CFR 261.2) that is listed as a hazardous waste or exhibits a characteristic of hazardous waste, as set out in part 261. Pesticides (including pesticide residues in containers that are not empty per the RCRA definition in § 261.7) that are discarded or intended to be discarded may qualify as hazardous wastes, if the pesticide is a hazardous waste as defined in § 261.33

(discarded commercial chemical products, off-specification products or manufacturing intermediates, container residues, and spill residues), or if they exhibit a characteristic of hazardous waste as described in part 261 subpart C, and are not otherwise exempt from regulation. A hazardous waste remaining in a container is not subject to Subtitle C regulation if, among other things, the container is ''empty'' as defined in § 261.7. A container is ''empty'' if the wastes are removed pursuant to § 261.7(b)(1) or (b)(2), or, in the case of an acute hazardous waste, the container has been triple rinsed or otherwise cleaned pursuant to § 261.7(b)(3). EPA believes that the triple rinsing procedure provided in today's final rule meets the requirements of § 261.7(b)(3), thus meeting the directive in FIFRA section 19(f)(1)(B)(iv).

2. *Underground storage tanks.* RCRA Subtitle I provides for the development and implementation of a comprehensive regulatory program for ''underground storage tanks'' (USTs), defined at 42 U.S.C. 6991 and 40 CFR 280.12 as tanks that are used to contain an accumulation of ''regulated substances'' and whose volume (including underground pipes connected thereto) is 10 percent or more below ground. Regulated substances include petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (except hazardous wastes regulated under RCRA Subtitle C). CERCLA hazardous substances, enumerated at 40 CFR part 302, include a number of pesticides. UST requirements at 40 CFR part 280 include standards for new tanks as well as requirements for leak detection, closure, corrective action, and financial responsibility.

EPA is not aware of the extent of industry use of USTs to store agricultural pesticides, and solicited comment on the use of underground tanks to store agricultural pesticides and on the preferred means of coordinating UST and FIFRA requirements. No comments were received on the topic. Because today's final rule requires secondary containment of any bulk container holding pesticide, underground storage would be precluded unless the secondary containment structure was also underground. EPA considers that the expense of such a construction makes it unlikely that a facility would use underground storage, and assumes that since no comments were received, underground storage of agricultural pesticides is generally avoided in the industry. Furthermore, EPA has noted, in its review of State regulations, that underground storage of pesticides is forbidden by States with bulk containment regulations.

B. Clean Water Act

EPA has issued several regulations under the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) that are related to today's rule and that affect some sectors of the pesticide industry. The goal of the CWA is to achieve zero discharge of wastewater pollutants.

1. *Pesticide chemicals category, formulating, packaging and repackaging effluent limitations guidelines, pretreatment standards, and new source performance standards: Final rule.* On November 6, 1996, EPA promulgated regulations governing effluents from pesticide formulating, packaging and repackaging facilities (61 FR 57518, Ref. 57). Effluent guidelines establish limitations on the pollutants discharged into waters of the United States from industrial point sources. The Pesticide Formulating, Packaging and Repackaging (PFPR) effluent guidelines apply to facilities engaged in formulating, packaging or repackaging pesticides. The PFPR effluent guidelines regulation set limitations for facilities in two different regulatory subparts of 40 CFR part 455 (subparts C and E). Subpart C applies to facilities that discharge (or have the potential to discharge) wastewater from pesticide formulating, packaging, and/or repackaging operations. All pesticides with the exception of a few specific exemptions are included under subpart C. Subpart E applies only to refilling establishments that repackage agricultural pesticides into refillable containers. Subpart E does not apply to facilities that repackage non-agricultural pesticides. The same formulators, packagers, and repackagers (subpart E) and refilling establishments (subpart E) are affected by today's final pesticide container and containment rule. However, the PFPR effluent guidelines regulation does not include the other types of facilities covered by today's containment rule, namely commercial applicators and custom blenders.

Under the effluent guidelines rule, refilling establishments are required to achieve zero discharge of wastewater pollutants. For these facilities, the zero discharge regulation was based on reuse, recycle and water conservation practices, as well as contract hauling of any non-reusable wastewater for off-site disposal, if necessary. However, effluent guidelines do not require specific practices or control technologies. Many refilling establishments achieve the zero discharge requirement through water conservation and good housekeeping, which includes repairing leaking valves and fittings and collecting drips in pans under appurtenances. Facilities that also provide application services typically reuse rinsate as make-up water for application in accordance with the label. Compliance with today's pesticide container and containment rule regarding requirements for containment structures, and adherence to the recommendations regarding rinsate collection will assist refilling establishments in achieving the zero discharge of pollutants required by the effluent guidelines.

Under the PFPR effluent guidelines, subpart C facilities (formulators, packagers, and repackagers) are required to either achieve zero discharge of wastewater pollutants or to implement specific reuse, recycle, and water conservation practices (Pollution Prevention Alternative). For example, under the pollution prevention alternative, facilities must reuse their rinsates directly into the formulation or store rinsates for use in future formulation of the same or a compatible product.

When the PFPR effluent regulations were proposed in April 1994 (Ref. 64), the scope of subpart C included all pesticide active ingredients (PAIs) (with the exception of sodium hypochlorite and the partial exemption of specified sanitizers) and a wide variety of associated wastewater sources. EPA published a supplemental notice on June 8, 1995 (Ref. 61) which refined the scope of PAIs and wastewater sources. In the final rule, most sanitizer products were excluded, based on a number of factors, such as:

- Sanitizer products are formulated for the purposes of their labeled end use to ''go down the drain;''
- Sanitizer active ingredients are more likely to be sent to Publicly Owned Treatment Works (POTWs) in greater concentrations and volumes from their labeled end use than from rinsing formulating equipment at the PFPR facility;
- Biodegradation data received with comments on some of these sanitizer active ingredients support the hypothesis that they do not pass through POTWs;
- These sanitizer active ingredients represent a large portion of the low toxicity PAIs considered for regulation at the time of proposal; and
- Many sanitizer solutions containing these active ingredients are cleared by the Food and Drug Administration

(FDA) as indirect food additives under 21 CFR 178.1010.

The final PFPR effluent guidelines rule (subpart C) combined the pool chemicals exemption into the sanitizer exemption and exempted other pool chemicals in addition to the only pool chemical in the proposal, sodium hypochlorite. The additional chemicals that are included in the definition of pool chemicals in 40 CFR 455.10 include calcium hypochlorite, lithium hypochlorite, potassium hypochlorite, chlorinated isocyanurate compounds and halogenated hydantoins.

The bulk containment requirements in today's rule are consistent with the control technologies which are the basis for the PFPR effluent guidelines for refilling establishments (subpart E). In addition, the repackaging and refillable container requirements of today's rule, particularly the adherence to the recommendations regarding rinsate collection, will aid facilities in collecting and reusing rinsates to meet the zero discharge/pollutant prevention alternative requirements of subpart C of the PFPR effluent guidelines.

2. *National Pollutant Discharge Elimination System (NPDES) - Storm Water Phase II Final Rule*. EPA issued final regulations on December 8, 1999 (64 FR 68722, Ref. 52) addressing storm water discharges. The regulation established a ''no exposure'' exemption for storm water discharges from facilities where industrial materials and activities are not exposed to storm water. Upon review of earlier regulations that excluded storm water discharges from certain categories of light industry from NPDES permit requirements, a court invalidated the light industry exemption. In 1992, the Ninth Circuit court concluded that the exemption impermissibly relied on the unsubstantiated judgment of the facility operator to determine applicability of the exemption. The new rule established in 1999 now allows the exemption, but requires that the facility meet certain conditions and provide a certification for tracking and accountability. ''No exposure'' means that all industrial materials or activities are protected by storm-resistant sheltering so they are not exposed to rain, snow, snowmelt or runoff. (40 CFR 122.26(g))

Pesticide refilling operations and bulk storage operations required to apply for and obtain NPDES permits for storm water discharges associated with such operations may take advantage of this exemption if they provide a certification of ''no exposure'' and maintain the certified conditions at the facility. Even when an owner/operator certifies to no exposure, the NPDES permitting authority may still require a permit if it determines that there is a discharge interfering with water quality standards. This will provide an added incentive to place all tanks within secondary containment that is protected from the elements. Facilities that are not exempt will have to get a discharge permit.

3. *Effluent guidelines and standards for the transportation equipment cleaning (TEC) Industry*. On August 14, 2000, EPA published a final rule (65 CFR 49665, Ref. 51) establishing restrictions on the discharge of wastewater from cleaning the interiors of tank trucks, rail tank cars, inland tank barges, ocean/sea tankers, and other similar tanks used to transport materials, including agricultural chemicals and fertilizers. The TEC regulations do not apply to wastewaters generated from cleaning the interiors of pesticide drums or intermediate bulk containers (IBCs), defined as portable containers with 450 liters (119 gallons) to 3,000 liters (793 gallons) capacity. EPA subsequently studied the Industrial Container and Drum Cleaning Industry. The Preliminary Data Summary - Industrial Container and Drum Cleaning Industry (EPA–821–R–02–011 and Ref. 48) can be downloaded from the following link: *http://www.epa.gov/waterscience/pollcontrol/drum/index.html*.

