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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

RIN 0560–AH58

Revisions of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services (FFAS) and to the Administrator, Farm Service Agency (FSA), to implement cooperative agreements for Conservation Programs carried out by FSA and to implement the Grassroots Source Water Protection Programs as authorized by section 1240O of the Food Security Act of 1985 (1985 Act).

DATES: This rule is effective August 30, 2006.

FOR FURTHER INFORMATION CONTACT: John H. Carter III, Program Manager, Conservation and Environmental Programs Division, Farm Service Agency, USDA/FSA/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, (202) 720–8774.

SUPPLEMENTARY INFORMATION: Section 1240O of the 1985 Act, 16 U.S.C 3839bb–2, authorizes the Grassroots Source Water Protection Program. Fiscal Year 2006 funding for this program was appropriated to the Farm Service Agency of USDA; however, the authority to administer the program is delegated to another USDA agency. Therefore, the delegations of authority from the Secretary to the Under Secretary, FFAS, and from the Under Secretary, FFAS, to the Administrator, FSA, are revised to authorize those entities to implement the Grassroots Source Water Protection Program.

Consistent with FSA's authority to implement the Grassroots Source Water Protection Program, this rule also includes a delegation of authority to FSA to enter into cooperative agreements to improve that program's coordination and effectiveness in meeting the program's goals. This rule further delegates authority to FSA to enter into cooperative agreements for other conservation programs to improve the coordination and effectiveness of those programs.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553(a)(2), notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, because this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and is, therefore, exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 808, this rule may be made effective upon publication.

List of Subjects in 7 CFR Part 2

Administrative practice and procedure, Authority delegations (Government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICES OF THE DEPARTMENT

■ 1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR parts 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary and to the Under Secretaries and Assistant Secretaries

■ 2. Section 2.16 is amended by adding paragraphs (a)(1)(xxvii) and (xxviii) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(1) * * *

(xxvii) Formulate and carry out the Grassroots Source Water Protection Program authorized by the Food Security Act of 1985, as amended (16 U.S.C. 3839bb–2).

(xxviii) Administer cooperative agreements authorized under 7 U.S.C. 2204b(b)(4) with respect to conservation programs.

* * * * *

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

■ 3. Section 2.42 is amended by adding paragraphs (a)(49) and (50) to read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

(49) Formulate and carry out the Grassroots Source Water Protection Program, authorized by the Food Security Act of 1985, as amended (16 U.S.C. 3839bb–2).

(50) Administer cooperative agreements under 7 U.S.C. 2204b(b)(4) with respect to conservation programs.

* * * * *

For Part 2, Subpart C, Paragraph 2.16(a)(1):

Dated: August 23, 2006.

Mike Johanns,

Secretary of Agriculture.

For Part 2, Subpart C, Paragraph 2.42(a):

Dated: August 18, 2006.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. E6–14365 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0046]

Emerald Ash Borer; Quarantined Areas; Indiana, Michigan, and Ohio

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of emerald ash borer. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

DATES: Effective on August 30, 2006, we are adopting as a final rule the interim rule that became effective on May 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective May 18, 2006, and published in the **Federal Register** on May 24, 2006 (71 FR 29762–29766, Docket No. APHIS–2006–0046), we amended the emerald ash borer regulations contained in 7 CFR 301.53–1 through 301.53–9 by adding all or portions of Adams, Hamilton, Huntington, LaGrange, Marion, Randolph, and Steuben Counties, IN; Alcona, Barry, Benzie, Berrien, Charlevoix, Cheboygan, Chippewa, Huron, Ionia, Iosco, Kalamazoo, Kent, Mason, Montcalm, Montmorency, Oceana, Ogemaw, Presque Isle, Roscommon, Sanilac, St. Joseph, and Van Buren Counties, MI; and Defiance, Delaware, Erie, Fulton, Hancock, Henry, Huron, Lorain, Ottawa, Sandusky, Williams, and Wood Counties, OH, to the list of quarantined areas in § 301.53–3(c). The interim rule restricted the interstate movement of regulated articles from these quarantined areas to prevent the artificial spread of emerald ash borer to noninfested areas of the United States.

Comments on the interim rule were required to be received on or before July 24, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 29762–29766 on May 24, 2006.

Done in Washington, DC, this 24th day of August 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14480 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421, 1423 and 1427

RIN 0560–AH48

Storage, Handling, and Ginning Requirements for Cotton Marketing Assistance Loan Collateral

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the cotton Marketing Assistance Loan Program of the Commodity Credit Corporation (CCC). The changes provide that bales of upland cotton pledged as collateral for CCC loans may be stored outside at warehouses approved by CCC subject to special storage, protection, receipting, and reporting requirements and loss of any applicable storage credits for the period stored outside. Second, the rule provides that producers or their agents may transfer cotton loan collateral to another approved location. Third, the rule provides limits on the amount of storage credits provided to producers when an upland cotton marketing assistance loan is repaid. Fourth, the rule requires ginned cotton to meet the definition of good condition and not be wet cotton in order to be eligible for a CCC loan. Fifth, this rule requires any unpaid warehouse compression charges to be billed to producers on loan cotton collateral that is delivered to CCC in satisfaction of the loan obligation. Sixth, this rule defines a minimum acceptable shipping standard for cotton warehouses. This rule also corrects and clarifies the Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Program regulations of CCC regarding loss of beneficial interest in commodities delivered to certain facilities engaged in storing and handling commodities under those programs.

DATES: This rule is effective August 30, 2006.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Cotton Program Manager, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; phone (202) 720–8481; *e-mail: gene.rosera@wdc.usda.gov*; or fax: (202) 690–1536. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

I. Background

A. Cotton Stored Outside

The revisions established by this final rule to the cotton marketing assistance loan program generally result from changing industry practices and marketing needs over recent years. For both the 2004 and 2005 crops, west Texas cotton storage warehouse capacity has not kept pace with production increases. In response to those shortages, CCC granted authorization to some warehouses to temporarily store cotton loan collateral outside subject to special insurance and storage requirements. The use of such storage was significant for the 2005 crop, topping 435,000 bales. This shortage of traditional cotton storage capacity has occurred at a time when cotton usage is increasingly dependent on export sales. Export use represented about 37 percent of total use for the 1995 through 1999 crops, but is estimated at about 75 percent for the 2006 marketing year. This shift in use has raised merchant concerns about both the quality of U.S. cotton, especially cotton stored outside, and the timeliness of its delivery from storing warehouses to export customers.

[1] To view the interim rule, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0046, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

These concerns may have been aggravated by CCC's temporary approvals of outside storage, a step viewed by some merchants as contributing to an increase in so-called ''country damage'' (loss of quality due to dust, rain, and packaging damage) and the slowing of cotton flow from warehouses with inventories exceeding their performance abilities. Concurrently, CCC had no process for allowing producers or their agents to move their cotton loan collateral from outside locations to available inside storage in other locations, or from warehouses considered unreliable to meet load-out requests.

B. Cotton Moisture Content

Additionally, several sectors of the U.S. cotton industry have been concerned about excess moisture in ginned cotton. FSA issued a Notice to the Trade (BCD–121) on February 1, 2006 to alert cotton warehouse operators of the incidence of water-packed cotton in Missouri. After similar problems were observed at a Tennessee warehouse CCC examined cotton from seven other gins for moisture damage. Initial results indicated similar moisture problems. The growing use of direct water spray moisture restoration systems concerns many in the cotton industry. And there is concern that these systems may be the cause of most moisture-damaged cotton. Prior to proposing changes regarding bale moisture, CCC was urged to revise loan eligibility requirements to provide that bales subject to direct water spray would be ineligible as collateral for a CCC loan starting after the 2007 crop year. CCC received other comments in opposition to that proposal. An estimated 200 U.S. gins use some form of direct-spray moisture restoration systems, and that the incidence of moisture problems, according to comments received, does not justify denial of loan eligibility to cotton from all the gins that use such systems.

In response to these issues, CCC initially published an advance notice of proposed rulemaking on February 13, 2006 at 71 FR 7445. During the 60-day comment period CCC received forty-three comments. Respondents included four national organizations, eight regional organizations, fifteen cotton storage warehouses, and sixteen individuals or companies. Based on the comments on the advance notice of proposed rulemaking, CCC published a proposed rule on May 26, 2006 at 71 FR 30318. Eighty nine comments were submitted on the proposed rule from six national/state organizations, twenty-four warehouse/warehouse associations, twenty-seven ginners/ginner associations, twelve merchants/merchant organizations, thirteen producers/producer cooperatives/associations, and seven individuals.

II. Discussion of Comments on Proposed Rule

A. Outside Storage of Cotton

Thirty four comments were received regarding CCC's proposal to permit the outside storage of loan cotton and indicate industry support for allowing the outside storage of cotton loan collateral if it is subject to various constraints and conditions. The majority of comments support approval only under special circumstances, although the majority of merchant comments oppose use of outside storage due to the increased risk of country damage. Many comments suggest that if outside storage is permitted it also be subject to denial of storage credit.

A recommendation submitted by the National Cotton Council on behalf of all cotton industry sectors was that warehouses subject to the U.S. Warehouse Act or with a Cotton Storage Agreement be required to indicate on the Electronic Warehouse Receipt (EWR) for such cotton the dates the bale was stored outside. Many comments stress the increased risk to the quality of cotton stored outside, and support its use only if limited to areas having unavoidable circumstances and subject to special storage requirements to assure the protection of the cotton. Some comments suggest that CCC should provide a grace period during which cotton may be stored outside. To constrain the use of outside storage, even when special circumstances occur, the comments also support CCC's proposal to limit the storage credits provided and to impose more stringent receipting, storage, reporting, and insurance requirements as a condition for approval. Therefore, to document the number of days a bale is stored outside, and to calculate the period for which a storage credit will not be provided, this rule also requires that warehouses requesting approval to indicate on the bale EWR the dates of outside storage and to submit weekly reports identifying such bales.

As suggested by the comments, this final rule provides that the warehouse must be in an area that has inadequate approved inside capacity to store the current crop. CCC will determine whether a state, a county, or a group of counties within a State is such a cotton storage deficit area based on the most recent cotton production estimate for the area provided by the National Agricultural Statistics Service. The area will be considered a deficit storage area for the crop year if cotton production for the crop year exceeds the combined approved inside storage capacity of warehouses in the area that have entered into a Cotton Storage Agreement with CCC.

B. Storage Credits

Denial of Credit for Outside Storage

CCC proposed to deny storage credit for all bales under a loan if one or more bales were stored outside for any period while under loan. Thirty three comments were received about this proposal. The comments indicate wide support for denying storage credits to cotton stored outside, but only for the period outside, and only if administered on a bale-by-bale basis. Four national organizations favor this proposal. Related comments are that bale receipts or associated records should indicate the dates the bale was stored outside for calculating denied storage credits.

CCC proposed to deny storage credits on outside-stored bales as an incentive for gins and producers to seek inside storage rather than to use warehouses where cotton inventory exceeds its inside capacity. CCC originally proposed to deny the storage credits for an entire loan quantity if one or more bales were stored outside. However, based on comments received, CCC understands that the proposal would disadvantage some producers whose loan cotton may be stored at multiple locations. CCC agrees that a more equitable policy is to deny credits on a bale-by-bale basis and this rule provides that, however, warehouses must provide weekly reports to CCC identifying bales stored outside. CCC also considered the suggestion that the credit should be denied only for the period of outside storage and resumed if the cotton is moved inside. CCC agrees that it would be inconsistent to deny storage credits for outside-stored loan cotton that is being transferred to inside storage. Therefore, this rule provides that storage credits are denied only for the period of time the cotton is stored outside.

Comments also suggested that CCC more precisely define when a bale is considered as stored outside. CCC agrees. Accordingly, this rule, in section 1427.19, provides that CCC shall not provide storage credits to a bale of upland cotton loan collateral for the period of time the bale is stored outside that exceeds a 15-day period beginning on the day the warehouse was notified that the bale is under loan.

Maximum Storage Credit

CCC proposed a uniform national rate of the lesser of a warehouse's 2005-crop tariff rate or $2.15/bale/month for calculating any storage credits applicable. This limit was intended to reduce incentives for warehouses to delay load-outs in order to maximize CCC storage payments, and discourage transfer of cotton under loan to maximize storage payments. Sixty-seven comments were received regarding this proposal. Very few support the proposed uniform rate of $2.15 or any other national rate. Some comments state that warehouse tariff rates and storage credits do not influence cotton flow, and that any reduction of rates will be disruptive, hurt producers, or ought to be postponed. Other comments state that the rates used for storage credits need to rise over time to cover operating cost increases. Many comments, including those submitted as the joint industry recommendation, suggest establishing two storage credit rates, each based on the weighted average tariff rates of two regions—California and Arizona comprising one region, and all other states comprising the other. The California and Arizona average would be reduced by an estimated average receiving charge for that area. This would allow the warehouses with tariff rates below the regional averages the opportunity to raise their rates to the average. CCC agrees that the objectives of capped rates may be better achieved by taking into account regional warehousing costs. Accordingly, section 1427.19 is revised to provide that the maximum storage credit rate for the 2006 and subsequent crops of upland cotton shall be the lesser of the 2005-crop tariff rate of a warehouse or $4.37 per bale per month for warehouses located in Arizona and California, and $2.66 per bale per month for warehouses located in all other cotton-producing States.

Additionally, section 1427.13 is amended to provide that if producers elect to forfeit the loan collateral to CCC, they shall pay any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan that are based on a rate exceeding CCC's maximum storage credit rate for the warehouse. This will provide for uniformity of storage credits whether the cotton is redeemed from loan or forfeited to CCC in satisfaction of the loan obligation.

C. Cotton Bale Eligibility

CCC proposed to amend cotton bale eligibility rules to require that cotton must be ginned by a ginner that, in addition to certifying to using approved bale packaging materials, would certify to not producing bales that are water-packed, false-packed, re-ginned, or re-packed. Thirty-two comments were received regarding this proposal. Although some support this proposal, the majority oppose it either as inadequate to remediate the problem of excessive moisture in cotton, or as an unfair certification to require from ginners. Three major national organizations, including a national ginner association, urge CCC to curtail all ginner use of direct water-spray systems after the 2007 crop, and to impose bale marketing and certification requirements in the meantime for gins that employ direct spray systems. Some ginners expressed an opposing view that CCC should not require moisture certifications for which no measurement protocols exist or dictate equipment specifications.

CCC shares the concern of most respondents regarding the use of direct water-spray equipment to increase bale moisture. The predominance of comments received, including the comments from USDA researchers, is that there is an increased risk of damage to cotton that is directly sprayed with water. Comments received from an industry task force, a national ginners association, and those representing the joint industry position urge CCC to prohibit directly sprayed cotton as being eligible to be pledged as loan collateral for marketing assistance loans starting after the 2007 crop. Although, the comments received indicate that this proposal is the majority view of the industry, CCC is aware that direct spray systems are used by about 20 percent of U.S. ginners. These ginners, with a few exceptions, feel that the system can be used without damaging cotton.

To the extent practicable, CCC generally supports the use of industry standards in the establishment of CCC cotton loan program regulations, most notably by requiring the use of packaging and ties that conform to industry specifications. However, CCC lacks authority to direct all of the processing requirements of gins based on loan collateral eligibility. Further, the equipment and a process for accurately measuring bale moisture at a gin are not commonly employed, and a moisture certification requirement would impose costs on ginners to comply. Therefore, CCC will not establish any new certification by ginners regarding the production of wet-packed, false-packed, re-ginned, or re-packed cotton. However, CCC agrees with the comments that suggest that the maximum level of moisture before fiber damage would occur, as measured at a gin, wet basis, is 7.5 percent at any point in the bale. Thus, while this rule imposes no new inspection process at the gin or warehouse, in evaluating complaints received about wet or damaged cotton, CCC will impose a maximum moisture level requirement for a bale of cotton. Similarly, to encourage maintenance of the quality of ginned cotton, CCC will incorporate into its bale eligibility requirements the standards established by the Joint Cotton Industry Bale Packaging Committee (''Committee'') publication ''A Guide for Cotton Bale Standards.'' Accordingly, this rule revises the regulations at 7 CFR 1427.5 to provide that a bale must be in good condition and shall not be wet cotton to be eligible as loan collateral. ''Wet cotton'' is defined as a bale at a gin that has 7.5 percent or more moisture, wet basis, at any point in the bale. ''Good condition'' is defined as a bale of cotton determined to be a Grade A or Grade B bale, by comparing the bale with the photographic standards of the Committee.

D. Transfer of Cotton Loan Collateral

CCC proposed to allow the transfer of loan cotton to other CCC-approved warehouses to provide producers or their agents the means to relocate outside-stored cotton, or to reduce marketing risks by removing cotton from warehouses considered unreliable in meeting load-out requests. CCC received seventy-one comments in response to the proposal. In general, the comments received are favorable to the concept of the relocation of loan cotton, although support is conditional on the imposition of several conditions. Support is stated by ginners, many warehouses, producers, and national organizations. Commonly suggested conditions are that producers must authorize such movement; that relocation costs be paid in full by the requestor; that relocations count against flow standards; and that storage credits be limited in some cases to reduce predatory transfers. Some comments in opposition are that relocations may disadvantage smaller warehouses, stress transportation resources, increase storage outlays, and only benefit larger merchants without improving cotton flow.

Based on the comments received, there is industry support to allow producers to move their cotton, and that proposal is adopted in this final rule. Also, CCC has decided to incorporate the recommendation of the joint industry position to limit storage credits applicable to some transferred cotton to 75 days to provide an incentive for

timely marketing of transferred cotton. This time period has been determined to be the average required by a cotton merchant from warehouse loadout to final marketing. Accordingly, this rule provides that producers may request the transfer of cotton loan collateral represented by an EWR to another approved cotton warehouse. The loan settlements of transferred cotton will be based on rates applicable at the original storing location, and storage credits may be limited based on the circumstances of the transfer.

E. Producer Liability for Unpaid Charges

CCC proposed amending section 1427.12 to correct two inconsistencies. First, regulations provide that if there are any liens or encumbrances on cotton provided as collateral for a marketing assistance loan, CCC must obtain waivers that fully protect the interest of CCC before disbursement of the loan even if the liens or encumbrances are satisfied from the loan proceeds. However, section 1427.25 provides for CCC to credit the loan repayment amount by all or a portion of the warehouse storage charges that have accrued during the period the cotton was pledged for loan. Second, over 40 percent of cotton warehouses have tariff charges for compression services that are not actually provided, and that such unpaid charges have followed the bale and were payable on cotton forfeited to CCC in satisfaction of the loan obligation. Accordingly, CCC proposed to establish consistency between these two requirements, and to clarify that CCC shall not be responsible for any charges attached to a bale other than for the storage charges as provided in 7 CFR 1427.19(h).

Eight comments were received in response to the proposal that CCC will not be responsible for unpaid charges associated with a loan bale (such as warehouse compression) and will bill a producer for such charges on forfeited cotton. All comments received either did not object, or were in favor of the proposal, thus no change from the proposal is made in the final rule.

III. Shipping Standards

Comments were received on the proposed rule suggesting significant industry support for regulations defining a minimum acceptable shipping standard for cotton warehouses. Such standards are currently set forth in the CCC Cotton Storage Agreement. CCC agrees that these terms should be clarified and set forth in those regulations governing cotton storage warehouses. Accordingly, this rule makes amendments to the terms and conditions for approval of a warehouse operator by CCC to store and handle CCC interest commodities at 7 CFR part 1423 to provide such a definition and to require mandatory weekly reporting of bales made available for shipment.

IV. Clarification

This rule amends § 1421.6(h)(1) of 7 CFR part 1421 to clarify the use of contracts with respect to beneficial interest. On June, 6, 2006 the agency published a final rule at 71 FR 32415 that amended regulations governing beneficial interest with respect to eligible commodities delivered to facilities governed by a Federal license, State license or CCC storage agreement. This provision unintentionally restricts a producer's ability to obtain a loan deficiency payment or freely market commodities of which they still maintain control and title in limited cases. This rule clarifies that facilities governed by a Federal license, State license, or CCC storage agreement can be bailees and the producers who deliver commodities may continue to have beneficial interest. Regardless, CCC may still require acceptable documentation from a producer to indicate whether the producer retains title and control of the stored commodity.

This rule also corrects the amendments made by the June 6, 2006 rule regarding beneficial interest provisions for cooperative marketing associations by restoring them consistent with that amendment as § 1421.6(j). And, finally, this rule amends 7 CFR 1421.201 to clarify that the loan deficiency payment rate shall be based on the date the commodity is delivered, if the producer elects this option.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be significant and has been reviewed by the Office of Management Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and

responsibilities among the various levels of government.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at *www.sc.egov.usda.gov* for downloading. The regulation is available at FSA's Price Support Division Internet site at *www.fsa.usda.gov/dafp/psd.* Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1423

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

7 CFR Part 1427

Agricultural commodities, Cotton, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR parts 1421, 1423, and 1427 are amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

■ 1. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General

■ 2. Amend § 1421.6 by revising paragraphs (h)(1), (h)(2) and adding paragraph (j) to read as follows:

§ 1421.6 Beneficial interest.

* * * * *

(h) * * *

(1) A provision that allows the producer to select the sales price of the commodity at a time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred-price, forward or price later contract. The following conditions apply:

(i) Producers under a deferred-price, forward, or price later contract will lose beneficial interest in the commodity once the commodity is applied in fulfillment of such a contract.