4. *Spill prevention control and countermeasures (SPCC)*. On July 17, 2002, (67 FR 47042, Ref. 47), EPA promulgated regulations under section 311(j)(1)(C) of the Clean Water Act (known as the SPCC regulations) for the prevention of oil spills into navigable waters and adjoining shorelines. The regulations apply to facilities that, because of their location, could reasonably be expected to discharge oil into navigable waters or adjoining shorelines. Part 112 of 40 CFR outlines requirements for both the prevention and the response to oil spills. Facilities that are subject to the SPCC regulations include any non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil, in quantities that may be harmful, into navigable waters of the United States or adjoining shorelines. Because the definition of ''oil'' under CWA section 311 is very broad (including oil ''of any kind and in any form''), it could potentially include pesticides that contain oil or are oil-based. EPA expects that comparatively few, if any, of the facilities covered by today's pesticide container and containment rule are also subject to SPCC requirements, but if any are, both today's rule and SPCC requirements apply. On December 12, 2005, EPA proposed two separate amendments to the SPCC Rule. One of them (Ref. 24) streamlines the regulatory requirements for qualified facilities and equipment regulated under 40 CFR part 112 and proposes a separate extension of the compliance date for farms. The other amendment (Ref. 23) extends the SPCC compliance dates for all facilities.

C. Occupational Safety and Health Administration Requirements

The Occupational Safety and Health Act (U.S.C. 2601 *et seq.*) addresses occupational safety and health hazards by establishing requirements for employers and employees and authorizing the Occupational Safety and Health Administration (OSHA) to establish mandatory occupational safety and health standards.

Tanks and containers that are used to store flammable and combustible liquids in occupational settings are subject to OSHA requirements under 29 CFR 1910.106. For storage tanks, § 1910.106(b) contains design and construction requirements, including standards for materials, spacing, venting, drainage and diking, fire and flood resistance, and testing for strength and tightness. Section 1910.106(c) contains specifications for piping, valves, and fittings. Section 1910.106(d) sets out design and construction requirements for containers and portable tanks, and also contains specifications for storage areas. Today's regulations do not contradict or supercede any existing OSHA requirements, and any applicable OSHA provisions will apply in addition to the provisions of today's rule.

D. Department of Transportation Hazardous Materials Regulations

The Hazardous Materials Transportation Act of 1974, (49 U.S.C. 1801 et seq) authorizes DOT to designate as hazardous materials those materials that may pose unreasonable risk to health and safety or property, and regulate the handling and transportation of such materials. The DOT regulations and their relationship to today's final pesticide container and containment regulations are discussed in detail in Unit IV. and many other places throughout this preamble.

XI. FIFRA Mandated Reviews

In accordance with FIFRA sec. 25(a), the Agency submitted a draft of this final rule to the FIFRA Scientific

Advisory Panel (SAP), the Secretary of Agriculture, and the Committee on Agriculture in the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry in the United States Senate.

The FIFRA SAP waived its review of this final rule because the significant scientific issues involved have already been reviewed by the SAP and additional review isn't necessary. The USDA did not submit any official comments.

XII. References

The following is a listing of the documents that are specifically referenced in this final rule. These documents, and other supporting materials, are included in the docket established for this rulemaking under docket ID No.EPA-HQ-OPP–2005–0327 at *http://www.regulations.gov*.

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XIII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final rule is a ''significant regulatory action'' because these requirements may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted a draft final rule to OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this rulemaking as required by sec. 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared two Economic Analyses (EAs) of the potential costs and benefits associated with this rule, one for the container requirements and another for the containment requirements. The reason for having two EAs is because the regulated community differs in each case. For example, the container requirements affect pesticide formulators and refillers of all pesticides while the containment requirements affect retailers, for-hire applicators and custom blenders of agricultural pesticides. The EAs, entitled *Economic Analysis of the Pesticide Container Design and Residue Removal Standards* (Ref. 22) and *Economic Analysis of the Bulk Pesticide Containment Structure Regulations* (Ref. 21), are available in

the docket for this rule and are briefly summarized here.

EPA estimates the total cost of the final rule to be $11.3 million ($8.37 million for containers + $2.93 million for containment) and the total benefits from the final rule to be $17 - 23.4 million. When the estimated cost of the final rule is compared to the estimated cost for the proposed rule, there is an annual cost reduction of approximately $27.4 - $38.6 million. This reduction in estimated cost is due to the choices made in the final rule that lead to a narrowing in the scope of regulated entities and products that are subject to the final rule. During the first year, regulated facilities will experience an increase in total paperwork cost burden of $1 million (containment) and $7.0 million (containers) due primarily to inspection and recordkeeping costs. For containers, in the second year and continuing thereafter, total paperwork cost burden per facility will decrease to 25 hours from 81 hours in the first year, reducing paperwork burden costs to $4.1 million annually.

Over 20 respondents submitted general comments on the Regulatory Impact Analyses (RIAs) or EAs for the proposed rule. Nearly all of the commenters wanted EPA to reevaluate the economic assessments. The most common comments were: 1) The costs far outweigh the benefits; 2) costs were underestimated; 3) benefits were overestimated; 4) this is a major rule, contrary to EPA's assessment; 5) the rule will have a significant impact on medium and large formulators as well as small formulators; 6) the rule will have a general impact on various industry segments; and 7) the rule does not comply with the standards of the Executive Order. Commenters who objected to the cost estimates mainly disagreed with EPA's estimate of the cost of complying with the six 9's residue removal standard. State regulatory agencies predicted that the rule would increase their workload and expressed the hope that EPA would increase State funding.

EPA reopened the comment period on the proposed rule on October 21, 1999 (64 FR 56918, Ref. 53) on three issues, proposing to reduce the scope of the container standards, add an exemption for certain antimicrobial pesticides, and adopt some of the Department of Transportation (DOT) hazardous materials regulations. These potential changes decreased the estimated economic impact by reducing the number of pesticide products subject to the container requirements compared to the original proposal.

Major changes resulted in cost reduction from the economic analysis for the proposed rule. Among these is the elimination of the requirement to demonstrate the hydraulic conductivity of containment structures, lowering of the residue removal standard from six 9's to four 9's, and limiting of rinse-testing requirement to those formulations expected to be problematic.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA for this final rule has been assigned EPA ICR No. 1631.02, and OMB control number 2070–0133. Consistent with the procedures at 5 CFR 1320.11, EPA sought comment on two Information Collection Request (ICR) documents that were submitted to OMB in conjunction with issuing the proposed rule (identified under EPA ICR No. 1631.01 and No. 1632.01). For the final rule, the two ICR documents were combined into one ICR document, which reflects the information collection provisions in this final rule. The ICR document for this final rule (identified under EPA ICR No. 1631.02) (Ref. 30) is included in the docket for the final rule.

Under the PRA, 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 codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. For the ICR activity contained in this final rule, in addition to displaying the applicable OMB control number in this Unit, the Agency is amending the table in 40 CFR 9.1 to list the OMB control number assigned to this ICR activity. Due to the technical nature of the table, EPA finds that further notice and comment about amending the table is unnecessary. As a result, EPA finds that there is good cause under section 553(b)(B) of the Administrative Procedures Act (APA), 5 U.S.C. 553(b)(B), to amend this table without further notice and comment.

Under the PRA, 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.

In this final rule, the information collection requirement burden on the regulated community includes the administrative burden associated with keeping monthly inspection and maintenance records for bulk pesticide containment structures. The regulated community's administrative burden is defined as the time spent to record and file the inspection and maintenance of the bulk pesticide containment structures per month. There is not a requirement to submit the records or reports to the Agency, however, EPA or its representatives may, from time to time, request information under these regulations to ensure compliance with the regulation.

The two ICRs for the proposed rule were combined into a single ICR for the final rule. This ICR document provides detailed presentations of the estimated annual burden and costs for 3 years, which represents the maximum OMB approval period for any collection activity, after which the Agency must seek renewal of the ICR approval from OMB every 3 years for as long as the requirements exist.

1. *Container burden.* The public reporting burden for this collection of information is estimated to be 66 hours in the first year of compliance with this rule for approximately 1,804 pesticide registrant respondents, and 10 hours in subsequent years. For an estimated 16,795 agricultural pesticide refiller respondents, the reporting burden is 7.5 hours per year. For an estimated 322 swimming pool supply companies, the reporting burden is 7.5 hours per year. The total annual paperwork burden across all pesticide registrant respondents, assuming that 1,804 facilities will be affected by the requirements, is 112,209 hours in first year, and 11,185 hours in all other years. The total annual paperwork burden across all agricultural pesticide refiller respondents, assuming 16,795 facilities will be affected by the

requirements, is 125,963 hours. The total annual paperwork burden across all swimming pool supply companies, assuming 322 facilities will be affected by the requirements, is 2,415 hours.

2. *Containment burden*. The public recordkeeping burden for this collection of information is estimated to be 7.5 hours for approximately 4,665 respondents in the first year after promulgation of this rule, which includes initial rule familiarization. The average annual burden per respondent for subsequent years is estimated to be 7.5 hours. The total annual paperwork burden across all respondents, assuming that 4,665 facilities will be affected by the requirement, is 34,988 hours per year.

In comments filed after reviewing the proposed ICRs in 1994, OMB commented that EPA should consider less burdensome testing requirements that meet the objective that disposal of containers poses no unreasonable risk to health of the environment. As discussed previously, EPA has modified the requirements to be less burdensome, decreasing the total industry burden for the final rule. The decrease in burden results mainly from the elimination of the hydraulic conductivity standard for containment structures, lowering of the residue removal standard to four 9's, and requiring residue removal testing only for problematic formulations.

The Agency is seeking additional comments on the paperwork burden estimates related to the provision in the final rule that allows States with existing regulations (§ 165.97) to request the authority to continue implementing its State containment regulations in lieu of EPA's regulations. As discussed previously, EPA added this provision in response to comments asking EPA to consider existing State regulations. Since this provision and related burden estimates were not part of the ICRs that were prepared and for which public comment was sought in conjunction with the proposed rule, EPA is providing this opportunity for public comment. Direct your comments on this to EPA using the public docket that has been established for this final rule (docket ID number EPA–HQ–OPP–2005–0327) at *http://www.regulations.gov*. In addition, send a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA ICR No. 1361.02. Since OMB is required to complete its review of the ICR between 30 and 60 days after August 16, 2006, please submit your comments no later than September 15, 2006.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. This determination is based on the Agency's two economic analyses performed for this rulemaking, which are briefly summarized in Unit XIII.A., and copies of which are available in the docket for this rulemaking (Refs. 21 and 22). The following is a brief summary of the factual basis for this certification.