(ii) Beneficial interest in the commodity is retained by the producer if the contract has no restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity.

(2) A provision between the producer and a warehouse approved in accordance with § 1421.103(c) for the storage of CCC loan collateral that provides the producer a period of time following the date of physical delivery of the commodity to elect whether the commodity is to be stored and receipted on behalf of the producer or is to be considered transferred to the warehouse.

* * * * *

(j) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

Subpart C—Loan Deficiency Payments

■ 3. Section 1421.201 is amended by adding paragraph (b)(3)(iii) to read as follows:

§ 1421.201 Loan deficiency payment rate.

* * * * *

(b) * * *

(3) * * *

(iii) The commodity is delivered, if the producer elects to receive the LDP rate based on the date of delivery.

* * * * *

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

■ 4. The authority citation for part 1423 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

■ 5. Add § 1423.11 to read as follows:

§ 1423.11 Delivery and shipping standards for cotton warehouses.

(a) Unless prevented from doing so by severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, acts of civil or military authority, non-availability of transportation facilities or any cause beyond the control of the warehouse operator that renders performance impossible, the warehouse operator will:

(1) Deliver stored cotton without unnecessary delay.

(2) Be considered to have delivered cotton without unnecessary delay if, for the week in question, the warehouse operator has made available for shipment at least 4.5 percent of their applicable storage capacity in effect during the relevant week of shipment.

(b) The warehouse operator shall provide a written report to CCC on a weekly basis. The reporting week shall be the seven day period starting at midnight following the close of business on each Saturday and ending at midnight after close of business of the following Saturday. Before close of business of the first business day of the following week, the warehouse operator

will provide following information to CCC:

(1) Bales made available for shipment (BMAS) during such week. BMAS is defined as any cotton bales that:

(i) Have been delivered, or are scheduled and ready for delivery during such week; and

(ii) Were scheduled and ready for delivery in a previous week, but were not picked up by the shipper and remain available for immediate loading and another shipping date has not been established, or such bales are not subject to a restocking fee as provided in the warehouse operator's public tariff.

(2) Active shipping orders, by week; and

(3) Applicable storage capacity that is the higher of CCC approved capacity or the maximum number of bales stored at any time during the applicable crop year.

(c) The warehouse operator may resolve any claim for noncompliance from any entity other than CCC with the cotton shipping standard in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. In no case will CCC provide assistance or representation to parties involved in arbitration proceedings arising with respect to activities authorized under the Cotton Storage Agreement.

PART 1427—COTTON

■ 6. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931–7939; and 15 U.S.C. 714b and 714c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

■ 7. Amend § 1427.3 by revising the definition of ''Reconcentration'' and adding definitions for ''Cotton storage deficit area'', ''Good condition'', ''Transfer'', and ''Wet cotton'' to read as follows:

§ 1427.3 Definitions.

* * * * *

Cotton storage deficit area means a State, County, or group of contiguous counties within a State, where the production of cotton for the area based on the most recent estimate from the USDA, National Agricultural Statistics Service exceeds the combined approved inside storage capacity of warehouses that have entered into a Cotton Storage Agreement with CCC.

* * * * *

Good condition means a bale of cotton that, by comparison with the photographic standards of ''A Guide for Cotton Bale Standards'' of the Joint Cotton Industry Bale Packaging Committee, is determined to be a Grade A or Grade B bale.

* * * * *

Reconcentration means the process for moving CCC-owned cotton from one approved warehouse to another CCC-approved warehouse location.

* * * * *

Transfer means the process for a producer or an authorized agent of the producer to move warehouse-stored loan collateral to another warehouse.

* * * * *

Wet cotton means a bale of cotton that, at a gin, has 7.5 percent or more moisture, wet basis, at any point in the bale.

■ 8. Amend § 1427.5 by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) Be in existence and good condition, be covered by fire insurance, and at the time of disbursement of the loan proceeds, be stored inside an approved storage warehouse unless, as determined under § 1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan.

* * * * *

(4) Not be false-packed, wet cotton, water-packed, mixed-packed, re-ginned, or repacked;

* * * * *

■ 9. Amend § 1427.10 by revising paragraph (b), redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and adding a new paragraph (c) as follows:

§ 1427.10 Approved storage.

* * * * *

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, as directed by CCC place such cotton within such warehouse.

(c) An approved cotton storage warehouse may temporarily store cotton pledged as collateral for a CCC loan outside, subject to the following conditions:

(1) The warehouse submits an application for approval of outside storage on a form prescribed by CCC.

(2) The warehouse is located in a storage deficit area as determined by CCC.

(3) The warehouse complies with all outside storage requirements established by CCC including but not limited to the duration of such outside storage as granted by CCC for the individual application, all-risk insurance for the loan value of the cotton with CCC as loss payee, and use of additional protective coverings and materials that elevate the entire bottom surface of the bale to protect such cotton from damage by water or airborne contaminants.

(4) The electronic warehouse receipt for any bale or bales of cotton pledged as collateral for a CCC loan must include the dates that the bale was initially stored outside, and the date that outside storage stopped.

(5) The warehouse provides CCC a weekly report in a format proscribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside.

* * * * *

■ 10. Revise § 1427.12 to read as follows:

§ 1427.12 Liens.

(a) Waivers that fully protect the interest of CCC must be obtained before loan disbursement, notwithstanding provisions in § 1427.19(h), if there are any liens or encumbrances on the cotton tendered as collateral for a loan, even though the liens or encumbrances are satisfied from the loan proceeds.

(b) CCC may elect to accept cotton as loan collateral that has warehouse receiving, compression, or other charges without a lien waiver if the producer at the time of loan application agrees to reimburse CCC for any such charges that CCC may pay on behalf of the producer or that reduce the value of the cotton delivered to CCC.

■ 11. Add paragraph (e)(3) to § 1427.13 to read as follows:

§ 1427.13 Fees, charges, and interest.

* * * * *

(e) * * *

(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that exceed such charges calculated based on CCC's maximum storage credit rate for the warehouse established in § 1427.19.

■ 12. Revise § 1427.16 to read as follows:

§ 1427.16 Movement and protection of warehouse-stored cotton.

(a) CCC may insure or reinsure stored cotton against any risk, or otherwise take an action it deems necessary to protect the interest therein of CCC.

(b) CCC may reconcentrate cotton as defined in § 1427.3 subject to the following:

(1) A loan servicing agent, or CMA shall arrange for reconcentration of cotton under the direction of CCC and CCC shall obtain new warehouse receipts; and

(2) Any charges, fees, costs, or expenses incident to the reconcentration of cotton shall be paid by CCC.

(c) A producer may transfer cotton loan collateral from one CCC-approved cotton storage warehouse to another CCC-approved cotton storage warehouse subject to the following conditions:

(1) The cotton is represented by electronic warehouse receipts;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator; and

(4) The CCC marketing assistance loan that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC.

(d) Following written notice by CCC to the producer and warehouse operator, CCC may transfer cotton pledged as collateral for the marketing assistance loan from one CCC-approved warehouse to another if:

(1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage; or

(2) Any term of the producer's loan agreement is violated, or

(3) Carrying charges are substantially in excess of the average of carrying charges available elsewhere and the storing warehouse, after notice, declines to reduce such charges.

(e) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under paragraph (c) of this section shall be paid by the requestor of the transfer.

(f) CCC shall exclude from the calculation of any storage credits payable under § 1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(3) Out of compliance with the terms of its Cotton Storage Agreement;

(4) Storing cotton loan collateral outside, or

(5) Under common ownership with the receiving warehouse.

■ 13. Amend § 1427.19 by revising paragraphs (h)(1) and (h)(2), and adding paragraph (j) to read as follows:

§ 1427.19 Repayment of loans.

* * * * *

(h) * * *

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer, agent, or subsequent agent authorized by the producer in the manner prescribed by CCC for the period the cotton was pledged as collateral for such loan:

(i) The warehouse storage charges which have accrued, and

(ii) With respect to the 2006 and subsequent-crops of upland cotton, for each bale of the loan stored inside an approved cotton warehouse during the entire period of the loan, storage charges based on paragraph (j) of this section, except that CCC shall not credit the loan repayment amount for a bale for any accrued storage charges for any period that the cotton bale was stored outside exceeding a continuous 15-day period beginning on the day the warehouse was notified that the bale is under loan.

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer, agent, or subsequent agent authorized by the producer in the manner prescribed by CCC, without regard to any warehouse charges that accrued before the cotton was pledged for loan:

(i) That portion of the warehouse storage charges that accrued during the period the cotton was pledged for loan that are determined to be necessary to permit the loan to be repaid at the adjusted world price; and

(ii) With respect to the 2006 and subsequent crops of upland cotton stored inside an approved cotton warehouse during the entire period of the loan, storage charges based on the rates in paragraph (j) of this section, except that CCC shall not credit the loan repayment amount for a bale for any accrued storage charges for any period that the cotton bale was stored outside exceeding a continuous 15-day period beginning on the day the warehouse was notified that the bale is under loan; or

* * * * *

(j) For the purpose of calculating storage credits that may be applicable under paragraph (h) of this section to the 2006 and subsequent crops of upland cotton, the warehouse storage rates to be used shall be the lower of;

(1) The tariff storage rate for the warehouse for the 2005-crop, or for any warehouse not in existence in 2005, a CCC-assigned average 2005-crop tariff rate for the county or area; or

(2) For warehouses located in Arizona and California, $4.37 per bale per month; and for warehouses located in all States other than Arizona and California, $2.66 per bale per month.

* * * * *

Signed in Washington, DC on August 23, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–14370 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2006–0004]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations regarding State and zone classifications by removing Minnesota from the list of accredited-free States and adding it to the list of modified accredited advanced States. The interim rule was necessary to help prevent the spread of tuberculosis because Minnesota no longer met the requirements for accredited-free State status.

DATES: Effective on August 30, 2006, we are adopting as a final rule the interim rule that became effective on January 24, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective January 24, 2006, and published in the **Federal Register** on January 30, 2006 (71 FR 4808–4810, Docket No. APHIS–2006–

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0004, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

0004), we amended the bovine tuberculosis regulations regarding State and zone classifications contained in 9 CFR part 77 by removing Minnesota from the list of accredited-free States in § 77.7 and adding it to the list of modified accredited advanced States in § 77.9. The interim rule was necessary to help prevent the spread of tuberculosis because Minnesota no longer met the requirements for accredited-free State status.

Comments on the interim rule were required to be received on or before March 31, 2006. We received two comments by that date. The comments were from private citizens. One commenter stated that no animals should ever be moved interstate, but did not comment specifically on the reclassification of Minnesota as a modified accredited advanced State. A second commenter, responding to the first, stated support for the interim rule. We are making no changes in response to these comments.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 71 FR 4808–4810 on January 30, 2006.

Done in Washington, DC, this 24th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14481 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2006–0107]

Spring Viremia of Carp; Import Restrictions on Certain Live Fish, Fertilized Eggs, and Gametes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are establishing regulations to restrict the importation into the United States of live fish, fertilized eggs, and gametes of fish species that are susceptible to spring viremia of carp, a serious contagious viral disease of carp. Cases of spring viremia of carp confirmed in the United States in 2002 and 2004, and since eradicated, have been linked to the unregulated importation of fish infected with the virus. This action is necessary to prevent further introductions of spring viremia of carp into the United States.

DATES: This interim rule is effective September 29, 2006. We will consider all comments that we receive on or before October 30, 2006.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0107 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0107.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Merrill, Aquaculture Specialist, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–0649; or Dr. Jill B. Rolland, Fishery Biologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

Spring viremia of carp (SVC) is a disease of certain species of finfish, caused by an eponymous rhabdovirus. The following species are considered susceptible to SVC: Common carp, including koi (*Cyprinus carpio*), grass carp (*Ctenopharyngodon idellus*), silver carp (*Hypophthalmichthys molitrix*), bighead carp (*Aristichthys nobilis*), Crucian carp (*Carassius carassius*), goldfish (*Carassius auratus*), tench (*Tinca tinca*), and sheatfish (*Silurus glanis*). SVC was first reported in Yugoslavia in 1969 and has since spread to other European countries as well as Asia. SVC is considered extremely contagious, and there are currently no U.S.-approved vaccines or treatments for the virus.

In the United States, SVC is not known to exist in farm-raised fish. The disease is considered a foreign animal disease and is reportable to the Animal and Plant Health Inspection Service (APHIS). SVC is also a listed as a notifiable disease by the World Organization for Animal Health (OIE). Characteristics of OIE-notifiable aquatic animal diseases such as SVC include the following:

1. The disease has been shown to cause significant production losses due to morbidity or mortality at a national or multinational level where it occurs;

2. The disease has been shown to, or is strongly suspected to, negatively affect wild aquatic animal populations that are shown to be an asset worth protecting; or

3. The disease has the potential for international spread, including via live animals, their bodily fluids and waste, and inanimate objects.

If SVC is discovered in an OIE member country, the affected country must report the discovery to OIE, which will notify the other member countries.

Transmission of SVC virus (SVCV) [1] may occur through water contaminated with feces, urine, or mucus from infected fish and by parasites such as leeches. SVCV can survive for long periods of time in water and mud, increasing the possibility of transmission between sites by contaminated equipment. In addition, piscivorous birds that prey on SVC-susceptible species often travel over very large areas and can transmit the disease between sites. The presence of SVCV in ovarian fluid also suggests that the disease may be transmitted from parent to offspring. Morbidity and mortality vary considerably by several factors including temperature, fish species, and other factors, but may be substantial. Some fish that recover from SVC can become non-clinical carriers of the virus. Non-clinical carriers of the virus can transmit the virus to other susceptible species, but do not show signs of SVC.

Although other factors, such as age, can determine how severely the disease will affect a population, the temperature at which fish become infected, temperature fluctuations during the infective period, and the ability of the fish to mount a timely immune response seem to be the most important components for SVC. Generally, the disease flourishes in the spring as water temperatures increase, but maximum mortality occurs when temperatures are below 64 °F. As temperatures rise, disease expression varies as the immune resistance of carp also rises. Temperatures at or above 68 °F are optimal for immune function of susceptible species, where fish may not exhibit symptoms of the disease. Once the disease is detected in host species, total depopulation of exposed susceptible species is necessary given the contagious nature of the pathogen and the possibility of non-clinical carriers that may not exhibit symptoms.

Clinical signs of SVC may be nonspecific and include darkening of the skin, exophthalmia (pop-eye), ascites (dropsy), pale gills, hemorrhages in the gills, skin, and eyes, and a protruding vent with a thick mucoid fecal cast. Pinpoint hemorrhages may occur in many organs and are considered an important indicator for SVC. Other internal signs include edema, inflammation of the intestine, and enlargement of the spleen. Concurrent infections often occur and may complicate the diagnosis. Mortality can be up to 70 percent in yearlings, while older age groups generally experience lower mortality rates. As stated previously, SVC does not exist in farm-raised fish populations in the United States. During two routine tests of wild fish populations in 1989 and 1993, test results showed that some fish had been exposed to the European strain of SVCV. Because of the low number of positive tests compared with all of the tests that were conducted, we consider the European strain of SVC to exist at very low prevalence levels in wild fish populations in the United States.

In April 2002, a koi farm in North Carolina experienced an outbreak of SVC. The outbreak occurred shortly after the facility spawned koi that had been imported from a production facility in an Asian country where the SVC-status is unconfirmed. At the North Carolina farm, incoming fish had not been pre-screened for SVC and, apart from new stock importation, the U.S. farm did not have any known risks for SVCV exposure. The farm sent a sample of the diseased koi to the Fish Disease Diagnostic Laboratories of the University of Arkansas at Pine Bluff, an APHIS-approved diagnostic laboratory. After a tentative positive diagnosis for SVC, the Arkansas laboratory forwarded the sample to the OIE reference laboratory for SVC in Weymouth, England. The OIE laboratory confirmed the tentative diagnosis of SVC on June 25, 2002. The confirmed case was reported to APHIS on July 3, 2002. The affected koi farm operated sites for hatching and resale in North Carolina and Virginia. Due to multiple transfers of fish between sites, both of the farm's sites were considered exposed to SVCV.

Two additional cases of SVC were confirmed in the summer of 2004, in Missouri and Washington. In the Missouri outbreak, a shipment of fish to the facility preceded the SVC outbreak by 2 weeks. These fish came from a U.S. facility where a disease with symptoms similar to SVC had been previously encountered in the spring of each of the 2 prior years. This U.S. facility where the fish originated had also imported fish from Asian countries prior to the onset of its disease problems, but had ceased importations afterwards. In the Washington outbreak, a hobbyist had acquired fish from a U.S. distributor who had obtained SVC-susceptible fish from a pet store supplied by Asian sources. In both situations, the imported fish had not been screened for SVC prior to importation.

An APHIS review of the details in both of these cases concluded that domestic U.S. populations of SVC-susceptible fish were not considered to have been at prior risk from SVCV exposure other than from fish of direct or indirect Asian origin brought onto their premises. After SVC outbreaks were reported, the site in Washington, owned by a backyard hobbyist, and the site in Missouri, a commercial operation, were completely depopulated, cleaned and disinfected, and restocked with SVC-negative fish.

Tracebacks conducted at the affected facilities in North Carolina, Washington, and Missouri indicated that all three of the outbreaks in commercial facilities followed the introduction of imported fish from countries where SVC was known to exist or where the SVC status is unconfirmed. Furthermore, subsequent genetic identification of the viral strain involved in all U.S. farmed fish outbreaks of SVC determined that the virus was of Asian, rather than European, genotype, which is the only genotype of SVC that has been identified in previous testing of wild fish populations in the United States. As the Asian strain of SVC had not been previously detected or reported in the United States, or in the Western hemisphere, APHIS concluded that the SVC outbreaks in U.S. farmed fish were linked to the importation of SVC-infected fish.

Currently, there are no Federal regulations that restrict the importation of SVC-susceptible species of fish to prevent the introduction of SVC. Based on our review of the 2002 and 2004 cases of SVC in the United States, we have determined it is necessary to restrict the importation of live fish, fertilized eggs, and gametes of SVC-susceptible species to ensure they are free of SVC.

Accordingly, we are amending the animal import regulations in 9 CFR part 93 by adding a new subpart I, ''Aquatic Animal Species'' (§§ 93.900 through 93.907, referred to below as the regulations). The regulations will restrict the importation of live fish, fertilized eggs, and gametes of SVC-susceptible species. In addition, the importation of live cultures of SVCV, preserved SVCV viral RNA or DNA, tissue samples containing viable SVCV, or other specimens intended for diagnostic or research purposes and which contain viable SVCV may be imported only under permit in accordance with 9 CFR part 122, ''Organisms and Vectors.''

The regulations in new subpart I are explained below, by section.

[1] SVC refers to actual clinical expression of the disease in susceptible species caused by the pathogen. SVCV refers to the actual pathogen regardless of its expression in the host species.

Definitions (§ 93.900)

Section 93.900 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, APHIS representative, certifying official, communicable disease, competent authority, container, Department, fertilized egg, gamete, inspector, person, port veterinarian, region, spring viremia of carp (SVC), SVC-susceptible species,* and *United States.*

The following definitions are standard and found throughout part 93: *Administrator, Animal and Plant Health Inspection Service, APHIS representative, communicable disease, Department, inspector, person, port veterinarian, region,* and *United States.* These terms and their definitions are set out in the regulatory text at the end of this document.

Some additional terms that are being added to the regulations will be new to part 93 and their applicability is specific to aquatic animal species. Also, some of the terms have not been discussed previously in this document. These terms are *certifying official, competent authority,* and *container.* These terms will be defined as follows:

Certifying official. An individual authorized by the competent authority of a country to sign health certificates for aquatic animals.

Competent authority. The national veterinary services or other authority of a country, having the responsibility and competence for ensuring or supervising the implementation of aquatic animal health measures.

Container. A transport receptacle that is specially constructed to facilitate transportation of aquatic animals or aquatic animal products by one or several means of transport.

General Restrictions; Exceptions (§ 93.901)

Paragraph (a) of § 93.901 provides that no live fish, fertilized eggs, or gametes of SVC-susceptible species may be imported into the United States except in accordance with subpart I. This paragraph further provides that no such live fish, fertilized eggs, or gametes may be moved from the port of entry after arrival until released by the port veterinarian. In addition, this paragraph specifies that the Administrator may, upon request in specific cases, allow the importation of SVC-susceptible live fish, fertilized eggs, or gametes into the United States under conditions other than those specifically set forth in this subpart when he or she determines that such movement will not result in the introduction of SVC into the United States.

Paragraph (b) of this section provides that other provisions of part 93 relating to the importation of live fish, fertilized eggs, and gametes shall not apply to shipments of live fish, fertilized eggs, or gametes in transit through the United States if an import permit has been obtained under § 93.903 and all conditions of the permit are observed, and if the live fish, fertilized eggs, and gametes are handled as follows:

- They are maintained under continuous confinement while in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or
- They are unloaded, in the course of such transit, into a holding facility that is provided by the carrier or its agent and has been approved by the Administrator as adequate to prevent the spread within the United States of any finfish disease; they are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States; and they are maintained under continuous confinement aboard such means of conveyance until it leaves the United States.
- They are moved in accordance with any additional conditions prescribed in the permit and determined by the Administrator to be necessary to ensure that the live fish, fertilized eggs, or gametes do not introduce SVC into the United States.
- For a holding facility to be approved by the Administrator, the following conditions must be met:
- The holding facility must be sufficiently isolated to prevent direct or indirect contact of the live fish, fertilized eggs, or gametes it contains with any other SVC-susceptible species in the United States.
- The holding facility must be constructed to provide adequate protection against environmental conditions and so that it can be adequately cleaned, washed and disinfected.
- Provision must be made for disposal of fish carcasses, shipping water, waste, and any associated shipping materials in a manner that will prevent dissemination of disease.
- Provision must be made for adequate sources of feed and water and for attendants for the care and feeding of fish, fertilized eggs, or gametes in the facility.
- The holding facility must comply with all applicable local, State and Federal requirements for environmental quality.
- The holding facility must comply with any additional requirements that may be imposed by the Administrator for a particular shipment if necessary to prevent the dissemination of disease.

Ports Designated for the Importation of Live Fish, Fertilized Eggs, and Gametes (§ 93.902)

Section 93.902 designates ports through which live fish, fertilized eggs, and gametes of SVC-susceptible species may be imported into the United States. We consider these ports to have adequate facilities and inspectors to perform the necessary inspections of shipments of live fish, fertilized eggs, and gametes.

Air and ocean ports listed are Los Angeles and San Francisco, CA; Miami and Tampa, FL; Atlanta, GA; Honolulu, HI; Chicago, IL; Boston, MA; Newark, NJ; New York, NY; Portland, OR; Dallas-Ft. Worth, TX; and San Juan, PR. Land border ports listed are Detroit, MI; Buffalo-Niagara, NY; Seattle and Sumas, WA; and Otay Mesa, CA.

This section also provides for other ports to be designated by the Administrator in special instances with the concurrence of the Secretary of the Department of Homeland Security.

Import Permits for Live Fish, Fertilized Eggs, and Gametes (§ 93.903)

Paragraph (a) of § 93.903 requires that live fish, fertilized eggs, or gametes of SVC-susceptible species must be accompanied by an import permit issued by APHIS and must be imported within 30 days of the proposed arrival date stated in the import permit.

Paragraph (b) of this section provides the address from which prospective importers may request import permit applications and to which completed applications should be sent. An application for an import permit must be submitted for each shipment of live fish, fertilized eggs, and gametes of SVC-susceptible species.

Paragraph (c) specifies the information that must be included on an import permit application. It states that the application must include the name and address of the exporter; the proposed date of shipment; the name and address of the importer; the species and number of live fish, fertilized eggs, or gametes to be imported into the United States; the purpose of the importation; the ports of embarkation; the mode of transportation (airplane, boat, car, etc.) to be used to ship the live fish, fertilized eggs, or gametes to the United States; the route of travel, including all carrier stops en route; the port of entry; the proposed date of arrival; and the name and address of the person to whom the shipment of live fish, fertilized eggs, or gametes will be delivered in the United States. APHIS

needs this information to determine whether the live fish, fertilized eggs, or gametes are eligible for importation, to respond to an applicant, to identify the shipment at the port of entry, to ensure that inspectors and facilities are available for inspection in the United States, and to contact appropriate persons if any questions arise concerning the importation.

Paragraph (d) explains what happens after we receive and review the application for an import permit. This paragraph provides that if, following our review, we determine that the live fish, fertilized eggs, or gametes are eligible to be imported, we will issue an import permit. This paragraph also specifies that an import permit does not guarantee that any live fish, fertilized eggs, or gametes will be allowed entry into the United States; the fish, fertilized eggs, or gametes will be allowed to enter the United States only if they meet all applicable requirements of the regulations.

Health Certificate for Live Fish, Fertilized Eggs, and Gametes (§ 93.904)

Paragraph (a) of § 93.904 requires that SVC-susceptible species of live fish, fertilized eggs, and gametes that are imported into the United States from any part of the world be accompanied to the port of entry in the United States by a health certificate. The health certificate must be in English or contain an English translation and must be issued by a full-time salaried veterinarian of the national government of the exporting region, or issued by a certifying official and endorsed by the competent authority of the exporting region. The health certificate will be valid for 30 days from the date of issuance.

In addition, the health certificate must state that the shipment was inspected by the veterinarian or certifying official who issued the certificate and found to be free of any clinical signs of disease consistent with SVC within 72 hours prior to the shipment being exported from the region of origin and that the live fish, fertilized eggs, or gametes covered by the health certificate meet the requirements of paragraph (b) of this section.

Paragraph (b) of this section requires the live fish, fertilized eggs, or gametes to meet the following conditions to be eligible for importation into the United States:

- The live fish, fertilized eggs, or gametes must be under the supervision of the competent authority and must participate in a health surveillance program for SVC.
- The region or establishment from which the live fish, fertilized eggs, or gametes originate must demonstrate freedom from SVC through a minimum of 2-years' continuous health history, supported by laboratory testing by a pathogen detection facility approved for SVC viral assays by the competent authority.
- SVC-susceptible fish populations in the region or establishment must be tested at least twice annually, with at least 3 months between the tests and at times or under environmental conditions that would facilitate the detection of SVCV if it were present. Sampling procedures must utilize an assumed pathogen prevalence of 2 percent, with a corresponding confidence level of 95 percent. Samples must be collected and submitted by a certifying official or veterinarian recognized by the competent authority. The standard screening method for SVC must include isolation of SVCV in cell culture, using either the epithelioma papulosum cyprini (EPC) or fathead minnow (FHM) cell lines. However, the Administrator may authorize other assays for SVCV detection in lieu of virus isolation through cell culture, if the Administrator determines that such assays are robust enough to provide equal assurances of the SVC status of an exporting region or establishment. All viral testing results must be negative.

These requirements will ensure that SVC-susceptible species of live fish, fertilized eggs, or gametes imported into the United States are not infected with SVCV.

Paragraph (c) of § 93.904 requires that the live fish, fertilized eggs, or gametes be shipped to the United States in new containers or containers that have been cleaned and disinfected to neutralize any SVCV to which the shipping containers may have been exposed. Cleaning and disinfection must take place under the supervision of the official who issues the health certificate.

Acceptable disinfection procedures include individual or combination treatments with: Solutions having a pH of 12 or higher or 3 or lower with a contact time of at least 10 minutes; heat at or above 56 °C for at least 15 minutes; chlorine solutions having a concentration of at least 500 ppm with a contact time of at least 10 minutes; iodine solutions having a concentration of at least 100 ppm with a contact time of at least 10 min; ultraviolet exposure (254 nm; minimum exposure of 10,000 microwatt seconds/cm^2); or other disinfectants such as Virkon used according to the manufacturer's directions. Other procedures may be used if determined adequate by the Administrator to neutralize the SVCV. Cleaning and disinfection protocols must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment.

The requirements described above are consistent with OIE's guidelines for trade in SVC-susceptible live fish, fertilized eggs, and gametes (Article 2.1.4.6 of the OIE Aquatic Code).

Declaration and Other Documents for Live Fish, Fertilized Eggs, and Gametes (§ 93.905)

Section 93.905 requires the importer or his or her agent to submit the following documents to the collector of customs for use by the port veterinarians:

- All permits, certificates, or other documentation required by this part; and
- Two copies of a declaration that lists the port of entry, the name and address of the importer; the name and address of the broker; the origin of the live fish, fertilized eggs, or gametes; the number, species, and the purpose of the importation; the name of the person to whom the fish will be delivered; and the location of the place to which such delivery will be made.

Inspection at the Port of Entry (§ 93.906)

Section 93.906 sets forth requirements for port of entry inspections of shipments of SVC-susceptible species of live fish, fertilized eggs, or gametes. Paragraph (a) provides that the shipments must be presented for inspection at a port of entry designated under § 93.902. This paragraph also requires that the port veterinarian be notified at least 72 hours in advance of the arrival of the shipment in the United States. It also provides that any shipment of live SVC-susceptible fish species that the port veterinarian determines to exhibit clinical signs consistent with SVCV infection or disease, or any shipments of live fish, fertilized eggs, and gametes of SVC-susceptible species that otherwise do not meet the requirements of this subpart will be refused entry.

Paragraph (b) states that shipments refused entry must be exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, or will be disposed of as the Administrator may direct.

User Fees

APHIS user fees for processing permit applications and for inspecting animals at the port of entry will apply. The user

fees are set forth in 9 CFR part 130. User fees for processing applications for permits to import certain animals and animal products are listed in the table in § 130.4. User fees for inspection at the port of entry and laboratory and facility inspections are the hourly fees set forth in § 130.30.

Processed Products of SVC-Susceptible Species

Currently, we do not know the extent of imports to the United States of products of SVC-susceptible species. Such products could include muscle fillets (imported whole or for further processing), fresh or frozen whole uneviscerated fish, or tissues of SVC-susceptible species intended for use as bait, or other materials. Available scientific literature indicates that there is a perceived low risk of SVC transmission associated with products of SVC-susceptible species intended for human consumption or for further processing. Also, the importation of products from SVC-susceptible species has not been linked to outbreaks of SVC in the United States. Therefore, we are not restricting the importation of such products at this time. Fresh or frozen whole uneviscerated fish or tissues of SVC-susceptible species for use as bait may be determined to present additional risks. We will continue to seek more information regarding those risks and may impose restrictions on such materials at a later date. We welcome comment on this issue as well as on any aspect of this rule.

Immediate Action

Immediate action is necessary to prevent further introductions of SVC into the United States. SVC is not currently present in farm-raised populations of fish in the United States. Each time SVC has been discovered in commercial fish sites, the disease has been eradicated. Tracebacks conducted at the affected facilities in North Carolina, Washington, and Missouri indicated that all three of the outbreaks in commercial facilities followed the introduction of imported fish from countries where SVC was known to exist or where the SVC status was unknown, and genetic identification of the viral strain involved in all U.S. farmed fish outbreaks of SVC determined that the virus was of Asian, rather than European, genotype, which is the only genotype of SVC that has been identified in previous testing of wild fish populations in the United States. The facilities did not have any known risks of SVCV exposure other than through such imports. Despite its current SVC-free status, the United States remains unprotected from continuing introductions of infected fish, since there are a number of known or suspected SVC-positive countries that export fish to the United States, and pre-testing of imported SVC-susceptible fish is not currently required. Therefore, it is necessary to implement regulations that will restrict such imports in as timely a manner as possible.

Under these circumstances, the Administrator has found that notice and public procedures with respect to this action are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for issuing this rule as an interim rule, rather than publishing a proposed rule.

This rule will take effect 30 days after the date of publication to prevent detrimental effects to live fish, fertilized eggs, and gametes that were in transit to the United States prior to the publication date.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations to establish restrictions on the importation into the United States of live fish, fertilized eggs, and gametes of fish species that are susceptible to SVC. We are also restricting the importation of diagnostic specimens and research materials containing viable SVCV. These actions are necessary to prevent the introduction of SVC into the United States.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

The total value of SVC-susceptible species in the United States industry was approximately $23.2 million in 1998.[2] The small business size standards for animal aquaculture, as identified by the Small Business Administration (SBA), based upon the North American Industry Classification System (NAICS) code 112511, is $750,000 or less in annual receipts. While the available data do not provide the number of U.S. farms producing SVC-susceptible species according to size, it is reasonable to assume that the majority of the operations are small businesses by SBA standards because of the value of sales compared to the total number of farms.[3] In 1998, a total of 76 carp farms accounted for approximately $3.2 million in farm sales; 34 feeder goldfish farms accounted for approximately $9.3 million in sales; 115 koi farms accounted for approximately $3.9 million in sales; and 65 ornamental goldfish farms accounted for approximately $6.7 million in sales. The data above do not reveal the number of separate U.S. farms that produced the susceptible species in 1998, since some farms produced more than one species. APHIS welcomes information that would enable us to more precisely identify the number of small entities that may be affected by this rule.

Existing data suggest that domestic producers of SVC-susceptible ornamental fish species (*i.e.*, koi, Crucian carp, and goldfish) will benefit from this interim rule. The United States is a net importer of live ornamental fish. In 1998, the United States imported $45.1 million in live ornamental fish, with approximately 57 percent of that arriving primarily from Asia. In that same year, U.S. exports of live ornamental fish were $10.6 million, less than one-fourth the value of imports.[4] This rule will ensure SVC-susceptible live fish, fertilized eggs, and gametes imported by these producers are free of SVC.

The United States is a net exporter of live carp (*i.e.*, common carp (excluding koi), grass carp, silver carp, bighead carp, tench, and sheatfish). In 1998, the United States exported approximately $1.7 million in live carp, while importing roughly $0.2 million. Approximately 98 percent of U.S. exports of live carp are sent to Canada. U.S. producers who export live carp will also benefit from this interim rule because it will help to provide continued assurance of the SVC-free status of U.S. exports.

U.S. imports of live carp come primarily from Japan, Hong Kong, and Israel,[5] which are considered to be potential sources of SVCV-infected fish. Japan accounted for 87 percent of the U.S. live carp import market in 2003,

[2] NASS/USDA, *1998 Census of Aquaculture*. Note: 1998 is the most recent year in which census data for aquaculture are available.

[3] Based upon 2002 Census of Agriculture—State Data.

[4] Global Trade Atlas, 1998.

[5] Global Trade Atlas, 2003.

and Hong Kong and Israel accounted for about 7 and 6 percent, respectively.[6] SVC-susceptible fish imported from these and other regions of the world will have to be certified as being from a region or establishment determined to be free of SVC.

Importers of SVC-susceptible species will be affected by the user fees that will be charged for processing applications for import permits and for conducting inspections at the port of entry under APHIS' regulations in §§ 130.4 (processing import permit applications) and 130.30 (hourly rates for services). The user fee for processing an initial import permit application is $94. In the beginning, import compliance assistance ($70) might be necessary, which would raise the cost to $164 for each shipment, but we estimate that most importers will not need import compliance assistance. The user fee rate is $84 per hour ($21 per quarter hour) for inspection services, including travel time, during normal business hours. At other times, the user fees are $100 per hour ($25 per quarter hour) Monday through Saturday and on holidays. The user fees are $112 per hour ($28 per quarter hour) on Sundays.

According to APHIS' Veterinary Services, the average inspection takes an estimated 4½ hours, including inspectors' travel time to the port. Therefore, the total cost of inspecting a shipment can range from $378 to $504, depending on whether the inspection is done during normal business hours.[7] The projected average cost of inspection to an importer with four or more shipments annually is between $2700 and $3650.[8] The average cost of import permits, based upon an average of 7 shipments per annum per importer, will be $685.[9] A small number of entities currently import more than 40 shipments of SVC-susceptible species annually. Permit and inspection costs for these importers are expected to range between $15,000 and $20,000. The projected total annual cost to importers of live SVC-susceptible species is between $237,384 and $316,512 for inspections, and about $59,032 for import permits.[10]

Import permit and inspection expenditures by entities will be roughly proportional to the number of shipments imported. We do not have data on the average value of shipments of SVC-susceptible species by importers, or the range or distribution of shipment values. Imports of SVC-susceptible species are often a mixture of the less expensive ornamental fish and the more expensive koi. APHIS invites comment on the average revenues and operating costs, and average number of shipments per year, of small-entity importers that may be impacted by this interim rule.

The user fees set forth in this interim rule are financial targets, with the goal of recovering the cost of agency operations. Profit margins of some importers could decline due to the user fees, depending upon the extent to which they are unable to pass these costs on to their buyers. One possible response of buyers of imported SVC-susceptible species to price increases may be to shift to domestic sources for ornamental fish, and limit imports to the more expensive species, such as koi. Given their limited domestic availability, price changes that may occur because of the user fees incurred by importers should not have a large effect on the quantities imported. APHIS welcomes information from the public as to the domestic wholesale supply of the various SVC-susceptible species, compared to quantities imported. While it is anticipated that the permit and inspection costs may have a discernable impact on prices of SVC-susceptible species, we believe the benefits of preventing future introduction of SVC into the United States, in terms of forgone depopulation and cleaning and disinfecting expenditures, will exceed any negative price effects.

APHIS considered several alternatives to the import requirements for SVC-susceptible species set forth in this final rule. One alternative was to list regions where SVC is known to exist in our regulations and to only impose import restrictions on SVC-susceptible species imported from those regions. This approach would allow for regions maintaining SVC-free status to export SVC-susceptible species without the added import permit and health certificate requirements. However, it was determined that due to the complex epidemiology of SVC, and the present inability of APHIS to monitor or assess the veterinary infrastructure of countries maintaining SVC freedom, that the establishment of a list of SVC-free regions could not be done with any reliable assurance of initial or ongoing validity.

A second alternative APHIS considered was to exempt SVC-susceptible species intended to remain in private aquaria from the restrictions set forth in this rule; however, it was determined that we could not assure that allowing such an exemption would mitigate the risk of spreading the pathogen or disease via accidental or purposeful release into waterways with wild SVC-susceptible populations.

APHIS also considered exempting a limited number of imported SVC-susceptible fish brought into the United States as personal baggage, since many goldfish (*Carassius auratus*) and possibly other SVC-susceptible species are brought into the United States in this fashion by international travelers. It was determined that we could not adequately ensure that such practices would not result in accidental or purposeful release into waterways where other populations of fish, including farmed fish species, could be affected.

APHIS invites comment on any additional information that will enable us to better assess the financial burden that the rule may place on small-entity importers of SVC-susceptible species.

This rule contains certain reporting and recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0301 to the information collection and recordkeeping requirements.

[6] Global Trade Atlas, 2003.

[7] Total cost of an average inspection during normal business hours is derived as follows: ($84*4) + $42 = $378. Total cost of an average inspection on Sundays is derived as follows: ($112*4) + $56 = $504.

[8] Based upon 2004 SVC-susceptible species import records of 628 shipments from the Automated Target System Inbound Production Web Server.

[9] The estimated total average cost for import permits does not include the import compliance assistance fee of $70, which is only incurred until the application process becomes familiar to the importer.

[10] The projected total annual cost to importers for inspections during normal business hours is derived as follows: $378 per inspection*628 shipments = $237,684 for inspections. The projected total annual cost to importers for inspections on Sundays is derived as follows: $504 per inspection*628 shipments = $316,512. The total annual cost for permits is derived as follows: $94 per permit*628 shipments = $59,032.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2006–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0107 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to restrict the importation of live fish, fertilized eggs, and gametes of SVC-susceptible species into the United States. It also restricts the importation of diagnostic specimens or research materials containing viable SVCV. Live fish, fertilized eggs, and gametes of SVC-susceptible species that are imported into the United States will have to be accompanied by a health certificate. Importers of SVC-susceptible species will be required to obtain an import permit, and provide a declaration at the port of entry. Importers of live cultures of SVCV, preserved SVC viral RNA or DNA, tissue samples containing viable SVCV, or other specimens for diagnostic or research purposes will also have to obtain an import permit.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .40090834 hours per response.

Respondents: Importers of SVC-susceptible live fish, fertilized eggs, and gametes, and cultures/diagnostic specimens containing SVCV.

Estimated annual number of respondents: 12,010.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 36,010.

Estimated total annual burden on respondents: 5,969 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. The heading for part 93 is revised to read as set forth above.

■ 3. Part 93 is amended by adding a new Subpart I—Aquatic Animal Species, §§ 93.900 through 93.907, to read as follows:

Subpart I—Aquatic Animal Species

Sec.
93.900 Definitions.
93.901 General restrictions; exceptions.
93.902 Ports designated for the importation of live fish, fertilized eggs, and gametes.
93.903 Import permits for live fish, fertilized eggs, and gametes.
93.904 Health certificate for live fish, fertilized eggs, and gametes.
93.905 Declaration and other documents for live fish, fertilized eggs, and gametes.
93.906 Inspection at the port of entry.

Subpart I—Aquatic Animal Species

§ 93.900 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

APHIS representative. A veterinarian or other individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

Certifying official. An individual authorized by the competent authority of a country to sign health certificates for aquatic animals.

Competent authority. The national veterinary services or other authority of a country, having the responsibility and competence for ensuring or supervising the implementation of aquatic animal health measures.

Container. A transport receptacle that is specially constructed to facilitate transportation of aquatic animals or aquatic animal products by one or several means of transport.

Department. The United States Department of Agriculture (USDA).

Fertilized egg. A viable fertilized ovum of an aquatic animal.

Gamete. The sperm or unfertilized egg of aquatic animals that is held or transported separately.

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this subpart.

Person. Any individual, corporation, company, association, firm, partnership, society or joint stock company.

Port veterinarian. A veterinarian employed by the Animal and Plant Health Inspection Service to perform duties required under this subpart at a port of entry.

Region. Any defined geographic land area identifiable by geological, political, or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (zone, county, department, municipality, parish, Province, State, etc.);

(3) Parts of several national entities combined into an area; or

(4) A group of national entities (countries) combined into a single area.

Spring viremia of carp (SVC). A disease caused by infection with spring viremia of carp virus, a rhabodivrus capable of infecting several carp species, in addition to some other cyprinid and ictalurid fish species.

SVC-susceptible species. Common carp (*Cyprinus carpio*), grass carp (*Ctenopharyngodon idellus*), silver carp (*Hypophthalmichthys molitrix*), bighead carp (*Aristichthys nobilis*), Crucian carp (*Carassius carassius*), goldfish (*Carassius auratus*), tench (*Tinca tinca*), and sheatfish (*Silurus glanis*).

United States. All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 93.901 General restrictions; exceptions.