Under the RFA, 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 in accordance with the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the industry profiles for this rulemaking that EPA prepared as part of the Economic Analyses, EPA has determined that this final rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, small entity for purposes of this final rule is synonymous with small business.

In addition, for purposes of analyzing the potential impacts of this final rule on small businesses, the Agency disaggregated the universe of potentially impacted small business into subcategories of large-small businesses, medium-small businesses, and small-small businesses. The analysis disaggregated the impacts of small businesses into these sub-categories because the SBA size standard for small businesses, which are primarily intended to define whether a business entity is eligible for Federal government programs and preferences reserved for small businesses (13 CFR 121.101), may not be representative of all small businesses in the industry sectors impacted by this rulemaking. (See section 632(a)(1) of the Small Business Act.) The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the Pesticide and Other Agricultural Chemical Manufacturing sector (i.e., NAICS code 325320) approximately 92% of the industries would be classified as small businesses under the SBA definition (500 or fewer employees). However, 60% of the SBA defined small companies have 1 to 19 employees, which are considered small-small businesses in the Agency's analysis. By disaggregating the potential impacts of this final rule on small businesses, the Agency was able to consider the distribution of the estimated impacts among the universe of potentially impacted small businesses, particularly potential impacts on the small-small businesses.

Considering just the container requirements, the estimated costs of compliance for the universe of potentially impacted small businesses in each of the regulated industries as a proportion of their current revenues are estimated to be less than 1 percent. Specifically, using the SBA definition of small businesses, the costs of compliance for all small businesses are estimated to be less than 0.02 percent of the current average entity revenues. Looking at the estimated impacts using the disaggregated small business sub-categories used in the Agency's analysis (which further divides small businesses into large-small, medium-small and small-small business within each of the regulated industries), no small-small business is estimated to incur costs which account for more than 0.04 percent of current average entity revenues.

Considering just the containment requirements, the estimated costs of compliance for the universe of potentially impacted small businesses as a proportion of their current revenues are estimated to be less than 1 percent, except for small commercial applicators. When only looking at commercial applicators, and using the SBA definition of small business, the costs of compliance for potentially impacted small commercial applicators to install new secondary containment units are estimated to be as high as 2.7 percent of the current average entity revenues. Small-small commercial applicators, based on the disaggregated small business sub-categories used in the Agency's analysis, may face costs of compliance that are as much as 7.8 percent of the current average entity revenues. However, only 6 of the 3,000 small commercial applicators were identified as small-small commercial applicators that will need to install both a secondary containment unit and a containment pad and thus are estimated to be impacted in this way. The costs of compliance for potentially impacted

small commercial applicators to retrofit existing containment structures are estimated to be less than 1 percent of the current average entity revenues.

For agricultural pesticide refillers, the other industry estimated to be impacted by the containment regulations, the costs of compliance for small agricultural pesticide refillers are estimated to be less than 0.18 percent of current average entity revenues using the SBA definition of small businesses, and less than 0.34 percent of current average entity revenues based on the disaggregated small-small business sub-category used in the Agency's analysis.

Considering the overall impact of this final rule on the universe of potentially impacted small businesses using the SBA definition for small business, the Agency has determined that this final rule will not have a significant adverse economic impact on a substantial number of small entities.

In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. In doing so for this particular rule, as discussed in more detail previously, the major changes that EPA made to the proposed requirements resulted in significant reductions in the potential costs of compliance for this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. As described in Unit XIII.A., the annual costs associated with this action are estimated to total $11.3 million ($8.37 millioin for containers + $2.93 million for containment). This cost represents the incremental cost to registrants, pesticide dealers, commercial applicators and custom blenders attributed to the requirements in this action. Accordingly, this action is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have federalism implications, because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Under cooperative agreements with EPA, States will be involved in compliance monitoring and enforcement activities, but are not otherwise expected to engage in the activities regulated by this rule. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 6, 2000), EPA has determined that this action does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. EPA is not aware of any tribal governments which are pesticide registrants, refillers or dealers storing large quantities of pesticides. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this action because it is not designated as an economically significant regulatory action as defined by Executive Order 12866 (see Unit XIII.A.). Further, this action does not establish an environmental standard that is intended to have a negatively disproportionate effect on children. To the contrary, this action will provide added protection for children from pesticide risk by ensuring the integrity of pesticide container design, as well as secure pesticide storage and disposal.

H. Executive Order 13211

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

I. National Technology Transfer Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action requires performance standards for containment structures and residue removal testing for containers of certain pesticide formulations, but does not require specific methods or standards. Therefore, this action does not impose any technical standards that would require Agency consideration of voluntary consensus standards.

J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues. Although not directly impacting environmental justice-related concerns, the Agency believes that the requirements in this rule will assist EPA and others in reducing potential exposures associated with the handling, storage, management and disposal of pesticide containers covered by the rule.

XIV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 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**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Pesticides and pests.

List of Subjects in 40 CFR Part 165

Environmental protection, Packaging and containers, Containment structures, Pesticides and pests.

Dated: August 3, 2006.

Stephen L. Johnson,

Administrator.

■ Therefore, 40 CFR chapter I is amended as follows:

■ 1. Part 9 is amended as follows:

PART 9—[AMENDED]

■ a. 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.

■ b. In § 9.1 the table is amended by adding a new center heading entitled ''Pesticide Management and Disposal'' and an entry for new part 165 after the center heading and entries for ''State Registration of Pesticide Products,'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * * * *	
Pesticide Management and Disposal	
Part 165	2070–0133
* * * * * * *	

PART 156—[AMENDED]

■ 2. Part 156 is amended as follows:

■ a. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 through 136y.

■ b. In § 156.10 by adding paragraph (d)(7), and by revising paragraphs (f) and (i)(2)(ix) to read as follows:

§ 156.10 Labeling requirements.

* * * * *

(d)* * *

(7) For a pesticide product packaged in a refillable container, an appropriately sized area on the label may be left blank to allow the net weight or measure of content to be marked in by the refiller according to 40 CFR 165.65(h) or 165.70(i) prior to distribution or sale of the pesticide. As required in paragraph (a)(1)(iii) of this section, the net contents must be shown clearly and prominently on the label.

* * * * *

(f) *Producing establishment's registration number.* The producing establishment registration number preceded by the phrase ''EPA Est.'', of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It must appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through such wrapper or container. For a pesticide product packaged in a refillable container, an appropriately sized area on the label may be left blank after the phrase ''EPA Est.'' to allow the EPA establishment registration number to be marked in by the refiller according to 40 CFR 165.65(h) or 165.70(i) prior to distribution or sale of the pesticide.

* * * * *

(i) * * *

(2)* * *

(ix) Specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with subpart H of this part and part 165 of this chapter. These instructions must be grouped and appear under the heading, ''Storage and Disposal.'' This heading must be set in type of the same minimum sizes as required for the child hazard warning. (See table in § 156.60(b))

* * * * *

■ c. By adding Subpart H entitled ''Container Labeling'' to read as follows:

Subpart H—Container Labeling

Sec.
156.140 Identification of container types.
156.144 Residue removal instructions - general.
156.146 Residue removal instructions for nonrefillable containers - rigid containers with dilutable pesticides.
156.156 Residue removal instructions for refillable containers.
156.159 Compliance date.

Subpart H—Container Labeling

§ 156.140 Identification of container types.

For products other than plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container. The information may be located on any part of the container except the closure. If the statements are placed on the container, they must be durably marked on the container. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.

(a) *Nonrefillable container.* For nonrefillable containers, the statements in paragraphs (a)(1) through (a)(4) of this section are required. If placed on the label, the statements in paragraphs (a)(1) through (a)(3) of this section must be under an appropriate heading under the heading ''Storage and Disposal.'' If any of the statements in paragraphs (a)(1) through (a)(3) of this section are placed on the container, an appropriate referral statement such as ''See container for recycling [or other descriptive word] information.'' must be placed on the label under the heading ''Storage and Disposal.''

(1) *Statement identifying a nonrefillable container.* The following phrase is required: ''Nonrefillable container.''

(2) *Reuse statement.* One of the following statements is required. Products with labels that allow household/residential use must use the statement in paragraph (a)(2)(i) or (a)(2)(iii) of this section. All other products must use the statement in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

(i) ''Do not reuse or refill this container.''

(ii) ''Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.''

(iii) The following statement may be used if a product is ''ready-to-use'' and

its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: ''Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.''

(3) *Recycling or reconditioning statement*. One of the following statements is required:

(i) ''Offer for recycling if available.''

(ii) ''Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site]. For example, this statement could be ''Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact the Ag Container Recycling Council (ACRC) at 1–877–952–2272 (toll-free) or *www.acrecycle.org.*''

(iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(iv) An alternative recycling statement that has been reviewed and approved by EPA.

(v) ''Offer for reconditioning if appropriate.''

(4) *Batch code*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

(b) *Refillable container*. For refillable containers, one of the following statements is required. If placed on the label, it must be under the heading ''Storage and Disposal.'' If the statement is placed on the container, an appropriate referral statement, such as ''Refilling limitations are on the container.'' must be placed under the heading ''Storage and Disposal.''

(1) ''Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.''

(2) ''Refillable Container. Refill this container with [*common chemical name*] only. Do not reuse this container for any other purpose.''

§ 156.144 Residue removal instructions - general.

(a) *General*. Except as provided by paragraphs (c) and (d) of this section, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal that are specified in §§ 156.146 and 156.156. The residue removal instructions are required for both nonrefillable and refillable containers.

(b) *Placement of residue removal statements*. All residue removal instructions must be placed under the heading ''Storage and Disposal.''