(a) No live fish, fertilized eggs, or gametes of SVC-susceptible species may be imported into the United States except in accordance with this subpart,[11] nor shall any such live fish, fertilized eggs, or gametes be moved from the port of entry after arrival until released by the port veterinarian; provided that the Administrator may, upon request in specific cases, allow the importation of SVC-susceptible live fish, fertilized eggs, or gametes under conditions other than those set forth in this subpart when the Administrator determines that such movement will not result in the introduction of SVC into the United States.

(b) Other provisions of this subpart relating to the importation of live fish, fertilized eggs, and gametes shall not apply to shipments of SVC-susceptible species of live fish, fertilized eggs, or gametes in transit through the United States if an import permit has been obtained under § 93.903 and all conditions of the permit are observed; and if the live fish, fertilized eggs, and gametes are handled as follows:

(1) They are maintained under continuous confinement while in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or

(2) They are unloaded, in the course of such transit, into a holding facility[12] that is provided by the carrier or its agent and has been approved by the Administrator in accordance with paragraph (b)(4) of this section as adequate to prevent the spread within the United States of any finfish disease; they are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States; and are maintained under continuous confinement aboard such means of conveyance until it leaves the United States.

(3) They are moved in accordance with any additional conditions prescribed in the permit and determined by the Administrator to be necessary to ensure not introduce SVC into the United States.

(4) For a holding facility to be approved by the Administrator:

(i) The holding facility must be sufficiently isolated to prevent direct or indirect contact of the live fish, fertilized eggs, or gametes it contains with any other SVC-susceptible species in the United States;

(ii) The holding facility must be constructed to provide adequate protection against environmental conditions and so that it can be adequately cleaned, washed and disinfected;

(iii) Provision must be made for disposal of fish carcasses, shipping water, waste and any associated shipping materials in a manner that will prevent dissemination of disease;

(iv) Provision must be made for adequate sources of feed and water and for attendants for the care and feeding of live fish, fertilized eggs, or gametes in the facility;

(v) The holding facility must comply with all applicable local, State and Federal requirements for environmental quality.

(vi) The holding facility must comply with any additional requirements that may be imposed by the Administrator for a particular shipment if necessary to prevent the dissemination of disease.

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.902 Ports designated for the importation of live fish, fertilized eggs, and gametes.

(a) The following ports are designated as ports of entry for live fish, fertilized eggs, and gametes of SVC-susceptible species imported under this subpart:

(1) *Air and ocean ports.* Los Angeles and San Francisco, CA; Miami and Tampa, FL; Atlanta, GA; Honolulu, HI; Chicago, IL; Boston, MA; Newark, NJ; New York, NY; Portland, OR; Dallas-Ft. Worth, TX; and San Juan, PR.

(2) *Canadian border ports.* Detroit, MI; Buffalo-Niagara, NY; and Blaine and Seattle, WA.

(3) *Mexican border ports.* Otay Mesa, CA.

(b) *Designation of other ports.* Other ports may be designated by the Administrator in specific cases with the concurrence of the Secretary of the Department of Homeland Security.

§ 93.903 Import permits for live fish, fertilized eggs, and gametes.

(a) Live fish, fertilized eggs, or gametes of SVC-susceptible species imported into the United States must be accompanied by an import permit issued by APHIS and must be imported within 30 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted for each shipment of live fish, fertilized eggs, or gametes of SVC-susceptible species to the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231. Application forms for import permits may be obtained from this address.

(c) A completed application shall include the following information:

(1) The name and address of the person intending to export live fish, fertilized eggs, or gametes of SVC-susceptible species to the United States;

(2) The proposed date of shipment to the United States;

(3) The name and address of the person intending to import live fish, fertilized eggs, or gametes of SVC-susceptible species into the United States;

(4) The species and number of live fish, fertilized eggs, or gametes of SVC-susceptible species to be imported into the United States;

(5) The purpose of the importation;

(6) The port of embarkation;

(7) The mode of transportation;

(8) The route of travel, including all carrier stops en route;

(9) The port of entry in the United States;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the live fish, fertilized eggs, or gametes of SVC-susceptible species will be delivered in the United States.

(d) If APHIS determines that the live fish, fertilized eggs, or gametes are

[11] The importation of live cultures of SVC virus, preserved SVC virus viral RNA or DNA, tissue samples containing viable SVC virus, or other specimens intended for diagnostic or research purposes and which contain viable SVC virus may be imported only under permit in accordance with 9 CFR part 122.

[12] Requests for approval of such facilities should be made to the Animal and Plant Health Inspection Service at the address provided in § 93.903 for permit applications.

eligible for importation, APHIS will issue an import permit indicating the applicable conditions for importation. An import permit does not guarantee that any live fish, fertilized eggs, or gametes will be allowed entry into the United States; the fish, fertilized eggs, or gametes will be allowed to enter the United States only if they meet all applicable requirements of the permit and regulations.

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.904 Health certificate for live fish, fertilized eggs, and gametes.

(a) *General*. All live fish, fertilized eggs, and gametes of SVC-susceptible species that are imported from any region of the world must be accompanied by a health certificate issued by a full-time salaried veterinarian of the national government of the exporting region, or issued by a certifying official and endorsed by the competent authority of that country. The health certificate must be written in English or contain an English translation. The health certificate will be valid for 30 days from the date of issuance. The health certificate for the live fish, fertilized eggs, or gametes must state that:

(1) The live fish, fertilized eggs, or gametes were inspected by the veterinarian or certifying official who issued the certificate within 72 hours prior to shipment, and were found to be free of any clinical signs of disease consistent with SVC; and

(2) The live fish, fertilized eggs, or gametes covered by the health certificate meet the requirements of this section.

(b) *Surveillance*. The live fish, fertilized eggs, or gametes must meet the following conditions to be eligible for importation into the United States:

(1) The live fish, fertilized eggs, or gametes must originate in a region or establishment which conducts a surveillance program for SVC under the supervision of the competent authority.

(2) The region or establishment must demonstrate freedom from SVC through a minimum of 2-years' continuous health history, supported by laboratory testing by a pathogen detection facility approved for SVC viral assays by the competent authority.

(3) SVC-susceptible fish populations in the region or establishment must be tested at least twice annually, with at least 3 months between the tests and at times or under environmental conditions that would facilitate the detection of SVCV if it were present. Sampling procedures must utilize an assumed pathogen prevalence of 2 percent, with a corresponding confidence level of 95 percent. Samples must be collected and submitted by a certifying official or veterinarian recognized by the competent authority. The standard screening method for SVC must include isolation of SVCV in cell culture, using either the epithelioma papulosum cyprini (EPC) or fathead minnow (FHM) cell lines. However, the Administrator may authorize other assays for SVCV detection in lieu of virus isolation through cell culture, if the Administrator determines that such assays provide equivalent assurance of the SVC status of an exporting region or establishment. All viral testing results must be negative.

(c) *Shipping containers*. All live fish, fertilized eggs, and gametes must be shipped to the United States in new containers or in used containers that have been cleaned and disinfected in accordance with this section.

(1) Cleaning and disinfection of shipping containers must take place under the supervision of the veterinarian or certifying official who issues the health certificate.

(2) Cleaning and disinfection must be sufficient to neutralize any SVC virus to which shipping containers may have been exposed. Acceptable disinfection procedures include individual or combination treatments with: Solutions having a pH of 12 or higher or 3 or lower with a contact time of at least 10 minutes; heat at or above 56° C for at least 15 minutes; chlorine solutions having a concentration of at least 500 ppm with a contact time of at least 10 minutes; iodine solutions having a concentration of at least 100 ppm with a contact time of at least 10 minutes; ultraviolet exposure (254 nm; min exposure of 10,000 microwatt seconds/cm^2); or other disinfectants such as Virkon used according to the manufacturer's directions. The Administrator may authorize other procedures if the Administrator determines they are adequate to neutralize the SVC virus.

(3) Cleaning and disinfection protocols must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment to the U.S. port of entry.

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.905 Declaration and other documents for live fish, fertilized eggs, and gametes.

(a) For all live fish, fertilized eggs, and gametes offered for importation under this subpart, the importer or his or her agent must submit the following documents to the collector of customs for use by the port veterinarian:

(1) All permits, certificates, or other documentation required by this subpart; and

(2) Two copies of a declaration that lists the port of entry, the name and address of the importer, the name and address of the broker, the origin of the live fish, fertilized eggs, or gametes, the number, species, and the purpose of the importation, the name of the person to whom the fish will be delivered, and the location of the place to which such delivery will be made.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.906 Inspection at the port of entry.

(a) All live fish, fertilized eggs, and gametes of SVC-susceptible species imported from any part of the world must be presented for inspection at a port of entry designated under § 93.902. The APHIS port veterinarian must be notified at least 72 hours in advance of the arrival in the United States of a shipment of live fish, fertilized eggs, or gametes of SVC-susceptible species. Any shipment of live SVC-susceptible fish species that the port veterinarian determines to exhibit clinical signs consistent with SVCV infection or disease, or any shipments of live fish, fertilized eggs, and gametes of SVC-susceptible species that otherwise do not meet the requirements of this subpart, shall be refused entry.

(b) Shipments refused entry, unless exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, shall be disposed of as the Administrator may direct.

(Approved by the Office of Management and Budget under control number 0579–0301)

Done in Washington, DC, this 24th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14478 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1247]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation E, which implements the

Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The final rule provides that Regulation E covers payroll card accounts that are established directly or indirectly through an employer, and to which transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis. The final rule also provides financial institutions with an alternative to providing periodic statements for payroll card accounts if they make account information available to consumers by specified means.

DATES: This final rule is effective July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, or David A. Stein or John C. Wood, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for disclosure of terms and conditions of an EFT service, documentation of EFTs by means of terminal receipts and periodic account activity statements, limitations on consumer liability for unauthorized transfers, procedures for error resolution, and certain rights related to preauthorized EFTs. The Act and regulation also restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)), which interprets the requirements of Regulation E, is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Overview of Comments Received

Payroll cards have become increasingly popular with some employers, financial institutions, and payroll service providers as a means of providing a consumer's wages or other recurring compensation payments—assets that the consumer is able to access and spend through an access device that provides functionality comparable to a debit card. Typically, an employer will arrange with a bank or a third-party service provider to make available to its employees a magnetic stripe-backed card; this card accesses an account (or subaccount) assigned to the individual employee. Each payday, the employer credits this account for the amount of the employee's compensation instead of providing the employee with a paper check or making a direct deposit of salary to the employee's checking or deposit account. The employee then can use the payroll card to withdraw the funds at an ATM and to make purchases at POS (and possibly get cash back). Some payroll cards may offer features such as convenience checks and electronic bill payment. Payroll cards are often marketed to employers as a cost-effective means of providing wages to employees who lack a traditional banking relationship. For ''unbanked'' consumers, payroll card products can serve as substitutes for traditional transaction accounts at a financial institution.

On September 17, 2004, the Board published a notice of proposed rulemaking in the **Federal Register** (69 FR 55,996) (September 2004 proposal) to provide, among other things, that the term ''account'' under Regulation E includes payroll card accounts established by an employer for the purpose of providing an employee's compensation on a recurring basis. Under the September 2004 proposal, a payroll card account would be subject to the regulation whether it is operated or managed by the employer, a third-party payroll processor, or a depository institution. The Board received nearly 50 comment letters on the proposed revisions addressing payroll card accounts.

Both industry and consumer group commenters generally reacted favorably to the September 2004 proposal, agreeing that coverage of payroll card accounts under Regulation E was appropriate. Consumer groups further urged the Board to expand the scope of the proposal to cover any stored-value card product that is marketed or used as an account substitute, or that is used to receive payments of significant household funds, such as workers' compensation or unemployment benefits.

Most industry commenters urged the Board to grant financial institutions relief from the requirement to provide paper periodic statements. These commenters cited various reasons, including that other means of accessing balance and transaction information, such as by telephone or through the Internet, provided more useful and timely information to consumers at less cost to financial institutions.

On January 10, 2006, the Board published an interim final rule in the **Federal Register** (71 FR 1,473) (interim rule), that adopted the proposed treatment of payroll card accounts as ''accounts'' for purposes of coverage under Regulation E. In response to commenters' suggestions, the interim rule included a new § 205.18 which granted financial institutions an alternative means to provide account transaction information to payroll card users instead of providing periodic statements. Specifically, a financial institution could provide account information by: (1) Making balance information available to the consumer through a readily available telephone line; (2) making available to the consumer an electronic history of the consumer's account transactions, such as through an Internet Web site, covering a period of at least 60 days; *and* (3) providing promptly upon the consumer's request, a written history of the consumer's account transactions covering a period of at least 60 days prior to the request. The interim rule included additional revisions regarding initial disclosures, error resolution rights, and other consumer protections. To give interested parties an opportunity to comment on these modifications, particularly the alternative means of providing account information, the Board requested additional comment on the interim rule.

The Board received approximately 30 comment letters on the interim rule. A variety of business entities, including banks, credit unions, payroll services providers, and industry trade associations, provided comments. Consumer groups and a state attorney general also provided comments. This section provides a brief overview of the comments received. The section-by-section analysis discusses specific comments, and sets forth the Board's analysis of those comments, in more detail.

Many commenters addressed the scope of the interim rule. Industry commenters generally continued to support the Board's coverage of payroll card accounts under Regulation E. Several industry commenters urged the Board not to extend the scope of the rule to cover additional stored-value, or prepaid, products, as this could discourage the continued evolution of such products. However, other industry commenters recommended that the interim rule's definition of ''payroll card account'' be extended to cover other card products to which a consumer might elect to add his or her salary by direct deposit and which are not necessarily ''established by an employer.'' A few industry commenters also expressed concern about the proposal to treat employers who make payroll cards available to their employees as financial institutions subject to the regulation. Consumer groups urged the Board to engage immediately in a separate rulemaking to provide specifically that Regulation E covers any card product that is marketed or used as an account substitute, or to any card product used to receive payments of significant household funds, such as workers' compensation or unemployment benefits.

Commenters also addressed the appropriateness of the interim rule's alternative to providing paper periodic statements. Most industry commenters commended the Board's grant of relief from the requirement to provide paper periodic statements if account information is available through alternative means, but many asked for clarification or proposed specific changes regarding the alternative methods of delivery. A few industry commenters asked the Board to provide similar relief for other types of card accounts, such as accounts to which government benefits are deposited on a recurring basis. In contrast, consumer groups asserted that full Regulation E protections should apply to payroll card accounts, including the requirement to provide paper periodic statements. These groups stated that paper periodic statements would enable consumers to track their balances and transactions more effectively.

III. Summary of the Final Rule

The Board is revising Regulation E substantially as published in the January 2006 interim rule, with one significant revision regarding the scope of entities that are subject to the regulation with respect to payroll card accounts and a few additional clarifying modifications.

Under the final rule, payroll card accounts specifically are included in the definition of ''account'' for purposes of Regulation E. A ''payroll card account'' is defined as an account directly or indirectly established through an employer to which transfers of the consumer's wages or other compensation are made on a recurring basis. Section 205.18 of the final rule grants financial institutions flexibility in providing certain account information to payroll card users. In particular, a financial institution need not provide periodic statements under § 205.9 if the institution: (1) Makes available balance information to the consumer through a readily available telephone line; (2) makes available to the consumer an electronic history, such as through an Internet Web site, of the consumer's account transactions covering a period of at least 60 days preceding the date the consumer electronically accesses the account; and (3) upon the consumer's oral or written request, promptly provides a written history of the consumer's account transactions covering a period of at least 60 days prior to the request. The history of account transactions provided electronically or upon request must set forth the same type of information required on periodic statements under Regulation E, including information about any fees for EFTs imposed during the 60-day period.

Unlike the approach set forth in the interim final rule, the final rule would generally not cover employers and third-party service providers as ''financial institutions'' under the regulation because they typically do not hold payroll card accounts, or issue payroll cards and agree to provide EFT services to payroll card holders. However, if an employer or a service provider were to undertake either of these functions, it would become a financial institution subject to the rule.

In addition, the final rule clarifies how financial institutions that do not provide periodic statements under § 205.9 can comply with the error resolution procedures in § 205.11 of Regulation E. As provided in the interim rule, a consumer's 60-day period to report errors begins on the earlier of the date the consumer electronically accesses the account (provided that information about the alleged error is made available to the consumer) or the date the financial institution sends a written history including that transaction. To assist institutions that may not, or are unable to, track when consumers electronically access their accounts, the final rule also provides that institutions can comply with the error resolution provisions if they allow a consumer to report an error up to 120 days after the date the transaction allegedly in error was credited or debited to the consumer's account. As explained in more detail in the section-by-section analysis, this approach allows an institution to comply with the regulation without tracking when consumers electronically access their account information and, at the same time, ensures that consumers will have at least 60 days from the date of every transaction listed in the electronic or written statement to report an error. A similar clarification is provided with respect to the liability provisions in § 205.6.

The effective date of the final rule with respect to the payroll card provisions is July 1, 2007.

IV. Section-by-Section Analysis

Section 205.2 Definitions

2(b) Account

The EFTA and Regulation E apply to any EFT that authorizes a financial institution to debit or credit a consumer's asset account. Under the final rule, the term ''account'' in § 205.2(b) is revised to include a ''payroll card account,'' which is defined as an account directly or indirectly established through an employer to which transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis. A payroll card account is an account subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution.

Many industry commenters agreed that the scope of the rule was appropriately limited to payroll card accounts as defined in the interim rule, and stated that a rule with broader coverage could stifle the development of other stored-value, or prepaid, card products. One such commenter urged the Board to state expressly in the commentary that other card products offered by third parties that may be used by consumers to access their salary are not covered by the regulation.

Several industry commenters, however, asserted that the final rule should be revised, or interpreted, to cover other card products that may also be used primarily to access recurring deposits of salary, even if they are established by a consumer without the involvement of an employer. In this regard, a few commenters noted that some depository institutions offer payroll card products directly to consumers who may not want to

manage, or who may not qualify for, a traditional deposit account and whose employers may not offer a payroll card option. These commenters observed that, like the payroll card accounts covered by the interim rule, these products may permit only electronic deposits of salary and wages and allow access to funds only by means of a card.

A few industry commenters urged the Board to extend the rule to also cover general spending cards that permit a consumer to add value through a variety of means, including through direct deposits of salary. Some industry commenters asked the Board to clarify the status of Regulation E coverage for other card products, such as cards used to deliver health benefits or to deliver government-managed or directed consumer payments, such as child support, unemployment insurance, and workers' compensation.

Consumer groups supported coverage of payroll card accounts, but stated that consumer protection could be strengthened by also covering card products used to receive one-time payments of wages, salary, and other compensation, which, in their view, should be similarly protected from unauthorized use under Regulation E. Consumer groups also urged the Board to initiate a separate rulemaking to cover additional cards used to deliver important household funds, such as emergency benefit payments, income tax refunds, or loan proceeds, as well as other cards marketed or used as deposit account substitutes.

By express definition, the coverage of EFT services under the EFTA and Regulation E depends upon whether a transaction involves an EFT to or from a consumer's account. Section 903(2) of the EFTA defines an ''account'' as a ''demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes.'' As explained in the interim rule, in light of the characteristics of payroll cards, the Board believes it is appropriate to exercise its authority under Sections 903(2) and 904(d) of the EFTA to classify payroll card accounts as ''accounts'' for purposes of Regulation E.[1] Payroll card accounts are assigned to an identifiable consumer and represent a recurring stream of payments that is likely the primary source of the consumer's income. They are replenished on a recurring basis and designed for ongoing use at multiple locations and for multiple purposes. Payroll card accounts utilize the same kinds of access devices, electronic terminals, and networks as do other EFT services historically covered by the EFTA.

Section 205.2(b)(2) is generally adopted as set forth in the interim rule and provides that the term ''account'' includes a ''payroll card account,'' which is an account that is directly or indirectly established through an employer, and to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis. (Former § 205.2(b)(2) was previously redesignated under the interim final rule as § 205.2(b)(3).) The definition generally includes a payroll card account that represents the means by which an employer regularly pays the employee's wages, salary, or other form of employee compensation and would include, for example, card accounts for seasonal workers or employees that are paid on a commission basis. Coverage under Regulation E applies whether the account is operated or managed by an employer, a third-party payroll processor, or a depository institution. However, as further discussed below under § 205.18(a), the fact an employee is paid by payroll card account through the employment relationship would not make the employer a financial institution subject to the regulation unless the employer holds payroll card funds, or issues the payroll card and agrees with the employee to provide EFT services. The definition has been revised to refer to accounts established ''through'' an employer, rather than ''by'' an employer as in the interim rule to clarify what a payroll card account is, regardless of which entities are covered as financial institutions with respect to the account. In addition, the reference in the definition to a payroll card account that is established ''on behalf of a consumer'' has been deleted as unnecessary.

A few industry commenters observed that an employer may elect to provide bonuses or other incentive-based payments on a non-recurring basis more than once during a year on a card used only for that purpose. Thus, these commenters urged that the Board clarify that the term ''payroll card account'' does not include cards used to disburse such ''isolated or limited'' payments. The Board agrees with commenters' suggestions and has revised comment 2(b)–2 to clarify that the term ''payroll card account'' generally does not include a card used solely to disburse bonuses or other incentive-based payments because such payments are unlikely to be the consumer's primary source of salary or compensation. In contrast, the term would include card accounts that receive deposits of commission-based payments paid to an employee, even if not made on regular intervals (for example, if based on sales), because such payments are typically the primary means by which that employee receives his salary or other compensation. *See also* § 205.2(b)(2). Comment 2(b)–2 further clarifies that cards exclusively used to disburse payments other than compensation, such as petty cash or travel expenses, are not ''payroll card accounts.'' Nevertheless, to the extent bonuses or other incentive-based payments, payments to reimburse travel expenses, or any other deposits of funds (for example, if a consumer is permitted to add his or her funds) are transferred to an account that otherwise meets the definition of a payroll card account, such transfers are EFTs covered by the regulation.