(c) *Exemption for residential/household use products*. Residential/household use pesticide products are exempt from the residue removal instruction requirements in this section through § 156.156.

(d) *Modification*. EPA may, on its own initiative or based on data submitted by any person, modify or waive the requirements of this section through § 156.156, or permit or require alternative labeling statements.

§ 156.146 Residue removal instructions for nonrefillable containers - rigid containers with dilutable pesticides.

The label of each dilutable (liquid or solid) pesticide product packaged in a rigid nonrefillable container must include the following residue removal instructions as appropriate.

(a) *Timing of the residue removal procedure*. One of the following statements must immediately precede the instructions required in paragraph (b) of this section and must be consistent with the instructions in paragraphs (b) and (c) of this section:

(1) ''Clean container promptly after emptying.''

(2) ''Triple rinse or pressure rinse container (or equivalent) promptly after emptying.''

(3) ''Triple rinse container (or equivalent) promptly after emptying.''

(b) *Triple rinse instructions*. The label of each dilutable pesticide product packaged in rigid nonrefillable containers must include one of the following sets of instructions.

(1) For liquid dilutable pesticide products in containers small enough to shake, use the following instructions: ''Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times.''

(2) For solid dilutable pesticide products in containers small enough to shake, use the following instructions: ''Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times.''

(3) For containers that are too large to shake, use the following instructions: ''Triple rinse as follows: Empty remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times.''

(c) *Pressure rinse instructions*. The label of each dilutable pesticide product packaged in rigid nonrefillable containers may include one of the following sets of instructions, and one of them must be used if the statement in paragraph (a)(2) of this section is used. If one of these statements is included on the label, it must immediately follow the triple rinse instructions specified in paragraph (b) of this section.

(1) For liquid dilutable pesticide products, use the following label instruction: ''Pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.''

(2) For solid dilutable pesticide products, use the following label instruction: ''Pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.''

(d) *Non-water diluent*. (1) A registrant who wishes to require users to clean a container with a diluent other than water (e.g., solvents) must submit to EPA a written request to modify the

residue removal instructions of this section. The registrant may not distribute or sell the pesticide with the modified residue removal instructions until EPA approves the request in writing.

(2) The registrant must indicate why a non-water diluent is necessary for efficient residue removal, and must propose residue removal instructions and disposal instructions that are appropriate for the characteristics and formulation of the pesticide product and non-water diluent. The proposed residue removal instructions must identify the diluent. If the Directions for Use permit the application of a mixture of the pesticide and the non-water diluent, the instructions may allow the rinsate to be added to the application equipment or mix tank. If the Directions for Use do not identify the non-water diluent as an allowable addition to the pesticide, the instructions must require collection and storage of the rinsate in a rinsate collection system.

(3) EPA may approve the request if EPA finds that the proposed instructions are necessary and appropriate.

§ 156.156 Residue removal instructions for refillable containers.

The label of each pesticide product packaged in a refillable container must include the residue removal instructions in this section. Instructions must be given for all pesticide products that are distributed or sold in refillable containers, including those that do not require dilution prior to application.

(a) *Timing of the residue removal procedure*. One of the following statements must immediately precede the instructions required in paragraph (b) of this section and must be consistent with the instructions in paragraph (b) of this section:

(1) ''Cleaning the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller.''

(2) ''Pressure rinsing the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller.''

(b) *Residue removal instructions prior to container disposal*. (1) Instructions for cleaning each refillable container prior to disposal are required. The residue removal instructions must be appropriate for the characteristics and formulation of the pesticide product and must be adequate to protect human health and the environment.

(2) Subject to meeting the standard in paragraph (b)(1) of this section, the statement on residue removal instructions could include any one of the following:

(i) The refilling residue removal procedure developed by the registrant for the pesticide product.

(ii) Standard industry practices for cleaning refillable containers.

(iii) For pesticides that require dilution prior to application, the following statement: ''To clean the container before final disposal, empty the remaining contents from this container into application equipment or a mix tank. Fill the container about 10 percent full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.''

(iv) Any other statement the registrant considers appropriate.

§ 156.159 Compliance date.

As of August 17, 2009, all pesticide products distributed or sold by a registrant must have labels that comply with §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146, and 156.156.

■ 3. By adding a new part 165 to read as follows:

Part 165—Pesticide Management and Disposal

Sec.

Subpart A—General

165.1 Scope.
165.3 Definitions.
165.4–165.19 [Reserved]

Subpart B—Nonrefillable Container Standards: Container Design and Residue Removal

165.20 General provisions.
165.23 Scope of pesticide products included.
165.25 Nonrefillable container standards.
165.27 Reporting and recordkeeping.
165.28–165.39 [Reserved]

Subpart C—Refillable Container Standards: Container Design

165.40 General provisions.
165.43 Scope of pesticide products included.
165.45 Refillable container standards.
165.47 What information must I report about my refillable containers?
165.48–165.59 [Reserved]

Subpart D—Standards for Repackaging Pesticide Products into Refillable Containers

165.60 General provisions.
165.63 Scope of pesticide products included.
165.65 Registrants who distribute or sell pesticide products in refillable containers.
165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.
165.70 Refillers who are not registrants.
165.71–165.79 [Reserved]

Subpart E—Standards for Pesticide Containment Structures

165.80 General provisions.
165.81 Scope of stationary pesticide containers included.
165.82 Scope of pesticide dispensing areas included.
165.83 Definition of new and existing structures.
165.85 Design and capacity requirements for new structures.
165.87 Design and capacity requirements for existing structures.
165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.
165.92 What if I need both a containment pad and a secondary containment unit?
165.95 What recordkeeping do I have to do as a facility owner or operator?
165.97 States with existing containment programs.

Authority: 7 U.S.C. 136 through 136y.

Subpart A—General

§ 165.1 Scope.

The Part 165 regulations establish standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.

§ 165.3 Definitions.

Act means the Federal Insecticide, Fungicide, and Rodenticide Act.

Agricultural pesticide means any pesticide product labeled for use in a nursery or greenhouse or for use in the production of any agricultural commodity, including any plant, plant part, animal, or animal product produced by persons (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, horticulturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

Appurtenance means any equipment or device which is used for the purpose of transferring a pesticide from a stationary pesticide container or to any refillable container, including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering devices.

Container means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol

cans and containers that become part of a direct injection system) are considered to be containers for the purposes of this part.

Containment pad means any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.

Containment structure means either a secondary containment unit or a containment pad.

Custom blending means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

(1) The blend is prepared to the order of the customer and is not held in inventory by the blender;

(2) The blend is to be used on the customer's property (including leased or rented property);

(3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;

(4) The blend is prepared from registered pesticides; and

(5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

Dry pesticide means any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowable powders, granules, and dry baits.

Establishment means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).

Flowable concentrate means a stable suspension of active ingredients in a liquid intended for dilution with water before use.

Nonrefillable container means a container that is not a refillable container and that is designed and constructed for one time containment of a pesticide for sale or distribution. Reconditioned containers are considered to be nonrefillable containers.

One-way valve means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposite direction, thus allowing the withdrawal of material from, but not the introduction of material into, a container.

Operator means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.

Owner means any person who owns a facility at which a containment structure is required.

Pesticide compatible means, as applied to containers, that the container construction materials will not chemically react with the formulation. A container is not compatible with the formulation if, for example, the formulation:

(1) Is corrosive to the container;

(2) Causes softening, premature aging, or embrittlement of the container;

(3) Otherwise causes the container to weaken or to create the risk of discharge;

(4) Reacts in a significant chemical, electrolytic, or galvanic manner with the container, or

(5) Interacts in a way, such as the active ingredient permeating the container wall, that would cause the formulation to differ from its composition as described in the statement required in connection with its registration under FIFRA section 3.

Pesticide compatible means, as applied to secondary containment, that the containment construction materials are able to withstand anticipated exposure to stored or transferred materials without losing the capacity to provide the required secondary containment of the same or other materials within the containment area.

Pesticide dispensing area means an area in which pesticide is transferred out of or into a container.

Portable pesticide container means a refillable container that is not a stationary pesticide container.

Pressure rinse means the flushing of the container to remove pesticide residue by using a pressure method with a pressure of at least 40 PSI.

Produce means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

Producer means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

Refillable container means a container that is intended to be filled with pesticide more than once for sale or distribution.

Refiller means a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

Refilling establishment means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

Repackage means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.

Rinsate means the liquid produced from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

Runoff means surface water leaving the target site.

Secondary containment unit means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers.

Stationary pesticide container means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

Tamper-evident device means a device which can be visually inspected to determine if a container has been opened.

Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode.

Triple rinse means the flushing of the container three times to remove pesticide residue by using a non-pressurized method.

Washwater means the liquid produced from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound.

§§ 165.4–165.19 [Reserved]

Subpart B—Nonrefillable Container Standards: Container Design and Residue Removal

§ 165.20 General provisions.

(a) *What is the purpose of the regulations in this subpart*? The regulations in this subpart establish design and construction requirements for nonrefillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart*? You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in nonrefillable containers. If your pesticide product is subject to the regulations in this subpart as set out in § 165.23, your pesticide product must be distributed or sold in a nonrefillable container that meets the standards of these regulations.

(c) *When do I have to comply*? As of August 17, 2009, all pesticide products distributed or sold by you in nonrefillable containers must be distributed or sold in compliance with these regulations.

§ 165.23 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart*? The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (d) of this section.

(d) *How will EPA determine if an ''antimicrobial'' pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment*? (1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the nonrefillable container regulations within the time frames established by EPA in the rule or in its notification.

(e) *What other pesticide products are subject to the regulations in this subpart*? (1) Except for manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt under paragraph (c) of this section, all of the regulations in this subpart apply to a pesticide product if it satisfies at least one of the following criteria:

(i) The pesticide product meets the criteria of Toxicity Category I as set out in § 156.62 of this chapter.