The fact that an employee only remains in the employer's hire for a short time, for example, a few pay cycles, does not negate coverage, so long as the employer intended to make recurring payments to the payroll card account. However, if the employer only transmits funds to an account accessible by a card in isolated instances—for example, in final-payment situations, or in emergency situations when other payment methods are unavailable, such a card ''account'' would not fall within the definition of a payroll card account. *See also* comment 2(b)–2. In these cases, the Board believes that the costs of applying Regulation E's protections and providing disclosures for a card serving a one-time or limited use would outweigh any incremental benefit to consumers.

As noted in the supplemental information to the interim rule, a payroll card account is covered under the final rule whether the underlying funds are held in individual employee accounts or in a pooled account with some form of ''subaccounting'' maintained by a depository institution (or by a third party) to enable a determination of the amounts of money owed or attributed to particular employees. *See* 71 FR at 1,475. This approach assures uniform application and minimizes potential circumvention of the rule.

The Board's final rule limits the scope of the payroll card account definition to payroll card accounts established

[1] Under Section 904(d) of the EFTA, ''[i]f EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.''

directly or indirectly through an employer. Thus, the term ''payroll card account'' does not include accounts directly established by a consumer at a depository institution without the involvement of an employer, even if the depository institution limits the account to receiving direct deposits of recurring payments of salary or other compensation. The requirement that a payroll card account be established through a consumer's employer creates a bright-line test for determining which accounts are subject to special rules regarding payroll card accounts. Moreover, it would be difficult for financial institutions and others to distinguish an account directly established by a consumer to receive deposits of salary (without the involvement of an employer) from a ''traditional'' deposit account opened by a consumer. As a result, the definition of a payroll card account is limited as explained above. Accounts established directly by a consumer at a depository institution are fully covered by Regulation E because they fall within the existing definition of ''account'' in § 205.2(b)(1).

Gift cards issued by merchants that can be used to purchase items in the merchant's store are not covered by Regulation E. The regulation also does not cover general spending cards to which a consumer *might* transfer by direct deposit some portion of the consumer's wages. Although consumers might choose to send some or all of their salary or other compensation by direct deposit into a general spending card account, the consumer also may use these products for other purposes or for limited periods of time, like gift cards or other stored-value, or prepaid, cards. Consumers would derive little benefit from receiving full Regulation E protections for cards that may only be used for limited purposes or on a short-term basis, and which may hold minimal funds, while the issuer's costs of compliance with Regulation E might be significant. In contrast, for payroll card accounts that are established through an employer, there is a greater likelihood that the account will serve as a consumer's principal transaction account and hold significant funds for an extended period of time.

In addition, cards used solely for health-related expenses—such as cards linked to flexible spending accounts, health savings accounts or health reimbursement arrangements—are not covered by the regulation, whether funded by the employer or the employee. The Board will continue to monitor the development of the prepaid card market and could reconsider whether the current treatment of these products under Regulation E remains appropriate over time. *But see* 62 FR 43,467, 43,468 (August 14, 1997) (stating that accounts established by a government agency for distributing state or local employment-related benefits, such as unemployment benefits, are electronic benefit transfer (EBT) accounts covered by § 205.15).

Former comment 2(b)–2, which addresses examples of accounts not covered by Regulation E, was previously redesignated under the interim rule as comment 2(b)–3.

Section 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts

In the interim rule, the Board proposed to grant financial institutions relief from the requirement to provide periodic statements for payroll card accounts, provided that the financial institution makes account information available to the consumer through certain alternative means. The final rule adopts the approach set forth in the interim rule substantially as proposed, with a few clarifying changes to address commenters' concerns. In addition, the final rule applies the general definition of ''financial institution'' to describe the entities subject to the payroll card requirements. Thus, unlike the approach in the interim rule, employers and third-party service providers will generally not be covered as financial institutions under the regulation because they typically do not hold payroll card accounts, or issue payroll cards and agree with a consumer to provide EFT services.

Financial institutions covered under the rule are not required to provide periodic statements for payroll card accounts if they provide specified account information by telephone, electronically, and, upon the consumer's request, in writing. Section 205.18 of the final rule further addresses the requirements governing initial disclosures, the issuance of access devices, error resolution, and limitations on liability under the modified approach.

18(a) Coverage

The final rule adopts the existing definition of ''financial institution'' in § 205.2(i) to identify the entities that are subject to the regulation with respect to a payroll card account. *See* § 205.2(i). Thus, unlike the interim rule, employers and service providers typically would be excluded from the scope of the regulation because they are unlikely to either hold payroll card accounts or issue payroll cards and agree to provide EFT services to payroll card account holders. Except as modified by § 205.18, all provisions of Regulation E apply to financial institutions with respect to payroll card accounts in the same manner and to the same extent that they apply with respect to other accounts subject to the regulation.

Under one typical payroll card model, an employer contracts with a depository institution to provide payroll cards to its employees. In many cases, the depository institution may use a third-party service provider to perform some or a substantial proportion of the compliance duties (*e.g.*, in a turnkey arrangement), including mailing account terms and conditions and providing error resolution services. Or, the depository institution may elect to perform all of the compliance duties in-house. Under another payroll card model, the employer may contract directly with the third-party service provider for the payroll card program. Under both arrangements, a depository institution's participation in the payroll card program will be necessary both to hold the underlying funds as well as to issue the payroll card itself. In addition, the account relationship will generally be between the issuing bank and the employee, regardless of whether it is the bank or a service provider that is ultimately responsible for performing a particular compliance obligation. An employer's involvement in a particular payroll card program is likely to be limited to providing initial payroll card account disclosures on behalf of the depository institution or service provider.

Under the interim rule, an entity would have been treated as a financial institution if it directly or indirectly held a payroll card account or directly or indirectly issued a payroll card. Thus, employers that provided payroll cards to their employees would have been subject to the regulation because the scope of coverage did not require a person issuing an access device for a payroll card account to also agree with a consumer to provide EFT services. Similarly, a service provider would have been treated as a financial institution if it indirectly issued payroll cards through a bank. *See* 71 FR at 1,477.

Two commenters, one representing card issuers and a second representing specialists in corporate treasury functions, observed that most employers will not have expertise in complying with the regulation, and thus requested that the Board exclude employers from coverage under § 205.18(a) entirely. In particular, these commenters asserted that the compliance burden could be a

disincentive for some employers to offer payroll cards as a payment option for their employees. In this regard, a few commenters asserted that even if employers shift compliance duties to a third-party service provider by contract, the employer might still be liable for that party's failure to comply. In contrast, consumer groups agreed with the interim rule's treatment of all entities participating in card distribution, card processing, or transfer of payroll card funds as financial institutions.

Upon further consideration and analysis of the issue, the Board is revising § 205.18(a) to use the same definition of ''financial institution'' with respect to payroll card accounts that applies to other types of accounts to determine which entities providing payroll card services are covered under the rule. *See* § 205.2(i). Thus, an entity would be deemed a ''financial institution'' with respect to a payroll card account if it holds the payroll card account or if it issues a payroll card and agrees with the consumer to provide EFT services. Accordingly, the depository institution holding the funds will always be treated as a financial institution under the rule, but employers and service providers typically will not be covered because they generally do not hold payroll card accounts or issue payroll cards and agree with a consumer to provide EFT services.

Because payroll card account holders will, at a minimum, be able to assert their Regulation E rights against the depository institution holding their account in all cases, the Board believes that there would be little, if any, benefit of also covering employers under Regulation E. Under the interim rule's approach, employer coverage might lead employers who are generally unfamiliar with Regulation E's requirements to incur additional compliance costs and risk. The Board believes the imposition of such costs and risks on employers who neither hold payroll card accounts nor issue payroll cards could deter some employers from adopting payroll cards. Accordingly, under the final rule, if an employer arranges or contracts with a depository institution or third-party payroll services provider to pay its employees by payroll card account, the employer would not be a ''financial institution'' subject to the regulation.

Similarly, based upon the Board's understanding of how payroll card programs are structured, while a third-party service provider may perform some, most, or even all of the compliance duties for a particular payroll card program, it will neither hold payroll card accounts nor issue the payroll card itself. Thus, a third-party service provider typically would not be deemed a financial institution subject to the regulation. New comment 18(a)–2 sets forth the preceding discussion of how the final rule applies to employers and service providers. The comment also states that to the extent that an employer or a service provider undertakes to hold payroll card accounts or issue payroll cards and agree with a consumer to provide EFT services, it would become a financial institution subject to the regulation.

To the extent that more than one party (*e.g.*, a depository institution and a third-party service provider) each qualify as a financial institution with respect to the same payroll card account, those parties may contract among themselves to ensure compliance with the final rule. *See also* § 205.4(e) (stating that institutions providing EFT services jointly may contract among themselves to allocate requirements under the regulation). Thus, for example, disclosure obligations satisfied by one party, such as a service provider, would satisfy the disclosure obligations for any other financial institution with respect to that payroll card account. However, if the party that has contractually agreed to satisfy a compliance obligation fails to do so, each of the parties would be accountable under the EFTA and the final rule. These parties could also allocate among themselves the financial obligation for any liability resulting from the failure.

The final rule includes comment 18(a)–1 as proposed to clarify that a financial institution may issue an access device for a payroll card account only in response to an oral or written request for the device, or as a renewal or substitute of an accepted access device. *See* § 205.5(a). The comment further clarifies that a consumer is deemed to request an access device when the consumer chooses to receive his or her compensation through a payroll card account. The compulsory use prohibition in § 205.10(e) would not be violated as long as a job applicant is not required to establish a payroll card account as a condition of employment.

One commenter asked the Board to clarify whether an employer may include an unactivated payroll card with materials provided to employees about the terms and conditions of the payroll card account. Such a procedure would not violate Regulation E, provided that the terms and conditions for issuing an *unsolicited* access device as provided under § 205.5(b) are satisfied and the consumer retained the option to receive compensation by means other than the payroll card account.

18(b) Alternative to Periodic Statement

General Provisions

In the September 2004 proposal, the Board proposed that all provisions of Regulation E should apply to payroll card accounts in the same manner that they apply to other accounts, including the requirement to provide periodic statements. Most industry commenters urged the Board to permit entities offering payroll cards an alternative means of providing account information similar to the rules in § 205.15 of Regulation E for accounts established for the electronic transfer of government benefits (EBT accounts). The January 2006 interim rule granted relief from the requirement to provide periodic statements under § 205.9(b), provided that financial institutions make account information available by telephone, electronically, and, upon the consumer's request, in writing. The final rule adopts this approach. Some modifications have been made to clarify certain issues raised by commenters.

Industry commenters strongly supported the Board's decision to provide relief from the periodic statement requirement for payroll card accounts. Many stated that the alternative set forth in the interim rule strikes an appropriate balance between the needs of consumers and the costs to employers and institutions. A few industry commenters urged the Board to provide similar relief for other types of accounts that receive recurring payments, including accounts established by consumers at depository institutions without the involvement of an employer that only receive deposits of employee compensation and accounts funded solely by government benefit payments. One commenter recommended that the Board grant relief from the periodic statement requirements for all retail payment cards, including general spending cards, to the extent such cards may be covered under Regulation E. Another commenter suggested that the Board consider the adoption of a similar approach for the delivery of information for accounts generally under Regulation E, as well as for accounts and other banking products under other consumer financial services regulations (*e.g.*, Regulations Z and DD).

In contrast, consumer group commenters asserted that payroll card accounts should be given the same protections as are provided for other consumer accounts under the EFTA, including the right to paper periodic

statements. Consumer group commenters noted that periodic statements assist consumers in tracking their account balances and transactions and discovering unauthorized transfers or other errors involving their accounts. One state attorney general recognized that some employees are transient but recommended that the Board require periodic statements for any consumer that can provide a mailing address to the employer.

When the Board addressed EBT programs in 1994, it recognized that periodic statements are a central component of Regulation E's disclosure scheme. However, the Board granted EBT providers relief from the periodic statement requirement in light of the limited types of transactions involved, the availability of other means to obtain account information for benefit recipients, and the expense of routinely mailing monthly statements to all recipients. *See* 59 FR 10,678, 10,681 (March 7, 1994). Similarly, the Board is exercising its authority under Section 904(c) of the EFTA to grant financial institutions flexibility in connection with the periodic statement requirement for payroll card accounts.

In addition to the comments received on the September 2004 proposal and the January 2006 interim rule, the Board considered data it collected during focus group testing of payroll card holders during the fall of 2005. As described in more detail in the supplemental information for the interim rule, the majority of focus group participants regularly checked their balances over the telephone or checked balance and transaction information on-line; some checked their accounts through these methods multiple times per week. Most focus group participants who received paper periodic statements stated that they generally kept their statements as a record of account activity but otherwise rarely used them to track transactions or look for errors. Participants generally attributed their lack of statement use to the fact that they monitored their account information frequently during the month by the telephone or on-line. While a few participants wanted to receive paper statements, most indicated a clear preference for using alternative means of monitoring account activity, in particular by phone and on-line. *See* 71 FR at 1,476.

As with EBT products, the Board is persuaded that the alternative methods of providing account transaction information currently used by many payroll card providers are comparable to, and in some respects, better than, paper periodic statements. Information available by telephone or on-line is updated routinely, in contrast to periodic statements which only provide information as of the end of each statement cycle. Thus, consumers using telephone and on-line methods often have access to more timely information, which may assist consumers in more effectively tracking transactions to avoid overdrawing their accounts.

The Board also has weighed the potential burden and benefits of requiring financial institutions to provide periodic statements. Such a requirement could impose considerable one-time implementation costs, as well as ongoing costs for mailing such statements, on financial institutions currently offering such accounts and could discourage other financial institutions from offering them in the future. Weighing these considerations along with the alternative methods available to consumers for obtaining account information and consumers' actual account-monitoring practices, the Board concludes that granting relief from the periodic statement requirement for payroll card accounts is appropriate.

Section 205.18(b) of the final rule provides financial institutions flexibility either to provide periodic statements under § 205.9 as they would for other accounts or, as an alternative, to: (1) Make balance information available through a readily available telephone line; (2) make available an electronic history of the consumer's account transactions, such as through an Internet web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; *and* (3) provide promptly upon request a written history of the consumer's account transactions, covering at least 60 days preceding the date the institution receives the consumer's request. As further explained below in the discussion about the error resolution and liability limit time frames, a consumer ''electronically accesses'' an account once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer's identity.

The final rule does not provide relief from the requirement to provide paper periodic statements for other types of accounts. However, the Board will continue to monitor this issue and may reassess whether it would be appropriate to propose such relief in the future.

Readily Available Telephone Line

The Board stated in the supplementary information for the interim rule that a readily available telephone line for providing balance information must be a local or toll-free line that, at a minimum, is available during standard business hours. Consumer groups and the state attorney general that commented suggested that the telephone line should be operable beyond standard business hours in each time zone so that employees have sufficient time to access their account information when they are not at work. Consumer groups also urged the Board to require institutions to provide transaction information by telephone.

As in the interim rule, the final rule requires that institutions, at a minimum, make available a local or toll-free line for consumers to obtain their available balance during standard business hours. The Board expects that, in most cases, institutions will provide 24-hour access to balance information through an automated line, which would ensure that employees can access balance information at their convenience. Because the Board believes it may be operationally difficult for some institutions to include 60 days' worth of transactions through a telephone system, the final rule does not require institutions to provide information about specific transactions by telephone. In addition, the Board's focus group testing indicated that while limited transaction information was available through the telephone, most consumers chose not to access transaction information in that manner. *See* 71 FR at 1,476.

Model Form A–7(a), discussed below, contains a model clause that institutions may use to inform consumers at account-opening about how to access their account information, including a reference to the telephone number that consumers may call to obtain this information. Consumer groups urged the Board to also require that institutions print the telephone number on each payroll card as a reminder for consumers. The Board is aware that many payroll cards already display the telephone number for obtaining account information on the back of the card and, therefore, the Board has chosen not to impose such a requirement in the final rule. If the Board learns in the future, however, that consumers are unaware of the ability to obtain account information by telephone, the Board will consider whether additional protections are needed.

Electronic History

For transaction histories provided electronically, institutions are not limited to using an Internet Web site to comply with the rule. However, because electronic histories are disclosures

under Regulation E, they must be provided in a form that the consumer may keep, as is required for disclosures generally under § 205.4(a)(1). A new comment 18(b)–2 explains that financial institutions satisfy this requirement if the electronic history is available in a format that is capable of being retained by the consumer. For example, an institution would satisfy the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or downloaded using an Internet web browser.

A few industry commenters asked the Board to clarify that ATM access to a transaction history constitutes an acceptable means of providing an electronic history of transactions. Although the Board is unaware of any ATMs that currently offer the option of printing transaction histories of at least 60 days, institutions would be able to provide an electronic history at an ATM if consumers were able to print a copy of all the required information at the ATM.

Written History Upon Consumer's Request

The Board solicited comment on whether the requirement to provide a written history of transactions upon the consumer's oral or written request was a necessary or appropriate protection. Consumer groups and most industry commenters stated that the option to obtain a written history of transactions was both necessary and appropriate because some consumers may not be able to access the information electronically. However, a few industry commenters believed that institutions should be given flexibility in the manner in which they provide transaction information and that, accordingly, the rule should not require institutions to provide both an electronic *and* a written history.

The final rule retains the requirement that a financial institution mails or delivers a written history of account transactions promptly upon the consumer's oral or written request to address the possibility that some consumers may have limited on-line access. An institution would not satisfy the requirement to provide a written history by making a printed history available at an ATM because it does not ensure that a consumer is able to obtain a written history in all cases (for example, if the ATM is located in an inconvenient location).

The Board anticipates that, in general, written histories will be sent the next business day or soon after the institution receives the consumer's oral or written request. Institutions also may designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of account transactions. A few industry commenters asked whether a financial institution could charge a fee if a consumer makes frequent or multiple requests for copies of account statements within a short time frame. Although the final rule does not address the issue, the Board believes that charging fees to consumers who make occasional requests for written histories could have a chilling effect on consumers' ability to obtain information about transactions and thus, to exercise their error resolution rights.

Sixty-Day Transaction History

Most industry commenters stated that the requirement to provide 60 days of transactions was appropriate regardless of the means by which the account history is provided. Some industry commenters observed that many institutions provide up to 12 months of transactions on their Internet Web sites. However, a trade association representing community banks noted that some of its members currently can only provide a 30-day or a 45-day account history and expressed concern that these members would not be able to take advantage of the alternative to providing periodic account statements. A few industry commenters stated that providing a rolling 60-day transaction history might pose operational difficulties for those institutions that have developed systems that provide transaction histories only for specific statement cycles. One commenter asked the Board to clarify whether account histories must include transactions that have not yet posted to the account.

The final rule requires institutions to provide 60 days of transaction information, as proposed. Thus, if the consumer electronically accesses his or her account, the history must cover at least the preceding 60 days. Similarly, if the consumer requests a written history of transactions, the written history must cover at least 60 days preceding the date of the institution's receipt of that request.

The Board believes the 60-day requirement is appropriate for payroll card account holders because these consumers will not automatically be sent a statement that sets forth transaction information for each transfer occurring during a monthly cycle as they would for most other accounts covered by Regulation E. For those payroll card holders who do not access or request a copy of their transaction history at least on a monthly basis, the 60-day requirement is intended to help them avoid inadvertently losing their right to assert an error under § 205.11. New comment 18(b)–1 clarifies that a financial institution must include a transaction in the account history only if the transaction has posted to the payroll card account.

Section 205.18(b)(2) of the final rule requires that the account history provided under this section, whether provided electronically or in writing, contain the same type of account information that would be provided in a periodic statement under § 205.9(b)(1)–(6), including information about fees, account balances, and an address and telephone number for inquiries. Although a few commenters expressed concern that requiring all the information typically included on periodic statements could impose significant and costly systems changes, the Board believes such a requirement is necessary to ensure that consumers receive comparable account information regardless of whether they receive periodic statements or transaction histories under the alternative procedures in this final rule. The Board also believes that requiring that the same information be provided for payroll card accounts as for other accounts should facilitate institutions' ability to use the same systems for delivering account information and minimize the need to construct new systems.

18(c) Modified Requirements

Initial Disclosures and Annual Error-Resolution Notice

For financial institutions that do not furnish periodic statements, § 205.18(c) sets forth provisions clarifying the requirements relating to disclosures, liability limits, and error resolution procedures under Regulation E. Section 205.18(c)(1) generally sets forth modified disclosures that a financial institution must provide in addition to or in lieu of required initial disclosures under § 205.7(b). Commenters did not address this provision, and the Board has adopted § 205.18(c)(1) of the interim rule with minor revisions for clarity.