(ii) The pesticide product meets the criteria of Toxicity Category II as set out in § 156.62 of this chapter.

(iii) The pesticide product is classified for restricted use as set out in §§ 152.160 - 152.175 of this chapter.

(2) Except for manufacturing use products, plant-incorporated protectants, antimicrobial products that are exempt under (c) of this section, and other pesticide products that are regulated under paragraph (e)(1) of this section, a pesticide product must be packaged in compliance with 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the Department of Transportation requires it to be packaged according to 49 CFR parts 171–180.

(f) *What does ''pesticide product'' or ''pesticide'' mean in the rest of this subpart*? In §§ 165.25 through 165.27, the term ''pesticide product'' or ''pesticide'' refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (e) of this section.

§ 165.25 Nonrefillable container standards.

(a) *What Department of Transportation (DOT) standards do my nonrefillable containers have to meet under this part if my pesticide product is not a DOT hazardous material*? A pesticide product that does not meet the definition of a hazardous material in 49

CFR 171.8 must be packaged in a nonrefillable container that is designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material.

(b) *What DOT standards do my nonrefillable containers have to meet under this part if my pesticide product is a DOT hazardous material*? (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171–180.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171–180.

(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations*? If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the **Federal Register**. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

(d) *What standards for closures do my nonrefillable containers have to meet*? If your nonrefillable container is a rigid container with a capacity equal to or greater than 3.0 liters (0.79 gallons), if the container is not an aerosol container or a pressurized container, and if the container is used to distribute or sell a liquid agricultural pesticide, each nonrefillable container must have at least one of the following standard closures:

(1) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 11.5 threads per inch, National Pipe Straight (NPS) standard.

(2) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 5 threads per inch, buttress threads.

(3) Screw cap, 63 millimeters, at least one thread revolution at 6 threads per inch.

(4) Screw cap, 38 millimeters, at least one thread revolution at 6 threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

(e) *What standards for dispensing do my nonrefillable containers have to meet*? If your nonrefillable container has a capacity of 5 gallons (18.9 liters) or less, if the container is not an aerosol container, a pressurized container, or a spray bottle, and if the container holds a liquid pesticide, your nonrefillable container must do both of the following:

(1) Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.

(2) Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

(f) *What standards for residue removal do my nonrefillable containers have to meet*? Each nonrefillable container and pesticide formulation combination must meet the applicable residue removal standard of this section.

(1) If the nonrefillable container is rigid and has a capacity less than or equal to 5 gallons (18.9 liters) for liquid formulations or 50 pounds (22.7 kilograms) for solid formulations and if the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application (that is, if the pesticide is dilutable), each container/formulation combination must be capable of attaining at least 99.99 percent removal of each active ingredient when tested using the EPA test procedure ''Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers.''

(2) The test must be conducted only if the pesticide product is a flowable concentrate or if EPA specifically requests the records on a case by case basis.

(3) For the rigid container/dilutable product standard in paragraph (f)(1) of this section, percent removal represents the percent of the original concentration of the active ingredient in the pesticide product when compared to the concentration of that active ingredient in the fourth rinse. Percent removal is calculated by the formula:

percent removal = [1.0 - RR] x 100.0, where

RR = rinsate ratio = Active ingredient concentration in fourth rinsate/Original concentration of active ingredient in the product

(g) *Can I obtain a waiver from or a modification to any of the nonrefillable container standards*? Yes, it is possible for you to obtain a waiver from or a modification to the nonrefillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(3) EPA may approve a non-standard closure (that is, a closure not listed in paragraph (d) of this section) if EPA determines that both of the following conditions are satisfied:

(i) The non-standard closure is necessary for the proper mixing, loading, or application of the pesticide product.

(ii) The non-standard closure offers exposure protection to handlers during mixing and loading that is the same or greater than that provided by the standard closures.

(4) EPA may waive or modify the container dispensing capability standards in paragraph (e) of this section if EPA determines that at least one of the following conditions is satisfied:

(i) The product is typically removed from the container by a method other than pouring.

(ii) Compliance with the container dispensing capability standards would increase exposure to the pesticide container handler.

(5) EPA may waive or modify the requirements of paragraph (f) of this section regarding the residue removal standard if EPA determines that both of the following conditions are satisfied:

(i) The residue remaining in the container would not cause an unreasonable adverse effect on the environment; and

(ii) The product offers significant benefits and cannot be economically reformulated or repackaged.

(h) *How do I obtain a waiver from or a modification to any of the nonrefillable container standards*? To obtain a waiver from or a modification to any of the nonrefillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania

Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a nonrefillable container that does not comply with all of the nonrefillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the nonrefillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

§ 165.27 Reporting and recordkeeping.

(a) *What information must I report about my nonrefillable containers*? You are not required to report to EPA with information about your nonrefillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

(b) *What recordkeeping do I have to do for my nonrefillable containers*? For each pesticide product that is subject to § 165.25 - 165.27 and is distributed or sold in nonrefillable containers, you must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

(1) The name and EPA registration number of the pesticide product.

(2) A description of the nonrefillable container(s) in which the pesticide product is distributed or sold.

(3) At least one of the following records to document compliance with the requirement for closures in § 165.25(d) for each nonrefillable container used to distribute or sell the pesticide product that must comply with § 165.25(d):

(i) A letter or document from the container supplier that describes the closure.

(ii) A specification about the closure in the contract between the registrant or applicant and the container supplier.

(iii) A copy of EPA's approval of any non-standard closure.

(4) At least one of the following records pertaining to the container dispensing capability requirements in § 165.25(e) for each nonrefillable container used to distribute or sell the pesticide product that must comply with § 165.25(e):

(i) Test data or documentation demonstrating that the nonrefillable container meets the standards in § 165.25(e) when it contains the pesticide product.

(ii) Test data or documentation demonstrating that a different nonrefillable container meets the standards in § 165.25(e) when it contains the pesticide product or even a different pesticide product and a written explanation of why such data or documentation demonstrates that the container meets the standards in § 165.25(e) for the pesticide product.

(5) At least one of the following records pertaining to the nonrefillable container residue removal requirement in § 165.25(f) if the pesticide product is a flowable concentrate or if EPA specifically requests the records on a case by case basis:

(i) Test data showing that the nonrefillable container and pesticide formulation meet the standard in § 165.25(f) .

(ii) Test data showing that a different nonrefillable container with the same or a different pesticide formulation meets the standard in § 165.25(f), together with a written explanation of why such data demonstrate that the nonrefillable container and pesticide formulation meet the standard in § 165.25(f).

§§ 165.28–165.39 [Reserved]

Subpart C—Refillable Container Standards: Container Design

§ 165.40 General provisions.

(a) *What is the purpose of the regulations in this subpart*? The regulations in this subpart establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart*? (1) You must comply with all of the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers. If your pesticide product is subject to the regulations in this subpart as set out in § 165.43, your pesticide product must be distributed or sold in a refillable container that meets the standards of these regulations. This includes your pesticide products that are repackaged according to subpart D of this part.

(2) You must comply with the regulations in § 165.45(f) for stationary pesticide containers if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. If the pesticide product is subject to the regulations in this subpart as set out in § 165.43, the stationary pesticide containers used to distribute or sell the product must meet the standards of § 165.45(f).

(c) *When do I have to comply?* As of August 16, 2011, all pesticide products distributed or sold by you in refillable containers must be distributed or sold in compliance with these regulations.

§ 165.43 Scope of pesticide products included.

(a*) Are manufacturing use products subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) *Which ''antimicrobial'' pesticide products are not subject to the regulations in this subpart*? The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(d) *Which requirements must an ''antimicrobial'' swimming pool product comply with if it is not exempt from these regulations?* An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except § 165.45(d) regarding marking and § 165.45(e) regarding openings. For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(1) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(2) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(e) *How will EPA determine if an ''antimicrobial'' pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment*? (1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the refillable container regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart*? The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by paragraph (c) of this section. Antimicrobial products covered under by paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does ''pesticide product'' or ''pesticide'' mean in the rest of this subpart*? In §§ 165.43(h) through 165.47, the term ''pesticide product'' or ''pesticide'' refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through(f) of this section.

(h) *Are there any other exceptions*? (1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

§ 165.45 Refillable container standards.

(a) *What Department of Transportation (DOT) standards do my refillable containers have to meet under this part if my pesticide product is not a DOT hazardous material*? (1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that is designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material.

(2) A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not DOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in this subpart and the refilling is done in compliance with the repackaging regulations in subpart D of this part.

(b) *What DOT standards do my refillable containers have to meet under this part if my pesticide product is a DOT hazardous material*? (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171–180.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171–180.

(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations*? If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the **Federal Register**. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

(d) *What standards for marking do my refillable containers have to meet*? Each refillable container must be marked in a durable and clearly visible manner with

a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container.

(e) *What standards for openings do my refillable containers have to meet*? If your refillable container is a portable pesticide container that is designed to hold liquid pesticide formulations and is not a cylinder that complies with the DOT Hazardous Materials Regulations, each opening of the container other than a vent must have a one-way valve, a tamper-evident device or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

(f) *What standards do my stationary pesticide containers have to meet*? If a stationary pesticide container designed to hold undivided quantities of pesticides equal to greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide is located at the refilling establishment of a refiller operating under written contract to you, the stationary pesticide container must meet the following standards:

(1) Except during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, each stationary pesticide container (for liquid and dry pesticides) and its appurtenances must meet both of the following standards:

(i) Each stationary pesticide container and its appurtenances must be resistant to extreme changes in temperature and constructed of materials that are adequately thick to not fail and that are resistant to corrosion, puncture, or cracking.

(ii) Each stationary pesticide container must be capable of withstanding all operating stresses, taking into account static heat, pressure buildup from pumps and compressors, and any other foreseeable mechanical stresses to which the container may be subjected in the course of operations.