Section 205.18(c)(1)(i) requires the initial disclosures for payroll card accounts to disclose the means by which consumers can access information about their account, including the telephone number that may be used to obtain the account balance, and information about how an electronic history of account transactions can be obtained, such as the address of an Internet Web site. The initial disclosures also must include a

summary of the consumer's right to obtain a written history of account transactions upon request, including a telephone number to call to request a written history, in place of the summary of the consumer's right to receive periodic statements pursuant to § 205.7(b)(6). Under § 205.18(c)(1)(ii), the initial disclosures must contain a notice explaining the error resolution rights associated with payroll card accounts in place of the error resolution notice required by § 205.7(b)(10). In addition to these disclosures, institutions must also provide the other required disclosures set forth in § 205.7, including the disclosures explaining the consumer's liability for unauthorized EFTs and the fees imposed for EFTs or for the right to make transfers.

The final rule provides Model Clauses that financial institutions may use to facilitate compliance with the initial disclosure requirements, located in section A–7 of Appendix A to Part 205. Institutions choosing to utilize model clauses for initial disclosures will also have to modify paragraph (a) in section A–2 of Appendix A to Part 205 as appropriate to explain the consumer liability provisions if they opt not to provide periodic statements under this rule.

Section 205.18(c)(2) of the interim rule required financial institutions to provide an annual notice describing error-resolution rights substantially similar to the notice contained in section A–7(b) in Appendix A in place of the notice required by § 205.8(b). Several industry commenters urged the Board to give financial institutions the option to provide an abbreviated notice on a regular basis, as is currently permitted on periodic statements under § 205.8(b). These commenters believed an abbreviated notice could be provided when providing balance information by telephone, or when providing an account history electronically or in writing. In particular, some industry commenters noted that it was difficult to provide error resolution notices by mail to transient employees. The Board agrees that the approach suggested by these commenters is likely to provide payroll card users with information about their error resolution rights on a more timely basis, that is, when consumers are reviewing their history of account transactions. Accordingly, the final rule is revised to permit institutions to provide a notice similar to the abbreviated notice provided in Appendix A–3(b). Institutions must modify this notice to reflect the error resolution time frames and procedures set forth in this final rule. The abbreviated notice would have to be provided on each history of transactions, whether provided electronically or in writing upon the consumer's request, in lieu of the annual error resolution notice. The Board does not believe that it would be appropriate to permit the abbreviated notice to be provided exclusively through a telephone line because consumers would not be able to retain a copy of the notice.

Limitations on Liability and Error Resolution

Sections 205.18(c)(3) and (4) of the final rule are substantively similar to the interim rule and explain the limitations on liability and error resolution procedures for payroll card accounts when a financial institution does not provide periodic statements but instead follows the modified requirements. To address the concerns of some commenters about potential operational difficulties in determining when the liability limit and error resolution time frames begin to run, the final rule has been revised to provide a safe harbor that will satisfy the timing requirements in all instances.

As proposed in the interim rule, the final rule contains two different triggers for beginning the 60-day period for limiting liability for unauthorized EFTs in § 205.18(c)(3), depending on when and how the consumer has obtained a history of his or her account transactions. If the consumer obtains transaction information electronically under § 205.18(b)(1)(ii), the 60-day period begins on the date the account is electronically accessed by the consumer. If the consumer has requested a written history of his or her account transactions under § 205.18(b)(1)(iii), the 60-day period begins on the date the institution sends the written history. In either case, in order for the 60-day period to begin running, the alleged unauthorized transaction must be reflected in the electronic history or on the written history provided to the consumer. If a consumer accesses an electronic history and also requests a written history, both of which reflect information about the disputed transaction, the applicable 60-day period for reporting an unauthorized EFT begins on the earlier of these two events.

A similar rule is established in § 205.18(c)(4) for determining when the 60-day period begins for reporting an error under the procedures set forth in § 205.11. Thus, if a consumer obtains transaction information electronically under § 205.18(b)(1)(ii), the 60-day period for reporting an error begins on the date the account is electronically accessed by the consumer. If the consumer requests a written history of transactions under § 205.18(b)(1)(iii), the 60-day period begins on the date the institution sends the written history. Again, in either case, in order for the 60-day period to begin running, the alleged error must be reflected on the electronic history or on the written history provided to the consumer. Also, if the consumer both accesses an account electronically and requests a written history, the applicable 60-day period for reporting an alleged error begins on the earlier of these two events. Transactions that have not yet posted to the account do not trigger either the liability limit or the error resolution time frames.

Several industry commenters suggested alternate triggers for determining when the liability limit and error resolution time frames begin to run. For example, some industry commenters asserted that the 60-day period should begin running at the time information about a specific transfer is posted and becomes available to the consumer, regardless of when the consumer actually obtains the information. A few industry commenters suggested that the 60-day period should begin on the date of the transaction. Others stated that the 60-day period should begin when the consumer accesses an account balance by telephone. One industry commenter noted that the rule should provide certainty to financial institutions and merchants so that their systems need only retain information for a set period of time. In this regard, some industry commenters suggested that the Board clarify that a consumer's error resolution rights do not apply to a transaction more than 120 days old.

Safe Harbor

As proposed, the final rule provides that consumers' 60-day period to report an error with respect to a particular transaction begins on the date the consumer accesses the electronic history reflecting the alleged error or the date the institution sends a written history that includes that error, whichever is earlier. In response to comments received, the Board has revised the final rule to clarify institutions' options for compliance. A few industry commenters noted that some institutions may prefer to develop compliance systems that do not track consumers' access to their electronic history or when a written history is sent. The final rule provides a safe harbor to clarify that these institutions would comply with the error resolution provisions as long as they treat a notice of error as timely when it is received from the consumer

within 120 days after the transaction allegedly in error was credited or debited to the consumer's account. *See* § 205.18(c)(4)(ii). Providing consumers 120 days after the date a transaction has posted to a consumer's account to report an error ensures that the consumer will have at least 60 days to report an error even if the consumer first accesses the information on the last day that the transaction is required to be included in the account history. Institutions choosing to follow this practice would in most cases be affording consumers more than the minimum time period required by the regulation. A similar safe harbor is provided for reporting unauthorized transactions under § 205.18(c)(3)(ii).

New comment 18(c)–1 provides that institutions that choose to determine the consumers' reporting period in this way may still disclose the time period required by the regulation (as set forth in the Model Form in Appendix A–7). For example, an institution may disclose to payroll card account holders that the institution will investigate a notice of error provided within 60 days after the date the consumer electronically accesses an account or the date the institution sends a written history of transactions even if the institution actually provides a longer period of time for the consumer to report an error (*i.e.*, up to 120 days following the date a transaction has posted). Comment 18(c)–1 further states that an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error even if the institution may allow a consumer to assert a notice of error up to 120 days from the date of the posting of the alleged error.

Example

As discussed above, the history of account transactions provided under § 205.18(b)(1), whether provided electronically or in writing, must cover at least 60 days preceding the date that the information is made available or provided to the consumer. Thus, if a consumer accesses a payroll card account electronically, or is sent a written history, on June 1, then the history of transactions must cover a period of at least 60 days prior to June 1 and include any EFTs posted from April 2 through May 31. Assuming that the consumer did not previously access or receive account information reflecting transactions during April or May, the consumer must have at least 60 days, or until July 31, to assert any unauthorized EFTs or other errors occurring between April 2 and May 31 to preserve his or her rights under §§ 205.6 and 205.11 with respect to those transfers.

In the example, suppose the consumer electronically accesses his or her account on June 1 and discovers an error resulting from a transaction that posted on May 10. In this case, under § 205.18(c)(4)(i), the consumer must provide notice of that error to the institution no later than July 31 to trigger the institution's obligation to investigate the error. If the consumer provides a notice of the May 10 error after July 31, the institution would not be required to comply with the procedures and time limits in § 205.11 for investigating the error. Nevertheless, if the error involves an unauthorized EFT, liability for the unauthorized transfer may not be imposed on the consumer unless the institution satisfies the requirements of § 205.6. *See* comment 18(c)–3, discussed below.

For an institution electing to apply the error resolution time frame set forth in § 205.18(c)(4)(ii), the institution would comply with the regulation if it treats a notice of error as timely if received within 120 days after the date of the May 10 transfer to report the alleged error, or by September 7.

Electronic Access

With respect to electronic access, the Board stated in the supplementary information to the interim rule that the 60-day periods for liability limits and error resolution would not begin running if the consumer merely visited an Internet Web site where account information and other information could be retrieved. Rather, the 60-day period would begin once the consumer entered a user identification code or a password or otherwise complied with a security procedure used by an institution to verify the consumer's identity before granting access to account information. The interim rule did not require institutions to determine whether the consumer has in fact accessed information about specific transactions before triggering the 60-day period for liability limits and error resolution rights.

Consumer groups and the state attorney general that commented urged the Board to revise the rule so that the liability limit and error resolution provisions are not triggered with respect to a transaction unless a consumer actually accesses information about that specific transaction. In contrast, the vast majority of industry commenters stated that such a requirement was impractical, and would require significant expense to implement the necessary system changes. Accordingly, many industry commenters urged the Board to retain the proposed interpretation clarifying that ''electronic access'' to an account means that the consumer has logged onto a secure portion of an institution's Web site.

The final rule follows the interim rule for purposes of determining when a consumer has electronically accessed an account. A rule requiring an institution to determine if a consumer has reviewed specific transactions would be operationally burdensome and costly to implement. In addition, such an approach could require institutions to establish more complicated and cumbersome procedures for consumers to use to access account information. Thus, as in the interim rule, a consumer is deemed to have accessed his or her account electronically once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. Comment 18(c)–2 has been added to provide this interpretation. Under the final rule, the liability and error resolution provisions are not triggered when consumers obtain balance information by the telephone because many institutions may not make available specific transaction information available by telephone, and because, unlike written or electronic histories, a consumer will not be able to retain a copy of transactions to review. In addition, the final rule would not require institutions to track whether a consumer accessed an account electronically if they provide consumers at least 120 days after a transfer is credited or debited to the consumer's account to report an error.

Untimely Notice of Error

Industry commenters also requested clarification on the effect of providing account histories that include more than 60 days of transaction information. These commenters noted that many institutions commonly provide up to 12 months of transaction information on their Internet Web sites. Several industry commenters further urged the Board to clarify that the limits on consumers' liability for unauthorized transactions applies only to transfers occurring in the 60-day period before the consumer electronically accesses an account. Some of these commenters noted that researching unauthorized EFTs becomes more complicated and time-consuming for transactions older than 60 days, because documents such

as receipts and ATM security tapes or videos are often archived or destroyed after 60 days.

The Board has added new comment 18(c)–3 to address the circumstance in which a financial institution makes available more than 60 days of transaction information either electronically or in writing. The new comment provides that institutions generally will not be required to comply with the error resolution provisions set forth in § 205.11 with respect to a transaction that occurred more than 60 days prior to the date the consumer electronically accesses the payroll card account or the date a written history was sent, whichever is earlier (assuming information about the alleged error is available to the consumer). An institution that does not track when a consumer accesses an account or is sent a written history also may choose not to follow the procedures in § 205.11 for any notice of error received more than 120 days after the transfer allegedly in error is credited or debited to the consumer's account. In either case, however, if the consumer's assertion of error involves an unauthorized transfer, the institution is required to comply with § 205.6, which specifically addresses consumer liability for unauthorized transfers, before it may impose any liability on the consumer for the transfer. See also comment 11(b)(1)–7; EFTA § 909; 15 U.S.C. 1693g. Some institutions asked the Board to clarify that the limits on consumers' liability for unauthorized transfers only apply to transactions occurring during the 60 days preceding the date the consumer electronically accesses his or her account. However, such a rule would not be consistent with the EFTA, which does not contain a time limitation for asserting an unauthorized EFT claim. *See* EFTA § 909; 15 U.S.C. 1693g.

Additional Issues

Several commenters were concerned that explicitly stating that payroll card accounts were covered under Regulation E might affect whether they are also ''accounts'' for purposes of coverage under other laws, such as for customer identification procedures under the Bank Secrecy Act, for reserve requirements under the Board's Regulation D, for Truth in Savings Act purposes, and possibly for other purposes under state laws. As stated in the supplementary information for the interim rule, the definition of ''account'' as amended by the final rule does not affect the treatment of payroll card accounts under other laws. This final rule is intended only to address coverage issues under Regulation E.

Compliance Date

The interim rule established an effective date of July 1, 2007. Consumer groups commented that the effective date should be earlier in light of the projected growth of payroll card accounts. Industry commenters, however, asserted that financial institutions and employers will need at least 12 months following the adoption of a final rule to implement necessary changes, and one industry commenter suggested that mandatory compliance be delayed until 2008. The final rule retains a mandatory compliance date of July 1, 2007, for the revisions addressing payroll card accounts, to provide institutions sufficient time to implement necessary changes, but institutions may begin complying with the final rule beginning 30 days after the date of publication in the **Federal Register**.

A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts

Model Form A–7 provides model clauses consistent with the provisions in § 205.18 that apply to financial institutions that offer payroll card accounts but do not provide periodic statements under § 205.9(b). These clauses, which are modeled after similar clauses provided under Appendix A–5 for EBT accounts, are intended to assist financial institutions in disclosing to payroll card holders how to obtain account balances and account histories, as well as error resolution procedures. (The model clauses do not include language about the 120-day safe harbor under the liability limit and error resolution provisions because the safe harbor goes beyond the literal requirements of the final rule. *See* comment 18(c)–1.) Comment 2 for Appendix A is revised to clarify that the use of such clauses in making these disclosures in connection with payroll card accounts will protect a financial institution from liability under Sections 915 and 916 of the EFTA if the clauses accurately reflect the institution's EFT services. The final rule also includes nonsubstantive changes to the model clauses to correct a cross reference to § 205.15 of the regulation.

V. Final Regulatory Flexibility Analysis

The Board prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) in connection with the January 2006 interim rule. The Board received no comments on its regulatory flexibility analysis.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights with regard to electronic fund transfers. 15 U.S.C. 1693(b). The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the EFTA], or to facilitate compliance [with the EFTA].'' 15 U.S.C. 1693b(c). The EFTA also states that ''[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.'' 15 U.S.C. 1693b(d).

The Board is revising Regulation E to provide that payroll card accounts directly or indirectly established through an employer, and to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis are ''accounts'' subject to Regulation E. The Board believes that the revisions to Regulation E as discussed in the Supplementary Information are within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with Section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis with respect to the portions relating to

payroll card accounts. The Board also did not receive any comments on its regulatory flexibility analysis in the interim rule.

3. *Small entities affected by the final rule.* Entities are required to comply with the final rule to the extent that they qualify as financial institutions with respect to a payroll card account. Specifically, an entity must either directly or indirectly hold a payroll card account or issue an access device (*i.e.*, the payroll card) and agree with the consumer to provide EFT services. The Board does not currently believe that there are any employers or service providers that would qualify as financial institutions with respect to their payroll card programs. Based on available information, the final rule will, at the time of its adoption, apply to approximately 60 depository institutions that are offering payroll card programs. The Board is unaware of any such institutions which could be considered a small institution with assets less than $150 million.

All small entities that are engaged in providing payroll card accounts are affected by the requirements established by this final rule, including initial disclosures, error resolution procedures, and the provision of account information.

4. *Recordkeeping, reporting, and compliance requirements.* Institutions must provide an initial disclosure to payroll card account holders regarding the means by which the holder may obtain account information and the means by which the holder may resolve errors. In order to comply with the amendments to Regulation E, institutions must review their account-opening disclosures to ensure compliance with the regulation; and some institutions may be required to revise their disclosures. The rule provides model disclosures to facilitate the revision of the disclosures and to ensure compliance. In addition, if the institution elects not to provide periodic statements, the institution must establish systems for delivering account information electronically, upon the consumer's request, and by telephone. Institutions also will be required to implement error resolution provisions under the final rule to the extent that they do not currently have such procedures.

The Board understands that many depository institutions and payroll card services providers that provide such products are currently providing account-opening disclosures for payroll card accounts, and generally have in place error resolution procedures. In addition, the Board understands that many, if not all, institutions providing payroll cards make information regarding those payroll card accounts available to the holders through telephone and electronic access. Because the final rule codifies the current practices and procedures of many payroll card providers and provides an alternative to periodic statements, the Board concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

5. *Other Federal rules.* To the Board's knowledge, no Federal rules duplicate, overlap, or conflict with the final revisions to Regulation E.

6. *Steps taken to minimize the economic impact on small entities.* The Board solicited comment about potential ways to reduce regulatory burden. Commenters urged the Board to provide relief from the periodic statement requirement, asserting that other more cost-effective methods of providing transaction information could provide consumers with the information necessary to enable consumers to manage their payroll card accounts. In the final rule, financial institutions engaged in providing payroll card accounts may elect not to provide periodic statements if they make available balance information to consumers through a readily-available telephone line and make available account transaction information electronically, such as through an Internet web site. These financial institutions will also be required to provide a written history of account transactions upon the consumer's request.

The final rule would also in most cases exclude employers from the scope of entities subject to the regulation to the extent that such employers arrange or contract with a bank or third-party service provider to provide payroll cards. Commenters on the interim rule had urged the Board to exclude employers from the scope of the rule entirely, stating that the additional compliance burden may make some employers unwilling to establish payroll card programs.

Generally, under the final rule, consumers' 60-day period to report an error with respect to a transaction begins on the date the consumer electronically accesses an account for which information about the transaction is made available or the date the institution sends a written history reflecting the transaction, whichever is earlier. The final rule provides a safe harbor for financial institutions that may have operational difficulties in tracking when consumers electronically access their accounts or are sent a written history of transactions. To ease compliance, under the final rule, institutions can comply with the regulation if they allow a consumer up to 120 days after a transaction has posted to report any errors involving the transaction. A similar rule applies with respect to the provisions affecting consumer liability for unauthorized transactions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1) (PRA), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.2(b)(2) and 205.18. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to provide benefits to consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All entities involved in providing payroll card accounts that qualify as financial institutions under the regulation, of which there presently are approximately 60, potentially are affected by this collection of information because these institutions will be required to provide initial disclosures, account transaction histories, error resolution procedures, and other consumer protections, to consumers who receive their salaries through payroll card accounts as defined in § 205.2(b)(2).

The following estimates represent an average across all respondents and reflect variations among institutions based on their size, complexity, and practices. The other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimate methodology.

The final rule provides disclosure obligations with respect to payroll card accounts. Financial institutions are required to fully comply with Regulation E, as amended by this final rule, and provide disclosure of basic

terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. Certain information must be disclosed to consumers, including: Initial and updated EFT terms; transaction information; the consumer's potential liability for unauthorized transfers; and error resolution rights and procedures.

The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 5 participate in payroll card programs. These institutions should already have systems in place to comply with the Regulation E requirements for accounts generally. The Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to reprogram and update their systems to provide initial disclosures to payroll card account holders. The Federal Reserve also estimates that each respondent will take, on average, 7 hours to reprogram and update systems to provide periodic statements, or to provide account information by other means. Finally, the Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to develop error resolution procedures. The total annual burden for respondents regulated by the Federal Reserve for all of these disclosures is estimated to be 115 hours. Using the Federal Reserve's methodology, the total annual burden for all other institutions offering payroll cards, including respondents not regulated by the Federal Reserve, is approximately 1,265 hours. The disclosures are standardized and machine-generated and do not substantively change from one individual account to another; thus, the average time for providing the disclosure to all consumers should be small.

The Federal Reserve's current annual burden for Regulation E disclosures is estimated to be 83,751 hours for respondents regulated by the Federal Reserve. The final rule would increase the total burden under Regulation E for all respondents regulated by the Federal Reserve by 115 hours, from 83,751 to 83,866 hours. The Board did not receive any comments on the burden estimates provided in the interim final rule.

Because the records would be maintained by the institution and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Text of Final Revisions

Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the interim rule amending 12 CFR part 205 and the Official Staff Commentary which was published at 71 FR 1473 on January 10, 2006, is adopted as a final rule with the following changes:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 205.2 is amended by revising paragraph (b)(2) as follows:

§ 205.2 Definitions.

* * * * *

(b) * * *

(2) The term includes a ''payroll card account'' which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see § 205.18.

* * * * *

■ 3. Section 205.18 is revised to read as follows:

§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts.

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the act and this part with respect to payroll card accounts except as provided in this section.

(b) *Alternative to periodic statements.*

(1) A financial institution need not furnish periodic statements required by § 205.9(b) if the institution makes available to the consumer—

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through an Internet Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in § 205.9(b).

(c) *Modified requirements.* A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under § 205.7(b) by disclosing—

(i) *Account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of an Internet Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A–7(a) in appendix A of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by § 205.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by § 205.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with § 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A–3(b) in appendix A of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Limitations on liability.* (i) For purposes of § 205.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 205.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Error resolution.* (i) The financial institution shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of—

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in § 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

■ 4. In Appendix A to Part 205, Appendix A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c)) is revised to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))

(a) *Disclosure by financial institutions of information about obtaining account information for payroll card accounts. § 205.18(c)(1).*

You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available on-line at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) *Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§ 205.18(c)(1)(ii) and (c)(2)).*

In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or E-mail us at [electronic mail address]] as soon as you can, if you think an error has occurred in your payroll card account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]].

■ 5. In Supplement I to part 205, the following amendments are made:

■ a. Under *§ 205.2—Definitions*, under *2(b) Account*, paragraph 2. is revised;

■ b. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, under *18(a) Coverage*, paragraph 1. is republished, and paragraph 2. is added;

■ c. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, a new heading ''18(b) Alternative to Periodic Statements'' is added, and paragraphs 1. and 2. are added;

■ d. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, a new heading ''18(c) Modified Requirements'' is added, and paragraphs 1., 2., and 3. are added;

■ e. Under *Appendix A—Model Disclosure Clauses and Forms*, paragraph 2. is republished.