(2) Each stationary liquid pesticide container must meet all of the following standards:

(i) Each stationary liquid pesticide container must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

(ii) External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container from the top to the bottom, are prohibited on stationary liquid pesticide containers.

(iii) Each stationary liquid pesticide container connection below the normal liquid level must be equipped with a shutoff valve which is capable of being locked closed. A shutoff valve must be located within a secondary containment unit if one is required by subpart E of this part.

(g) *Can I obtain a waiver from or a modification to any of the refillable container standards*? Yes, it is possible for you to obtain a waiver from or a modification to some of the refillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(h) *How do I obtain a waiver from or a modification to any of the refillable container standards?* To obtain a waiver from or a modification to any of the refillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a refillable container that does not comply with all of the refillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the refillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

§ 165.47 What information must I report about my refillable containers?

You are not required to report to EPA with information about your refillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

§§ 165.48–165.59 [Reserved]

Subpart D—Standards for Repackaging Pesticide Products into Refillable Containers

§ 165.60 General provisions.

(a) *What is the purpose of the regulations in this subpart*? The regulations in this subpart establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

(b) *Do I have to comply with the regulations in this subpart*? You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers, if you are a registrant who distributes or sells pesticide products to a refiller (that is not part of your company) for repackaging into refillable containers, or if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. Each pesticide product that is subject to the regulations

in this subpart as set out in § 165.63 and that is distributed or sold in a refillable container must be distributed or sold in compliance with the standards of these regulations.

(c) *When do I have to comply*? As of August 16, 2011, all pesticide products distributed or sold by you in refillable containers must be distributed or sold in compliance with these regulations.

§ 165.63 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart*? No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart*? The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(d) Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations? (1) An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(3)	§ 165.70(f)(3)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(4)	§ 165.70(f)(4)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

(2) For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(i) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(ii) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(e) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?* (1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be repackaged in compliance with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be repackaged in compliance with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to

comply with the repackaging regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart*? The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does ''pesticide product'' or ''pesticide'' mean in the rest of this subpart*? In §§ 165.63(h) through 165.70, the term ''pesticide product'' or ''pesticide'' refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

(h) *Are there any other exceptions*? (1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) Custom blending is not subject to the regulations in this subpart.

(3) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

§ 165.65 Registrants who distribute or sell pesticide products in refillable containers.

(a) *Must I comply with the standards in this section*? You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products in refillable containers. This means that you conduct all of the repackaging for a pesticide product and that you do not distribute or sell the pesticide product to a refiller that is not part of your company for repackaging into refillable containers. If you are a registrant that repackages a product directly into refillable containers for sale or distribution and you also sell or distribute other quantities of that product to an independent refiller for repackaging, then you must meet the requirements in this section for those quantities you distribute or sell directly and the requirements in § 165.67 for those quantities that you distribute or sell to an independent refiller.

(b) *Am I responsible for product integrity*? Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(c) *What information must I develop*? For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under ''Directions for Use,'' or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(d) *What requirements must my individual establishments follow regarding repackaging a pesticide product into refillable containers*? A refiller at your individual establishment that repackages a pesticide product into refillable containers for distribution or sale must comply with all of the following provisions.

(1) The establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

(2) The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.

(3) The refiller must repackage a pesticide product only into a refillable container that is identified on your description of acceptable containers for that pesticide product.

(4) The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.

(5) The refiller must have all of the following items at the establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The pesticide product's label and labeling.

(ii) The written refilling residue removal procedure for the pesticide product.

(iii) The written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (f) of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.

(7) The refiller must inspect each refillable container according to paragraph (e) of this section.

(8) The refiller must clean each refillable container according to paragraph (f) or (g) of this section, if required by either paragraph.

(9) The refiller must ensure that each refillable container is properly labeled according to paragraph (h) of this section.

(10) The establishment must maintain records in accordance with paragraph (i) of this section.

(11) The establishment must maintain records as required by part 169 of this chapter.

(12) The establishment must report as required by part 167 of this chapter.

(e) *How must my individual establishments inspect refillable containers*? Before repackaging a pesticide product into any refillable container, a refiller at your establishment must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and

openings. If the condition in paragraph (e)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (e)(2) or (e)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by § 165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(f) *How must my individual establishments clean refillable containers*? A refiller at your establishment must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (f)(1) of this section and either paragraph (f)(2) or (f)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied:

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(g) *How must my individual establishments clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve*? As required in paragraph (f) of this section, a refiller at your establishment must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(h) *How must my individual establishments label refillable containers*? Before distributing or selling a pesticide product in a refillable container, a refiller at your establishment must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, the refiller at your establishment must ensure that the net contents statement and EPA establishment number appear on the label.

(i) *What recordkeeping must my individual establishments do*? Each of your individual establishments that repackages a pesticide product into refillable containers for distribution or sale must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. The establishment must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, both of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written refilling residue removal procedure for the pesticide product.

(ii) The written description of acceptable containers for the pesticide product.

(2) Each time a refiller at your establishment repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number of the refillable container.

§ 165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.

(a) *Must I comply with the standards in this section*? You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products to a refiller that is not part of your company for repackaging into refillable containers.

(b) *Under what conditions can I allow a refiller to repackage my pesticide product into refillable containers*? You may allow a refiller to repackage your pesticide product into refillable containers and to distribute or sell such repackaged product under your existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(ii) The pesticide product is repackaged at the site of a user who intends to use or apply the product by a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(3) You have entered into a written contract with the refiller to repackage the pesticide product and to use the label of your pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

(c) *What violations are applicable to illegal repackaging*? Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the refiller that is repackaging your pesticide product under written contract with you may be liable for

violations pertaining to the repackaged product.

(d) *When must I provide the written contract to the refiller*? If you allow a refiller to repackage your product as specified in paragraph (b) of this section you must provide the written contract to the refiller before you distribute or sell the pesticide product to the refiller.

(e) *Am I responsible for product integrity*? Yes, for a product that you distribute or sell to a refiller that is not part of your company for repackaging into refillable containers, you are responsible for the pesticide product not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(f) *What information must I develop*? For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under ''Directions for Use,'' or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(g) *When must I provide the information to the refiller*? You must provide the refiller with all of the following information and documentation before or at the time of distribution or sale of your pesticide product to the refiller:

(1) Your written refilling residue removal procedure for the pesticide product.

(2) Your written description of acceptable containers for the pesticide product.

(3) The pesticide product's label and labeling.

(h) *What recordkeeping must I do*? You must maintain all of the records listed in this section for the current operating year and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(1) Each written contract entered into with a refiller for repackaging your pesticide product into refillable containers.

(2) Your written refilling residue removal procedure for the pesticide product.

(3) Your written description of acceptable containers for the pesticide product.

§ 165.70 Refillers who are not registrants.

(a) *Must I comply with the standards in this section*? You must comply with the standards in this section if you are a refiller of a pesticide product and you are not the registrant of the pesticide product.

(b) *Under what conditions can I repackage a registrant's pesticide product into refillable containers*? A registrant may allow you to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(ii) The pesticide product is repackaged at the site of a user who intends to use or apply the product by a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(3) The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.

(c) *What violations are applicable to illegal repackaging*? Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the pesticide product's registrant may be liable for violations pertaining to the repackaged product.

(d) *Am I responsible for product integrity*? Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(e) *What requirements must I follow regarding repackaging a pesticide product into refillable containers*? You must comply with all of the following provisions.

(1) Your establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

(2) You must not change the pesticide formulation unless you have a registration for the new formulation.

(3) You must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant.

(4) You may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that you can use.

(5) You must have all of the following items at your establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The written contract from the pesticide product's registrant.

(ii) The pesticide product's label and labeling.

(iii) The registrant's written refilling residue removal procedure for the pesticide product.

(iv) The registrant's written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, you must identify the pesticide product previously

contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (g) of this section. You may identify the previous pesticide product by referring to the label or labeling.

(7) You must inspect each refillable container according to paragraph (f) of this section.

(8) You must clean each refillable container according to paragraph (g) or (h) of this section, if required by either paragraph.

(9) You must ensure that each refillable container is properly labeled according to paragraph (i) of this section.

(10) You must maintain records in accordance with paragraph (j) of this section.

(11) You must maintain records as required by part 169 of this chapter.

(12) You must report as required by part 167 of this chapter.

(13) The stationary pesticide containers at your establishment must meet the standards in § 165.45(f).

(14) You may be required to comply with the containment standards in subpart E of this part.

(f) *How must I inspect refillable containers*? Before repackaging a pesticide product into any refillable container, you must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (f)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (f)(2) or (f)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by § 165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(g) *How must I clean refillable containers*? You must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (g)(1) of this section and either paragraph (g)(2) or (g)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied.

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(h) *How must I clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve*? As required in paragraph (g) of this section, you must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(i) *How must I label refillable containers*? Before distributing or selling a pesticide product in a refillable container, you must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, you must ensure that the net contents statement and EPA establishment number appear on the label.

(j) *What recordkeeping must I do*? You must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, all of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written contract from the pesticide product's registrant for the pesticide product.

(ii) The written refilling residue removal procedure for the pesticide product.

(iii) The written description of acceptable containers for the pesticide product.

(2) Each time you repackage a pesticide product into a refillable container and distribute or sell the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number of the refillable container.

§§ 165.71–165.79 [Reserved]

Subpart E—Standards for Pesticide Containment Structures

§ 165.80 General provisions.

(a) *What is the purpose of the regulations in this subpart*? The purpose of the containment regulations in this subpart is to protect human health and the environment from exposure to agricultural pesticides which may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

(1) Storage and handling of large quantities of pesticide products.

(2) Pesticide dispensing and container-refilling operations.

(b) *Do I have to comply with the regulations in this subpart*? You must comply with the regulations in this subpart if you are an owner or operator of one of the following businesses and if you also have a stationary pesticide container or a pesticide dispensing (including container refilling) area:

(1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more that 50% of total annual revenue comes from retail operations).

(2) Custom blenders of agricultural pesticides.

(3) Businesses which apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

(c) *When do I have to comply*? You must comply with all applicable containment regulations for new and existing structures as of August 17, 2009.

§ 165.81 Scope of stationary pesticide containers included.

(a) *What is a stationary pesticide container*? A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) *What stationary pesticide containers are subject to the regulations in this subpart*? Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

§ 165.82 Scope of pesticide dispensing areas included.

(a) *What pesticide dispensing areas are subject to the regulations in this subpart*? A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

(i) Refillable containers;

(ii) Service containers;

(iii) Transport vehicles;

(iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) *What pesticide dispensing areas are exempt from the regulations in this subpart*? A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

(1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

§ 165.83 Definition of new and existing structures.

(a) *What is a new containment structure*? A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) *What is an existing containment structure*? An existing containment structure is defined as one whose installation began on or before November 16, 2006.

§ 165.85 Design and capacity requirements for new structures.

(a) *For all new containment structures, what construction materials must I use*? These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred materials and still provide secondary containment of those same or other materials within the containment area.

(b) *For all new containment structures, what are the general design requirements*? These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be configured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the

requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For new stationary liquid pesticide containment and new containment pads in pesticide dispensing areas, what are the capacity requirements*? These are the capacity requirements:

(1) New secondary containment units for stationary liquid pesticide containers, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) New secondary containment units for stationary liquid pesticide containers, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) *For new stationary liquid pesticide containment, what are the specific design requirements?* You must either anchor or elevate each new stationary liquid pesticide container protected by a secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) *For new containment pads in pesticide dispensing areas, what are the specific design requirements*? Each new containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(4) Have its surface sloped toward an area where liquids can be collected for removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

(f) *For new stationary dry pesticide containment, what are the specific design requirements*? These are the specific design requirements for new stationary dry pesticide containment:

(1) The stationary dry pesticide containers within the containment unit must be protected from wind and precipitation.

(2) Stationary dry pesticide containers must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6–inch high curb that extends at least 2 feet beyond the perimeter of the container.

§ 165.87 Design and capacity requirements for existing structures.

(a) *For all existing containment structures, what construction materials must I use*? These are the material specifications for an existing containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred materials and still provide secondary containment of those same or other materials within the containment area.

(b) *For all existing containment structures, what are the general design requirements*? These are the general design requirements for existing containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) You must seal all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For existing stationary liquid pesticide containment and existing containment pads in pesticide dispensing areas, what are the capacity requirements*? These are the capacity requirements:

(1) Existing secondary containment units for stationary liquid pesticide containers must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) Existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(3) Existing containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) *For existing stationary liquid pesticide containment, what are the specific design requirements*? You must either anchor or elevate each existing

stationary liquid pesticide container protected by a secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) *For existing containment pads in pesticide dispensing areas, what are the specific design requirements*? Each existing containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(f) *For existing stationary dry pesticide containment, what are the specific design requirements?* These are the specific design requirements for existing stationary dry pesticide containment:

(1) The stationary dry pesticide containers within the containment unit must be protected from wind and precipitation.

(2) Stationary dry pesticide containers must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6–inch high curb that extends at least 2 feet beyond the perimeter of the container.

§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.

(a) *What are the operating procedures required for all new and existing containment structures?* As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and ground water) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of each day on which pesticides have been spilled or leaked.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked whenever the facility is unattended.

(b) *What are the inspection and maintenance requirements for all new and existing containment structures*? As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Immediately repair any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed.

(3) Not store any pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made. Prompt removal of pesticides, including emptying of stationary pesticide containers, in order to effect repairs or recovery of spilled material is acceptable.

§ 165.92 What if I need both a containment pad and a secondary containment unit?

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in §§ 165.85(a) and (b), 165.87(a) and (b) and § 165.90, and as applicable, §§ 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

§ 165.95 What recordkeeping do I have to do as a facility owner or operator?

As a facility owner or operator subject to the requirements of this subpart, you must maintain the following records, and you must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

(1) Name of the person conducting the inspection or maintenance;

(2) Date the inspection or maintenance was conducted;

(3) Conditions noted;

(4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

§ 165.97 States with existing containment programs.

(a) *What options are available to States that already have containment regulations*? States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) *How may a State request authority to continue implementing its State containment regulations*? A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

(1) The State must submit a letter and any supporting documentation to EPA.

Supporting documentation must demonstrate that the States program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) *How will EPA notify the State if its request is granted*? EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) *How must a State inform EPA of revisions to its containment regulations*? Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.

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Vol. 71, No. 158

Wednesday, August 16, 2006

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FEDERAL REGISTER PAGES AND DATE, AUGUST

43343–43640 1
43641–43954 2
43955–44180 3
44181–44550 4
44551–44882 7
44883–45360 8
45361–45734 9
45735–46072 10
46073–46382 11
46383–46846 14
46847–47072 15
47073–47438 16

CFR PARTS AFFECTED DURING AUGUST

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:
7747 (See Proclamation 8039) 43635
8038 43343
8039 43635

Executive Orders:
11651 (See Proclamation 8039) 43635
13222 (See Notice of August 3, 2006) 44551

Administrative Orders:
Notices:
Notice of August 3, 2006 44551
Presidential Determinations:
No. 2006-18 of August 2, 2006 45361

5 CFR

591 43897
735 46073
1001 43345
2635 45735

Proposed Rules:
890 44592
1653 45437

7 CFR

28 47073
235 46074
301 43345
762 43955
922 43641
1218 44553
1260 47074

Proposed Rules:
246 ..... 43371, 44784
250 43992
305 43385
319 43385
352 43385
981 47152
1421 45744
1483 43992

8 CFR

Proposed Rules:
212 46155
235 46155

9 CFR

327 43958
381 43958

Proposed Rules:
3 45438
93 45439
94 45439
95 ..... 44234, 45439
98 45444

10 CFR

451 46383
950 46306

Proposed Rules:
20 43996
30 43996
31 43996
32 43996
33 43996
35 43996
50 ..... 43996, 44593
61 43996
62 43996
72 43996
110 43996
150 43996
170 43996
171 43996
431 44356
820 45996
835 45996

12 CFR

226 46388
268 44555
611 44410

Proposed Rules:
204 46411

14 CFR

13 47077
23 ..... 44181, 44182
39 ..... 43352, 43961, 43962, 43964, 44185, 44883, 45363, 45364, 45367, 45368, 45370, 46389, 46390, 46393, 46395
43 44187
71 ..... 43354, 43355, 43356, 43357, 44188, 44885, 46076, 46077, 47078, 47079
97 ..... 44560, 44562
413 46847
414 46847

Proposed Rules:
35 43674
39 ..... 43386, 43390, 43676, 43997, 44933, 44935, 44937, 45447, 45449, 45451, 45454, 45457, 45467, 45471, 45744, 46128, 46413, 47154
71 ..... 43678, 43679, 43680, 46130, 46131, 46132, 46133

15 CFR

764 44189

Proposed Rules:
740 44943
742 44943
744 44943
748 44943

922 46134

16 CFR

305 45371
Proposed Rules:
437 46878
Ch. II 46415
1307 45904
1410 45904
1500 45904
1515 45904

17 CFR

210 47056
228 47056
229 47056
240 47056
249 47056
Proposed Rules:
38 43681
210 47060
228 47060
229 47060
240 47060
249 47060

18 CFR

33 45736
42 ....43564, 46078

19 CFR

10 44564
163 44564
178 44564
Proposed Rules:
4 43681
101 47156
122 43681

20 CFR

416 45375
Proposed Rules:
404 ....44432, 46983

21 CFR

341 43358
510 43967
520 43967
529 43967
558 44886
Proposed Rules:
106 43392
107 43392
1310 46144

22 CFR

51 46396
Proposed Rules:
41 46155
53 46155

24 CFR

Proposed Rules:
15 46986
91 44860
570 44860
3286 47157

25 CFR

Proposed Rules:
15 45174
18 45174
150 45174
152 45174
179 45174
502 44239
546 44239
547 46336

26 CFR

1 ....43363, 43968, 44466, 44887, 45379, 47079, 47080
31 44466
Proposed Rules:
1 ....43398, 43998, 44240, 44247, 44600, 45474, 46415, 46416, 47158
31 44247
602 45474

27 CFR

555 46079
Proposed Rules:
555 46174

28 CFR

32 46028

29 CFR

1614 43643
1956 47081
2700 44190
2704 44190
2705 44190
4022 47090
4044 47090
Proposed Rules:
1625 46177

30 CFR

250 46398
254 46398
Proposed Rules:
202 46879
206 46879
210 46879
217 46879
218 46879

31 CFR

208 44584
315 46856
341 46856
346 46856
351 46856
352 46856
353 46856
359 46856
360 46856

32 CFR

199 47091
362 43652
505 46052
Proposed Rules:
312 44602
318 44603
323 46180
536 46260
537 45475

33 CFR

100 ....43366, 44210, 44213, 46858, 47092, 47094
117 ....43367, 43653, 44586, 44914, 45386, 45387, 47096
125 44915
165 ....43655, 43973, 43975, 44215, 44217, 45387, 45389, 45391, 45393, 45736, 46101, 46858, 47098
Proposed Rules:
100 ....43400, 47159
110 ....45746, 46181
165 ....43402, 44250

34 CFR

300 46540
301 46540
600 45666
668 45666
673 45666
674 45666
675 45666
676 45666
682 45666
685 45666