Supplement I to Part 205—Official Staff Interpretations

§ 205.2 Definitions.

2(a) * * *

2(b) Account

1. * * *

2. *Certain employment-related cards not covered.* The term ''payroll card account'' does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

* * * * *

§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts.

18(a) Coverage

1. *Issuance of access device.* Consistent with § 205.5(a), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a ''financial institution'' subject to the regulation because they neither hold payroll card

accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. *Posted transactions.* A history of transactions provided under §§ 205.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 205.18(b)(1)(ii) must be provided in a form that the consumer may keep, as required under § 205.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or stored electronically using an Internet web browser.

18(c) Modified Requirements

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in Appendix A–7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 205.6 and 205.11.

3. *Untimely notice of error.* An institution that provides a transaction history under § 205.18(b)(1) is not required to comply with the requirements of § 205.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 205.18(c)(4)(ii), an institution need not comply with the requirements of § 205.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

Appendix A—Model Disclosure Clauses and Forms

1. * * *

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–7223 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1265]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The amendments clarify that the requirement to obtain a consumer's authorization to collect a service fee for insufficient or uncollected funds through an electronic debit to the consumer's account applies to *any* person that intends to collect the fee in that manner. The amendments also clarify notice requirements for electronic check conversion transactions and for collecting insufficient funds fees electronically. This interim final rule, for which the Board is seeking comment, will supersede the corresponding provisions of the January 2006 final rule that addressed these topics.

DATES: This interim final rule is effective January 1, 2007. Comments must be received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by Docket No. R–1265, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, Vivian W. Wong, Attorney, or David A. Stein,

Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for disclosure of terms and conditions of an EFT service, documentation of EFTs by means of terminal receipts and periodic account activity statements, limitations on consumer liability for unauthorized transfers, procedures for error resolution, and certain rights related to preauthorized EFTs. Further, the Act and regulation also restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Summary of Interim Final Rule

On January 10, 2006, the Board published a notice of final rulemaking in the **Federal Register** (71 FR 1,638) (January 2006 final rule) that was primarily intended to provide guidance regarding the rights, liabilities, and responsibilities of parties engaged in electronic check conversion transactions (ECK transactions).[1] In addition to the provisions addressing authorization and notice requirements for ECK transactions, the final rule provided that before a fee for insufficient or uncollected funds may be debited via an EFT from a consumer's account, the consumer must authorize the debit. Authorization is obtained when notice is provided to the consumer stating that the fee will be collected by means of an EFT and the consumer goes forward with the underlying transaction. The notice must also disclose the specific amount of the fee. *See* 71 FR at 1,645–46, 1,659.

Although the Board intended to apply the requirement to provide notice to the consumer for the electronic collection of insufficient funds fees to all persons seeking to collect such fees electronically, the Board inadvertently omitted a reference that would have specifically applied the requirement to all persons that intend to collect insufficient funds fees electronically. The interim final rule corrects this omission and also clarifies that the requirement to provide notice and obtain the consumer's authorization to collect a fee for insufficient or uncollected funds electronically does not apply to the consumer's account-holding financial institution. The interim final rule further specifies how to disclose the amount of the fee when the dollar amount of the fee may vary based on the transaction amount or due to other factors.

The interim final rule clarifies that payees that intend to collect fees for insufficient or uncollected funds electronically at POS need not provide consumers an exact copy of the posted notice stating the payees' intent to collect such fees electronically, but instead may provide a notice that is substantially similar to the posted notice. Similar flexibility is provided for payees engaged in ECK transactions at POS with respect to the requirement to provide the consumer a notice stating the payee's intent to convert checks provided by a consumer to EFTs.

The effective date of this interim final rule is January 1, 2007. However, the rule provides that payees at POS will not have to disclose either the dollar amount of the insufficient funds fee or an explanation of how that fee will be determined on the version of the notice given to consumers at the time of the transaction until January 1, 2008.

Because the substantive requirements of this rule are largely unchanged from the corresponding provisions of the January 2006 final rule, the Board is issuing this rule in interim final form, rather than as a new proposal. The interim final rule also provides interested parties an opportunity to comment on all aspects of the revised requirement and clarifications.

III. Section-by-Section Analysis

Section 205.3 Coverage

3(a) General

Section 205.3(a) is revised to incorporate a revision that was inadvertently omitted from the January 2006 final rule addressing electronic check conversion transactions, ATM disclosures and other matters. *See* 71 FR 1,638 (January 10, 2006). Specifically, § 205.3(a) is revised pursuant to the Board's authority under Sections 904(c) and 904(d)(1) of the EFTA to provide that the requirement in § 205.3(b)(3) to obtain a consumer's authorization to collect a fee for insufficient or uncollected funds via an EFT to the consumer's account applies to any person. *See* 71 FR at 1,645–46. As further discussed under § 205.3(b)(3), this amendment would enable the Board to clarify that the requirement to obtain the consumer's authorization applies to the merchant or other payee seeking to collect an insufficient funds fee electronically and not to the consumer's account-holding institution.

3(b) Electronic Fund Transfer

Electronic Check Conversion

Under the January 2006 final rule, merchants and other payees in ECK transactions are required to obtain the consumer's authorization for the one-time transfer. Generally, authorization is obtained when the payee provides a notice to the consumer that a check received as payment will be converted to an EFT, and the consumer goes forward with the transaction. At POS, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on a receipt. *See* § 205.3(b)(2); 71 FR at 1,640–41. Model language was provided in the January 2006 final rule to facilitate compliance. *See* Model Clause A–6. This interim final rule clarifies that the notice given to the consumer at the time of the transaction must be substantially similar to the notice posted at POS, but need not be an exact copy of the posted notice.

Since publication of the January 2006 final rule, the Board has received inquiries regarding whether the requirement to provide a copy of the notice posted at POS affords payees flexibility to modify the language in the notice given to consumers, or whether the rule requires the copy to contain the same language as the posted notice. For example, a payee might seek to modify the text of the notice given to the consumer (*e.g.*, by changing the text

[1] In an ECK transaction, a merchant or other payee takes information from a consumer's check to initiate a one-time EFT from the consumer's account.

from ''You authorize us to use information from your check * * *'' to ''I authorize you to use information from my check * * *'') to make the notice more meaningful to the consumer. The Board did not intend that the text of the copy given to the consumer necessarily be identical to the text on the posted sign. As stated in the **SUPPLEMENTARY INFORMATION** to the January 2006 final rule, the requirement to provide a copy is intended to give consumers a document explaining that their checks might be converted that they may take home to refer to later, if necessary. *See* 71 FR at 1,642. Accordingly, § 205.3(b)(2) is revised to clarify that payees may provide to the consumer either a copy of the text of the notice posted at POS or alternatively, a substantially similar notice. Payees modifying the text of the posted notice in the notice given to the consumer must ensure that consumers are sufficiently informed that, by providing a check as payment, the consumer has authorized the conversion of the check to an EFT from the consumer's account.

Collection of Service Fees Through an Electronic Fund Transfer

Section 205.3(b)(3) was added in the January 2006 final rule to clarify that an EFT from a consumer's account to collect a fee due to insufficient or uncollected funds is covered by Regulation E and must be authorized by the consumer. Under the January 2006 final rule, a consumer authorizes the electronic collection of a fee for a check or EFT returned due to insufficient funds when the consumer receives notice of the intent to collect the fee from the consumer's account by EFT, along with a disclosure of the amount of the fee, and goes forward with the underlying transaction. *See* 71 FR at 1,645–46. The interim final rule redesignates § 205.3(b)(3) as § 205.3(b)(3)(i) and also clarifies that the obligation to provide notice to obtain the consumer's authorization to electronically collect a fee for insufficient or uncollected funds applies to the person seeking to collect the fee. The interim final rule also provides that if the amount of the fee may vary due to the amount of the underlying transaction or due to other factors, the person collecting the fee may, in many cases, provide an explanation of how the fee is determined, rather than provide a specific dollar amount. In addition, § 205.3(b)(3) is revised to state that at POS, the notice given to the consumer may be substantially similar to the posted notice, so long as the consumer is sufficiently informed of the payee's intent to electronically collect an insufficient funds fee and the amount of the fee.

Persons Subject to the Requirement

While § 205.3(b)(3) as adopted in the January 2006 final rule was intended to apply the notice and authorization requirement to the person electronically collecting a fee for any items returned to that person due to insufficient or uncollected funds in the consumer's account, the rule did not specifically indicate the party that was required to provide the notice. Section 205.3(b)(3) thus arguably could create some confusion as to whether the obligation of providing the notice lies with the payee seeking to collect the insufficient funds fee electronically or with the consumer's account-holding financial institution. The interim final rule therefore clarifies that the obligation to provide the notice to obtain the consumer's authorization for the electronic collection of insufficient funds fees rests with the party seeking to collect the fee, which typically would be a merchant or other payee. Accordingly, if a payee fails to obtain a consumer's authorization for it to collect a fee for insufficient or uncollected funds by means of an EFT from the consumer's account, the payee collecting that fee, and not the consumer's account-holding financial institution, has violated the regulation. Section 205.3(b)(3) is redesignated as § 205.3(b)(3)(i).

Revised comment 3(b)(3)–1 clarifies that the requirement in § 205.3(b)(3) is not intended to apply to the consumer's account-holding financial institution when it assesses a fee against the consumer's account for returning a check or EFT unpaid or for paying an overdraft, regardless of where the underlying transaction has taken place (for example, at a POS, at an ATM, or for a check that a consumer has sent in as payment).

Notice Requirements—General

As provided in the January 2006 final rule and in this interim final rule, payees must provide notice of their intent to electronically collect a fee for insufficient or uncollected funds. The notice must also state the amount of the fee. At POS, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be provided to the consumer at the time of the transaction, such as on the sales receipt. Payees in accounts receivable conversion (ARC), or lockbox, transactions will typically provide written notice on a billing statement or invoice. *See* § 205.3(b)(3); 71 FR at 1,646.

A separate notice to obtain the consumer's authorization to electronically collect a fee for items returned not paid due to insufficient funds in the consumer's account must be provided by the payee each time the payee seeks to collect the fee. Thus, the inclusion of authorization language in a contract or initial terms and conditions, for example, in an insurance contract or a utility agreement, would not satisfy a payee's obligation to provide notice each time it may seek to electronically collect an insufficient funds fee from the consumer's account. *See* comment 3(b)(2)–3.

The interim final rule in § 205.3(b)(3)(i) clarifies that the disclosure of the fee must be expressed in a dollar amount. This requirement is intended to inform consumers of how much they may be charged in the event they have insufficient funds in their account to clear the underlying transaction. *See* 71 FR at 1,646. State laws addressing the maximum fee that payees may collect for returned items due to insufficient or uncollected funds are not uniform, however. While in many states, the maximum fee that may be charged for items returned for insufficient funds is expressed as a flat fee regardless of the amount of the transaction, in others the fee may vary based on the transaction amount or on additional factors. For example, in some states, the maximum fee that may be collected may be a series of flat fees based on the amount of the transaction (*e.g.*, $25 for transactions up to $50, $30 for transactions between $50.01 and $300.00, and the greater of $40, or 5% of the face amount of the check, for transactions above $300), and in other states the maximum fee is a fixed percentage of the transaction amount (*e.g.*, 5% of the transaction amount). Moreover, in at least one state, the maximum fee might vary based on the number of days that a payment continues to be owed (*e.g.*, the maximum fee that may be collected in most cases is $25, but the fee may increase to $35 if the obligation remains outstanding after 15 days' notice). Thus, where the actual fee charged to the consumer may vary based on the amount of the underlying transaction or upon other factors beyond the payee's control, a requirement to disclose a specific dollar amount might impose considerable programming costs in some cases or be impossible to comply with in others. Accordingly, the interim final rule provides that where a fee for insufficient or uncollected funds may vary based on the amount of the transaction or other factors, such as the

amount of time the obligation is left outstanding, a payee seeking to collect the fee electronically may, in many cases, instead provide an explanation of how the fee will be determined. (*But see* § 205.3(b)(3)(ii), requiring payees at POS to state the dollar amount of the fee on the notice given to the consumer where the fee can be calculated at the time of the transaction.) Comment 3(b)(3)–2 provides an example of how the rule would apply when a person seeks to electronically collect an insufficient funds fees in connection with an ARC transaction.

To facilitate compliance, the January 2006 final rule provided model language that payees may use to disclose their intent to collect a fee for insufficient or uncollected funds electronically as well as the amount of the fee. Specifically, payees could disclose: ''You authorize us to collect a fee of $____ through an electronic fund transfer from your account if your payment is returned unpaid.'' *See also* Model Clauses A–6(a) and (b) in the January 2006 final rule. In the interim final rule, this clause has been moved to a new section A–8 of Appendix A because the requirement to disclose the payee's intent to collect electronically a fee for insufficient or uncollected funds is not limited to electronic check conversion transactions, but could apply more broadly (*e.g.,* when the underlying transaction is processed as a check transaction). The model clause has been revised for consistency with the interim final rule, and to improve its readability.

Notice Requirements—POS Transactions

As noted previously, under the January 2006 final rule, payees at POS must post notice of their intent to collect an insufficient funds fee electronically (along with the amount of the fee) in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on the sales receipt. The interim final rule in § 205.3(b)(3)(ii) permits payees to provide on the posted notice a description of how the fee is determined if it may vary based on the transaction amount or upon other factors beyond the payee's control. However, if the dollar amount of the fee can be calculated at the time of the transaction, the interim final rule provides that the copy of the notice provided to the consumer at POS must state that dollar amount, rather than an explanation of how that fee is determined. For example, in a state where the fee may vary based solely on the amount of the underlying transaction, the payee may provide an explanation of how the fee may be determined on the posted notice, but would be required to provide the actual dollar amount of the fee on the notice provided to the consumer. Conversely, in a state where the amount of the service fee cannot be calculated at the time of the transaction (*e.g.,* where the amount of the fee will depend on the number of days a debt continues to be owed), the payee may provide a description of how the fee will be determined on both the posted notice as well as on the copy provided to the consumer. *See* comment 3(b)(3)–3. Comment is requested on this approach, and specifically on the feasibility and the costs associated with providing the specific dollar amount of the insufficient funds fee that may be collected on the copy of the notice provided to the consumer at POS, if the maximum amount of the fee that may be collected is determined solely based on the amount of the transaction. Comment is also solicited regarding whether insufficient funds fees may be electronically collected by payees in circumstances other than in connection with a POS transaction or an ARC transaction when a consumer sends in a payment for a recurring bill or invoice (*e.g.,* to pay a credit card or a utility bill).

Consistent with the prior discussion regarding disclosures for ECK transactions, the notice given to the consumer at the time of the transaction regarding a person's intent to electronically collect an insufficient funds fee may be a copy of the posted notice, or may be a substantially similar notice. *See* § 205.3(b)(3)(ii). Thus, payees at POS may modify the text of the notice given to consumers as long as the notice sufficiently conveys to the consumer the payee's intent to electronically collect a fee if an item is returned to the payee due to insufficient or uncollected funds in the consumer's account, and the amount of the fee (or an explanation of how that fee is determined).

Delayed Compliance Date for Terminals at POS

Since publication of the January 2006 final rule, the Board has had discussions with vendors of check processing services and understands that achieving full compliance with the requirement to disclose the amount of the service fee on the receipt given to the consumer at POS will require considerable time and expense in order to reprogram existing terminals to provide the necessary information. In light of the fact that the notice posted at POS will inform consumers of the payee's intent to electronically collect fees for insufficient funds and at a minimum describe how those fees may be determined, the Board believes that the costs of reprogramming terminals used to generate receipts provided to the consumer by the January 1, 2007, compliance date would outweigh the additional benefit of providing the specific dollar amount of the fee to the consumer. Accordingly, § 205.3(b)(3)(iii) of the interim final rule provides a one-year delay in the compliance date with respect to the requirement to disclose the amount of the insufficient funds fee (or an explanation of the fee when the specific amount cannot be determined at the time of the transaction) on the copy of the notice, or substantially similar notice, given to the consumer at the time of the transaction.

This delayed compliance provision is limited solely to the disclosure on the version of the notice given to the consumer regarding the amount of the insufficient funds fee that may be collected and does not apply to the requirement to disclose on that notice, the payee's intent to electronically collect the fee. The delayed compliance date also does not apply to the requirement to provide the amount of the fee, or an explanation of how the fee is determined, on the posted notice.

This interim final rule supersedes the corresponding provisions of §§ 205.3(a) and 205.3(b)(3) and associated commentary that was contained in the January 2006 final rule. The Board seeks comment on all aspects of the interim final rule.

IV. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the interim final rule.* The Board is revising Regulation E to clarify that a person that intends to collect a fee for insufficient or uncollected funds via

an EFT from a consumer's account must obtain the consumer's authorization. Authorization would be obtained by the person, typically a merchant or other payee, if the person provides a written notice of its intent to collect the fee electronically, along with a disclosure of the dollar amount of the fee, and the consumer goes forward with the underlying transaction after receiving that notice. This requirement would allow consumers to receive prior notice of a payee's intent to electronically collect a fee for insufficient or uncollected funds and enable the Board to promote consistency in the notice provided to consumers by merchants and other payees.

In response to industry requests for flexibility with respect to the requirement to provide consumers with a copy of the notice posted at POS informing them of the payee's intent to electronically collect a fee for insufficient or uncollected funds, the interim final rule states that payees may provide a substantially similar notice. A similar revision is made with respect to the electronic check conversion requirements at POS. Accordingly, payees may provide consumers with a notice that is substantially similar to the notice posted at POS informing consumers that the payee may convert checks received as payment to EFTs.

In addition, to address state laws that, for example, permit payees to charge a fee for items returned due to insufficient funds in a consumer's account based on a percentage of the underlying transaction (rather than a flat fee regardless of the transaction amount), the interim final rule permits payees to disclose a description of how the fee will be determined in lieu of an actual dollar amount. However, if the dollar amount can be calculated at the time of the transaction, payees must state the dollar amount of the fee on the version of the notice provided to the consumer.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c). The Act also states that ''[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the act] are made applicable to such persons and services.'' 15 U.S.C. 1693b(d). The Board believes that the revisions to Regulation E discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis*. In accordance with section 603(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the September 2004 proposal (69 FR 55,996 (September 17, 2004)). In accordance with section 604(a) of the RFA, the Board also conducted a final regulatory flexibility analysis in connection with its January 2006 final rule (71 FR 1,638 (January 10, 2006)). The Board did not receive any comments on either of these regulatory flexibility analyses specifically with respect to the disclosure of a person's intent to electronically collect a fee for insufficient or uncollected funds. However, one commenter, a major provider of check processing services, in response to the September 2004 proposal, noted that in general any changes to the authorization language provided to consumers in electronic check conversion transactions at POS locations would entail re-programming of the terminals typically used to provide notices and obtain the consumer's authorization.

3. *Small entities affected by the interim final rule*. Merchants or other payees that initiate one-time EFTs from a consumer's account to electronically collect a fee for items returned due to insufficient or uncollected funds in the consumer's account will be required under the regulation to obtain the consumer's authorization for the transfer. Payees must provide written notice of their intent to collect the fees electronically, and disclose the dollar amount of the fee. For ARC transactions, notice will likely be provided on a billing statement or invoice. At POS, notice must be provided by posted signage, and a copy of the notice, or a substantially similar notice, must be given to the consumer.

The Board believes many small merchants and other payees that electronically collect fees for returned items due to insufficient or uncollected funds in a consumer's account are currently providing written notices to collect such fees debited, either on posted signage or on a transaction receipt at POS, and possibly both. Similarly, the Board believes that payees are providing written notices in ARC transactions because payment system rules currently require written notices. Therefore, small entities affected by this interim final rule are unlikely to have to craft entirely new notices as a result of this rule. Although they will have to review, and likely revise, their existing notices, including reprogramming the terminals used to generate these notices, the Board does not expect that the burden associated with these tasks will be significant. To further facilitate compliance, the Board provided model language regarding the notice requirement as part of the January 2006 final rule, and has provided revised model language in this interim final rule. In addition, the interim final rule would extend for one year, the compliance date for the requirement to disclose the dollar amount of the fees for insufficient or uncollected funds on the notice provided to the consumer to allow additional time for any necessary programming changes.

4. *Other federal rules*. The Board has not identified any federal rules that duplicate, overlap, or conflict with the interim final revisions to Regulation E.

5. *Significant alternatives to the proposed revisions*. The Board solicits comment about potential ways to reduce regulatory burden associated with this interim final rule.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The interim final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.3(b)(3). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq*.). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All persons, such as merchants and other payees, that may collect a fee for insufficient or uncollected funds via an EFT from the consumer's account potentially are affected by this collection of information, because these merchants and payees will be required to obtain a consumer's authorization for the electronic transfer under § 205.3(b)(3).

Burden with respect to the requirement to provide notice to the consumer for the purpose of obtaining the consumer's authorization for the electronic collection of fees for insufficient or uncollected funds was previously estimated in the January 2006 final rule (Docket No. R–1210 and R–1234), and reported in accordance with those estimates in documents filed with OMB. Under the Board's prior analysis, the total burden under Regulation E for all financial institutions, including but not limited to the burden of obtaining a consumer's authorization to collect a fee for insufficient or uncollected funds electronically as a result of the January 2006 final rule as further amended by this interim final rule, is 1,250,959 hours. This burden estimate does not, however, include the burden associated with the new disclosure requirements in connection with payroll card accounts as announced in a separate final rule (Docket No. R–1247).