36 CFR

242 ....43368, 46400
Proposed Rules:
242 ....46417, 46423, 46427

37 CFR

1 44219
201 ....45739, 46402
212 46402
Proposed Rules:
201 45749

38 CFR

3 44915
59 46103

40 CFR

9 ....45720, 47330
52 ....43978, 43979, 44587, 46403, 46860
81 ....44920, 46105
155 45720
156 47330
165 47330
180 ....43658, 43660, 43664, 43906, 45395, 45400, 45403, 45408, 45411, 45415, 46106, 46110, 46117, 46123, 47101
300 43984
302 47106
355 47106
712 47122
716 47130
Proposed Rules:
52 ....45482, 45485, 46428, 46879, 47161
59 44522
60 45487
61 45487
63 45487
81 ....44944, 45492
122 44252
300 46429
412 44252

41 CFR

Proposed Rules:
61-300 44945

42 CFR

411 45140
1001 45110
Proposed Rules:
414 44082
484 44082

43 CFR

Proposed Rules:
4 45174
30 45174
3200 46879
3280 46879

44 CFR

64 45424
Proposed Rules:
67 ....45497, 45498

45 CFR

Proposed Rules:
5b 46432

47 CFR

1 43842
54 43667
64 ....43667, 47141, 47145
73 ....45425, 45426, 47150, 47151
Proposed Rules:
Ch. I 45510
1 43406
2 ....43406, 43682, 43687
4 43406
6 43406
7 43406
9 43406
11 43406
13 43406
15 43406
17 43406
18 43406
20 43406
22 43406
24 43406
25 ....43406, 43687
27 43406
52 43406
53 43406
54 43406
63 43406
64 43406
68 43406
73 ....43406, 43703, 45511
74 43406
76 43406
78 43406
79 43406
90 43406
95 ....43406, 43682
97 43406
101 43406

48 CFR

Ch. 1 ....44546, 44549
6 44546
12 44546
26 44546
52 44546
204 44926
212 46409
219 44926
225 46409
242 44928
252 46409
253 44926
Proposed Rules:
204 46434
235 46434
252 46434
1804 43408
1852 43408

49 CFR

171 44929

369 45740
572 45427
594 43985
1420 45740
1507 44223
1572 44874

Proposed Rules:

107 46884
110 44955
178 44955
389 46887
601 44957
1111 43703
1114 43703
1115 43703
1244 43703

50 CFR

17 46864
18 43926
20 45964
21 45964
100 ....43368, 46400
622 45428
635 45428
648 ....44229, 46871
660 44590
679 ....43990, 44229, 44230, 44231, 44591, 44931, 46126, 46409
680 44231

Proposed Rules:

17 ....43410, 44960, 44966, 44976, 44980, 44988, 46994
32 46258
100 ....46416, 46423, 46427
216 44001
224 46440
300 45752
600 46364
622 43706
648 43707
665 46441

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 AUGUST 16, 2006

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Spiny dogfish; published 7-17-06

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Homebound definition; correction; published 8-16-06

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Endothall; published 8-16-06

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; published 8-16-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

North Carolina; published 7-17-06

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Heart Island, Alexandria Bay, NY; published 8-9-06

LABOR DEPARTMENT

Occupational Safety and Health Administration

State plans:

New York; published 8-16-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Sikorsky; published 8-1-06

Investigative and enforcement procedures:

Civil monetary penalties inflation adjustment

Correction; published 8-16-06

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Alta Mesa et al., Sacramento and San Joaquin Counties, CA; published 7-17-06

Eola-Amity Hills, Polk and Yamhill Counties, OR; published 7-17-06

Saddle Rock-Malibu, Los Angeles County, CA; published 7-17-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in California; comments due by 8-23-06; published 8-16-06 [FR 06-06941]

Egg Research and Promotion Program:

American Egg Board; State composition of geographic areas; amendment; comments due by 8-23-06; published 7-24-06 [FR E6-11738]

Soybean promotion, research, and information:

United Soybean Board; representation adjustment; comments due by 8-23-06; published 7-24-06 [FR E6-11737]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Noxious weeds:

Import, export, or interstate movement restrictions or prohibitions—

South African and Madagascar ragwort; comments due by 8-21-06; published 6-20-06 [FR E6-09665]

Plant-related quarantine, domestic:

Japanese beetle; comments due by 8-21-06; published 6-21-06 [FR E6-09728]

Plant-related quarantine, foreign:

Fruits and vegetables import regulations; revision; comments due by 8-25-06; published 4-27-06 [FR 06-03897]

Table grapes from Namibia; phytosanitary certification requirement; comments due by 8-25-06; published 6-26-06 [FR E6-10017]

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:

Northeastern United States fisheries—

Northeast multispecies; comments due by 8-25-06; published 7-26-06 [FR 06-06444]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 8-22-06; published 8-7-06 [FR 06-06737]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Reserve Select; requirements and procedures revision; comments due by 8-21-06; published 6-21-06 [FR 06-05490]

Routine care not directly related to study, grant, or research program; comments due by 8-21-06; published 6-20-06 [FR 06-05489]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Interstate electric transmission facilities; site permit applications; filing requirements and procedures; comments due by 8-25-06; published 6-26-06 [FR 06-05619]

Natural gas companies (Natural Gas Act):

Blanket certification and rates clarification; comments due by 8-25-06; published 6-26-06 [FR 06-05618]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuels and fuel additives—

Former severe ozone nonattainment areas; reformulated gas requirements; comments due by 8-22-06; published 6-23-06 [FR 06-05620]

Stratospheric ozone protection—

Hydrochloroflurocarbons (HCFCs) production, import, and export; allowance system; comments due by 8-21-06; published 7-20-06 [FR E6-11531]

Hydrochloroflurocarbons (HCFCs) production, import, and export; allowance system; comments due by 8-21-06; published 7-20-06 [FR E6-11532]

Solid waste:

Hazardous waste; alternative generator requirements applicable to academic laboratories; comments due by 8-21-06; published 5-23-06 [FR 06-04654]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Jurisdictional separations and referral; comments due by 8-22-06; published 5-24-06 [FR E6-07849]

Practice and procedure:

Benefits reserved for designated entities; competitive bidding rules and procedures; comments due by 8-21-06; published 6-21-06 [FR E6-09593]

FEDERAL RESERVE SYSTEM

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act—

Funds transfers and transmittal (wire transfers); transmittal orders by financial institutions; comments due by 8-21-06; published 6-21-06 [FR 06-05567]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Electronic Prescription Drug Program; e-prescribing transactions; identification of backward compatible version of adopted standard; comments due by 8-22-06; published 6-23-06 [FR E6-09521]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 8-21-06; published 6-22-06 [FR 06-05576]
Illinois; comments due by 8-25-06; published 6-26-06 [FR E6-10043]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Narragansett Bay, RI and Mount Hope Bay, MA; comments due by 8-23-06; published 5-25-06 [FR E6-08075]
Regattas and marine parades:
Clarksville Hydroplane Challenge, VA; comments due by 8-21-06; published 7-21-06 [FR E6-11630]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Braunton's milk-vetch and Lyon's pentachaeta; comments due by 8-21-06; published 7-21-06 [FR E6-11599]

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil and gas and sulphur operations:
Safety and environmental management systems; comments due by 8-21-06; published 5-22-06 [FR E6-07790]

INTERIOR DEPARTMENT
National Indian Gaming Commission
Classification standards:
Class II Gaming; bingo, lotto, et al.; comments due by 8-23-06; published 5-25-06 [FR 06-04798]
Electronic or electromechanical facsimile; games similar to bingo; and electronic, computer, or other technologic aids to Class II games; definitions; comments due by 8-23-06; published 5-25-06 [FR E6-07873]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
Freedom of Information Act; implementation; comments due by 8-21-06; published 7-21-06 [FR E6-11574]

PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Active duty members of military; FEHB coverage and premiums; comments due by 8-21-06; published 6-20-06 [FR E6-09666]

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
Investment company governance practices; comments due by 8-21-06; published 6-19-06 [FR 06-05493]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 8-23-06; published 7-24-06 [FR E6-11722]
Arrow Falcon Exporters, Inc., et al.; comments due by 8-21-06; published 6-22-06 [FR 06-05600]
BAE Systems (Operations) Ltd.; comments due by 8-24-06; published 7-25-06 [FR E6-11806]
Bell Helicopter Textron Canada; comments due by 8-21-06; published 6-22-06 [FR 06-05599]
Boeing; comments due by 8-21-06; published 6-22-06 [FR 06-05585]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 8-23-06; published 7-24-06 [FR E6-11724]
McDonnell Douglas; comments due by 8-21-06; published 7-25-06 [FR E6-11805]
Airworthiness standards:
Special conditions—
Avidyne Corp., Inc.; various airplane models; comments due by 8-21-06; published 7-20-06 [FR E6-11562]
Cirrus Design Corp. Model SR22 airplanes; comments due by 8-21-06; published 7-20-06 [FR E6-11483]
Class E airspace; comments due by 8-20-06; published 6-28-06 [FR 06-05732]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Household and dependent care services necessary for gainful employment expenses; comments due by 8-22-06; published 5-24-06 [FR E6-07390]
Repeal of tax interest on nonresident alien individuals and foreign corporations received from certain portfolio debt investments; public hearing; comments due by 8-24-06; published 8-9-06 [FR E6-12887]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act—
Funds transfers and transmittal (wire transfers); transmittal orders by financial institutions; comments due by 8-21-06; published 6-21-06 [FR 06-05567]

LIST OF PUBLIC LAWS

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H.R. 5877/P.L. 109–267

To amend the Iran and Libya Sanctions Act of 1996 to extend the authorities provided in such Act until September 29, 2006. (Aug. 4, 2006; 120 Stat. 680)

S. 3741/P.L. 109–268

To provide funding authority to facilitate the evacuation of persons from Lebanon, and for other purposes. (Aug. 4, 2006; 120 Stat. 681)

Last List August 4, 2006

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