Because the records would be maintained by the institutions and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Text of Interim Final Revisions

Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1603b.

■ 2. Section 205.3 is amended by revising paragraphs (a), (b)(2)(ii) and (b)(3) as follows:

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer.* * * *

(2) *Electronic fund transfer using information from a check.* * * *

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

* * * * *

(3) *Collection of insufficient funds fees via electronic fund transfer.* (i) *General.* The person initiating an electronic fund transfer to collect a fee for the return to that person of an electronic fund transfer or a check due to insufficient or uncollected funds in the consumer's account must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for insufficient or uncollected funds if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned due to insufficient or uncollected funds and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii), the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for insufficient or uncollected funds may be collected electronically in connection with a point-of-sale transaction, the person collecting the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location, and also provide the consumer a copy of the posted notice, or a substantially similar notice, at the time of the transaction. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but in such cases, the notice provided to each consumer must state the dollar amount of the fee if the amount can be calculated at the time of the transaction.

(iii) *Delayed compliance date for fee disclosure.* Through December 31, 2007, the copy of the notice given to consumers at point-of-sale under paragraph (b)(3)(ii) of this section need not include either the dollar amount of any fee collected electronically for insufficient or uncollected funds or an explanation of how the fee will be determined.

* * * * *

■ 3. In Appendix A to part 205,

■ a. Section A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2)), paragraphs (a) and (b) are revised; and

■ b. Section A–8 Model Clause for Electronic Collection of Insufficient Funds Fees (§ 205.3(b)(3)) is added.

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))

(a)—Notice About Electronic Check Conversion

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b)—Alternative Notice About Electronic Check Conversion (Optional)

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

[Specify other circumstances (at payee's option).]

* * * * *

A–8 Model Clause for Electronic Collection of Insufficient Funds Fees (§ 205.3(b)(3))

If your payment is returned due to insufficient funds in your account, you authorize us to make a one-time electronic fund transfer from your account to collect a fee of $____. [If your payment is returned due to insufficient funds in your account, you authorize us to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/[as follows]: _____.]

■ 4. In Supplement I to Part 205, under *Section 205.3—Coverage*, the heading ''Paragraph 3(b)(3)—Collection of Service Fees via Electronic Fund Transfer'' is revised as ''Paragraph 3(b)(3)—Collection of Insufficient Funds Fees via Electronic Fund Transfer'', paragraph 1. is revised, and paragraphs 2. and 3. are added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.3—Coverage

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3(b) Electronic Fund Transfer

* * * * *

Paragraph 3(b)(3)—Collection of Insufficient Funds Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid due to insufficient or uncollected funds in the consumer's account applies only to the person to whom the EFT or check was returned and that intends to collect the service fee by means of an EFT from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of the overdraft.

2. *Accounts receivable transactions.* In an accounts receivable (ARC) transaction where a consumer sends in a payment for amounts owed, a person seeking to electronically collect a fee for returned items due to insufficient or uncollected funds in a consumer's account must obtain the consumer's authorization to collect the fee. A consumer authorizes a person to electronically collect an insufficient funds fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by sending payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, a payee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. *Disclosure of dollar amount of fee at POS.* The notice provided to the consumer at POS under § 205.3(b)(3)(ii) must state the amount of the fee for insufficient or uncollected funds if the dollar amount of the fee can be calculated at the time of the transaction. For example, if a state sets a maximum fee that may be collected due to insufficient or uncollected funds in a consumer's account based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must provide the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, in a state where the amount of the insufficient funds fee a person may collect cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided to the consumer.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: August 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–14342 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE257, Special Condition 23–197–SC]

Special Conditions: West Pacific Air LLC; Raytheon Beech Model B–36TC; Protection of Electronic Flight Instrument Systems From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to West Pacific Air LLC, 6427 E. Rutter Road, Spokane, WA 99212, for a Supplemental Type Certificate for the Raytheon Beech Model B–36TC airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model ICDS–10 manufactured by SAGEM Avionics, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 23, 2006. Comments must be received on or before September 29, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE257, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE257. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public

contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE257.'' The postcard will be date stamped and returned to the commenter.

Background

On May 25, 2005, West Pacific Air LLC, 6427 E. Rutter Road, Spokane, WA 99212, applied for a new Supplemental Type Certificate for the Raytheon Beech Model B–36TC airplane. The Raytheon Beech Model B–36TC is currently approved under TC No. 3A15 and modified to TurbineAir configuration under STC SA01156SE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21.101, West Pacific Air LLC must show that the Raytheon Beech Model B–36TC aircraft, as changed, continues to meet the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Beech Model B–36TC. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. 3A15 are as follows: CAR 3 effective May 15, 1956, through Amendment 3–8, effective December 18, 1962; Federal Aviation Regulations (14 CFR, part 23) § 23.1301, Amendment 23–20; § 23.1309, Amendment 23–49; § 23.1311, Amendment 23–49; § 23.1321, Amendment 23–49; § 23.1322, Amendment 23–43; § 23.1331, Amendment 23–43; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards for an airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

West Pacific Air LLC plans to incorporate certain novel and unusual design features into the Raytheon Beech Model B–36TC airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical

functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Raytheon Beech Model B–36TC airplane. Should West Pacific Air LLC apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Raytheon Beech Model B–36TC airplane modified by West Pacific Air LLC to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. *For the purpose of these special conditions, the following definition applies: Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on August 23, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14457 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–30-AD; Amendment 39–14728; AD 2006–17–07]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. That AD currently requires initial and repetitive visual inspections for fretting and fluorescent magnetic particle inspections (FMPI) for cracking in the area of the tierod holes on 8th stage high pressure compressor (HPC) front hubs (from here on, referred to as HPC front hubs) that have operated at any time with PWA 110–21 coating. This AD requires either replacing HPC front hubs and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and FMPI for cracking of those parts and re-plating them if they pass inspection. This AD also requires adding JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR engines to the applicability. This AD results from an investigation by PW, which concluded that any HPC front hub or HPC disk coated with PWA 110–21 that ever operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, could crack before reaching their published life limit. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective October 4, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 4, 2006.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to PW JT8D–209, –217, –217A, –217C, and –219 turbofan engines. We published the proposed AD in the **Federal Register** on December 30, 2005 (70 FR 77342). That action proposed to require either replacing HPC front hubs

and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and FMPI for cracking of those parts and re-plating them if they pass inspection. That action also proposed to require adding JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR engines to the applicability.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Question the Need To Inspect Every Stage of the Disks

Two commenters question the need to inspect disks from additional HPC stages. The commenters ask how many instances of cracking, to what severity, in what types of coating, which operators, and how many cycles were accumulated.

We do not agree. Our data shows that cracking was found in several HPC front hubs, as well as in other stages, if any mating surface between the HPC front hub and the 8–9 spacer is coated with PWA 110–21. Disks in other HPC stages have different initiation rates and, therefore, a lower risk of failing. But each stage has the same cause of cracking and carries a risk of failure that exceeds our risk criteria, if allowed to go until overhaul. We have no data that indicates the risk is operations dependent. We did not change the AD.

Request Clarification As To What Previous Actions Exempt an Engine From This AD

Three commenters request clarification as to what previous actions exempt an engine from the requirements of this AD. They suggest that credit should be given to engines with HPC front hubs that have previously been inspected per PW Alert Service Bulletin (ASB) JT8D A6430 and associated AD 2002–23–14. They note that the proposed AD does not give this credit. They also suggest that the previous inspection under AD 2002–23–14 should be acceptable, even though the 7th stage HPC disks and 9th stage-through-12th stage HPC disks were not inspected. As currently written, the proposed AD would require operators to start the 8th stage HPC front hub inspection program over because all of the proposed actions required may not have been performed previously. Industry would be required to remove previously inspected engines from service, reinspect the 8th stage HPC front hub, and inspect and ''overhaul'' the entire HPC stack at tremendous expense and operational impact.

We agree. All previous inspections before the effective date of this superseding AD are acceptable. The inspection schedule for all affected disks is based only on the HPC front hub inspection schedule. We will give credit for all engines that previously complied with AD 2003–23–14. However, from the time of the effective date of this AD, all HPC disks and hubs stages 7-through-12 must be inspected for disk fretting when the front hub is inspected. We added the following statement to compliance paragraph (e) of this AD: ''Any engine with an HPC front hub that has been inspected using AD 2002–23–14, AD 2003–12–07, or AD 2003–16–05, is considered in compliance with this AD.''

Inspection Schedule Seems Too Short an Interval

Three commenters state that the inspection schedule for where the front hub is coated with Nickel-Cadmium and the 8–9 spacer is coated with PWA 110–21 seems too short an interval. Also, Rows (1) and (2) of Table 1 of the proposed AD seem inconsistent with the referenced PW ASBs. The commenters ask if this was the FAA's intent. For example, ASB JT8D A6430 is a less severe condition and allows the inspection to be postponed until next shop visit. Further, the ASBs force hub inspections (per the drawdown table) for hubs that operated with PWA 110–21 coating. But for hubs that only operated plated with Nickel-Cadmium (regardless of spacer coating type), the inspections are performed when the hub is accessible.

We partially agree. The risk for front hubs plated with Nickel-Cadmium is less severe than if the HPC front hub is coated with PWA 110–21, so it is not accurate to maintain the same inspection limits. Our analysis does not agree with PW's that the risk is low enough to wait until next shop visit. We added Table 5 to maintain the inspection limits from AD 2002–23–14 in response to the comment.

Request To Clarify Inspection

One commenter requests that we clarify that the inspection listed in PW ASB JT8D A6430, is valid for HPC front hubs coated with Nickel-Cadmium. Paragraphs 1. through 1.A, and 2. through 2.C of that ASB only refer to HPC front hubs that are coated with PWA 110–21.

We agree. We clarified the wording in this AD to indicate the correct inspection procedure.

Limit in Table 2 and Table 4 Should Be Changed

Three commenters state that the limit in rows (iii) and (iv) of Table 2 and Table 4 of the proposed AD should be changed to match PW ASB JT8D A6430, Revision 2, dated December 23, 2004 and ASB JT8D A6468, dated December 23, 2004. It appears that the intent was to mirror the compliance as specified in the ASBs, but as-written, the compliance in rows (iii) and (iv) do not agree with the ASBs. Specifically, any disk with fewer than 5,000 cycles-in-service has conflicting requirements in rows (iii) and (iv).

We agree and made that change in the AD.

Request To Change ''Hub Accessibility'' to ''Shop Visit''

One commenter requests that we change the phrase ''hub accessibility'' to ''shop visit'' for determining the compliance schedule. The commenter points out that we defined ''shop visit'' in the proposed AD but did not use it in the compliance.

We partially agree. Since ''shop visit'' is not being used in the AD, we omitted all definitions and clarifications of ''shop visit''. We also included a definition of ''accessible'' in the AD, to parallel the ASB.

Request To Remove the Word ''Terminating''

One commenter requests that we remove the word ''terminating'' as described for the required inspections. The commenter states that their understanding is that the inspection is a onetime inspection and is not repetitive.

We agree. Only those HPC front hubs that are accessible and inspected before 5,000 cycles-in-service require re-inspection. We removed the word ''terminating'' from the AD.

Request To Change Table Titles

One commenter requests that we change the titles of Table 2 and Table 4 of the proposed AD from ''HPC Disk Inspection Schedule'' to ''HPC Front Hub Inspection Schedule'', for clarification. We agree and made the changes in the AD.

Request To Add Additional Entries to Table 1

One commenter requests that we add additional entries to Table 1 of the proposed AD to clarify AD applicability for Nickel-Cadmium coated HPC front hubs installed on JT8D–STD engines. We agree and have added a fourth column to Table 1 in the AD.

Request To Clarify the Intent To Inspect 8th Stage Hubs That Are in JT8D–1A, –1B, –7, –7A, –7B, –9, –9A, and –11 Engines

One commenter requests that we clarify the intent to inspect 8th stage hubs that are in JT8D–1A, –1B, –7, –7A, –7B, –9, –9A, and –11 engines. The commenter states that Table 1 of the proposed AD appears to be in conflict with paragraph (f)(1) of the proposed AD.

We partially agree. Paragraph (f)(1) is not in conflict with Table 1, but we changed the AD to clarify that paragraph (f)(1) is for engines as applicable in Table 1.

Suggestion To Use Flowchart

One commenter suggests that we replace Table 1 of the proposed AD with a yes/no flowchart, which would be much easier to use since the decision logic is clearly conveyed. The commenter states that the FAA requires operators to have simple and concise manuals to ensure technicians understand tasks to be performed at the appropriate intervals. Table 2 ''HPC Disk Inspection Schedule'' in the proposed AD is complex, with numerous back and forth reading to determine the correct inspection interval.

We partially agree. Our table format is adequate. Therefore, we did not change the table format in the AD. But we also interpret the commenter's suggestion as a request for additional clarity in the table's wording, similar to other comments we received. As noted in response to other comments, we made several changes to the AD for clarification as a result of earlier comments. No further clarification is needed.

Request To List Engine Manual Inspection and Associated Limits

One commenter requests that we revise the proposed AD language that mandates use of inspection criteria from the service bulletins, to list the Engine Manual inspection and associated limits. The commenter states that the proposed AD language requires a strict adherence to the exact PW procedures. Operators have other Certificate Management Organization-approved maintenance programs that use alternate materials or processes. As written, operators would have to request Alternative Means of Compliance (AMOCs) to use their equivalent processes.

We do not agree. As the standard practices of PW change, we will reevaluate them. Operators should submit an AMOC if they want to use other methods than those in this AD. We did not change the AD.

Request To Only Allow Use of Electroless Nickel

One commenter requests that we change the proposed AD to only allow the use of Electroless Nickel. The proposed AD allows operators to restore the coating with Nickel-Cadmium. The PW Engine Manual allows the electrical contact area used on the spacers during Nickel-Cadmium restoration to be covered with PWA 595 (Aluminide paint) placing the same coating in the same critical areas of concern. ASB JT8D A6468 leaves the electrical contact areas bare after the Nickel-Cadmium is applied. The bare electrical contact areas are open to oxidation. Using Electroless Nickel would eliminate the potential for corrosion in bare electrical contact areas resulting from the Nickel-Cadmium process.

We do not agree that Electroless Nickel should be the only coating used. That would mean that Nickel-Cadmium coating must also be eliminated. Electroless Nickel may only be used on the spacers; not the disks. The data we have shows that corrosion on spacers is not an issue in the field. However, eliminating Electroless Nickel would leave several disks without protection against corrosion. We did not change the AD.

Request To Add Requirement That No PWA 110–21 Coated Units Be Re-Installed

One commenter requests that we standardize the coatings applied to all the steel disks and spacers, with a requirement that after the effective date of the AD, no PWA 110–21 coated units are to be installed in engines and or modules. PW ASB JT8D A6468 implies that the PWA 110–21 coating is no longer to be used. The detail in the accomplishment section of the ASB allows PWA 110–21 and Nickel-Cadmium to be applied to the disks and or hubs. Spacers can use one of three coatings, which are Nickel-Cadmium, PWA 110–21, or Electroless Nickel. Accomplishment of ASB JT8D A6468 is not proof that the units have eliminated PWA 110–21 coating from disks, hubs, and spacers. The current JT8D Engine Manual, P/N 481672, allows for any coating to be applied to the units under the proposed AD.

We agree. 7th stage HPC disks, HPC front hubs, and stage 8–9 spacers coated with PWA 110–21 are not serviceable. Removing the option to use PWA 110–21 coating from the engine manual prevents recoating and installing them. We changed the AD to prevent installation of those PWA 110–21 coated parts.

Request To Continue This Inspection Program on All Units

One commenter requests that we continue the inspection program even when operators install units that are not coated with PWA 110–21. The commenter states that the FAA is proposing to terminate the inspection program when the operators install units that have never used PWA 110–21 or come in contact with PWA 110–21. This proposed AD could lead to noncompliance with the proposed AD, by the simple introduction of one unit that has been coated with PWA 110–21, as the FAA has not forced elimination of PWA 110–21 coating.

We do not agree. This AD does not terminate the previous inspection program. The other disks are still subject to an inspection at the next shop visit per other ADs, mitigating the risk of cracking due to fretting. We did not change the AD.

Claim That Estimated Costs of Proposed AD Understated

One commenter claims the estimated total cost to U.S. operators of the proposed AD is understated. The commenter estimates the labor hours to reassemble the areas accessed and make each engine serviceable, to be 172 hours. Further, the number of engines in service exceeds 1,573 since all engines will be affected by the proposed AD, unless the inspection program for the hubs is synchronized with AD 2003–12–07.

We do not agree. The commenter provided no data that indicates our estimate of affected U.S. engines is wrong, or that every engine will require 172 hours of work. Our analysis indicates this AD will result in only some engines being removed from service early. Further, we allow credit for previous inspections per AD 2002–23–14, as well as AD 2003–12–07 and AD 2003–16–05. We did not change the AD.

Complete Visual Inspection Labor Hours Should Be Included

One commenter states that the labor hours for the complete visual inspection

should be included in the cost of the proposed AD. The proposed AD implies that the inspection for corrosion as the result of fretting is a simple visual inspection. The inspection for corrosion requires a complete removal of the corrosion preventative coating and close visual examination with precision equipment or recognized standard to accurately determine the extent and depth of the corrosion in areas outside the spacer contact area

We do not agree. The commenter provided no data to show that the AD will take longer than our estimate. We are only addressing costs related to the visual inspection for disk fretting. This AD is not about corrosion, and the inspection does not require specialized equipment. We did not change the AD.

Claim That Costs of Records Research Not Included

Two commenters claim the proposed AD does not include the cost of records research. They suggest that operators will have to do extensive research of the engine and HPC module records. The only reliable records are the hub hours and cycles accumulated, indicating hub utilization in the engines. One of the commenters estimates that each engine search will require 8 labor hours.

We do not agree. The cost to research records is not a valid cost for including in an estimate of cost of compliance for proposed ADs. We did not change the AD.

Additional Conditional Inspection Adds to the Cost

One commenter states that the proposed AD includes a conditional requirement to inspect the remaining steel HPC disks and or hubs whenever the 8th stage hub is inspected. Unless it is synchronized with AD 2003–12–07, this additional conditional inspection adds to the cost of compliance to the proposed AD. Airworthiness Directive 2003–12–07 currently requires inspection of the disks every four to eight calendar years, depending on the disk configuration or at two to four years, at shop exposure.

We do not agree. Our costs estimate considers inspections that occur before a scheduled shop visit as a result of this AD. We do not consider the costs to comply with other ADs or requirements to be costs directly associated with this AD. We did not change the AD.

Claim That Including JT8D–1 Through –17AR Series Engines Is Unnecessary

Two commenters claim that including the JT8D–1 through -17AR series engines into (the AD superseding) AD 2002–23–14 (JT8D–200 series) is unnecessary, based on the similarity of current requirements of AD 2003–12–07 and AD 2003–16–05. AD 2003–12–07 has a more restrictive inspection interval than the inspections of the proposed AD. Discontinuing PWA 110–21 coating at the next disk spacer overhaul and only allowing Nickel-Cadmium recoating would be a more effective method to enhancing safety than the proposed AD. In addition, the HPC 7–12 stage disk ''Corrosion ADs'' drive the inspection of HPC 7-through-12 stage disks per the engine manual Inspection 01 and Inspection 02 for the applicable disks. Inspection 01 specifies the accomplishment of Inspection 03 (FMPI) and Inspection 04 (Fretting Inspection). During the accomplishment of AD 2003–16–05, the disks are stripped, visually and FMPI inspected, re-identified, and replated with Nickel-Cadmium. These procedures are identical to the procedures listed in this proposed AD.

We do not agree. AD 2002–23–14 is only more restrictive for low- and medium-utilization carriers. For high-utilization carriers and older engines, this AD is more restrictive, which is why we proposed this AD. The inspections in AD 2003–12–07 and AD 2003–16–05, are similar, but not identical, nor are their compliance times the same as this AD. We did not change the AD.

Clarification of Definition

In preparing the responses to the commenters requesting clarity, we found that our proposed definition of accessible in paragraph (o) could be clearer, and should coincide with how the term is used in Tables 2 and 4. We did not change the meaning of the definition, but changed it from ''(o) For the purposes of this AD accessibility of the HPC front hub is removing the hub from the engine and deblading that hub'' to read ''(q) For the purpose of this AD, ''accessible'' is defined as when the HPC front hub is removed from the engine and the hub is debladed.'' It is now paragraph (q) because we added prohibition paragraphs (o) and (p) to this AD.

Conclusion

We carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

About 1,573 JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, and 1,280 JT8D–200 series turbofan engines, installed on airplanes of U.S. registry will be affected by this AD. We estimate it will take about 12 work-hours per engine to perform the proposed actions, and the average labor rate is $65 per work-hour. We also estimate 175 of those engines will be removed before reaching scheduled maintenance, and will require an additional 60 work-hours to disassemble and reassemble each engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,907,840.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in

the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2001–NE–30–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing 39–12958 (67 FR 70686, November 26, 2002) and by adding a new airworthiness directive, Amendment 39–14728, to read as follows:

2006–17–07 Pratt & Whitney: Amendment 39–14728. Docket No. 2001–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 4, 2006.

Affected ADs

(b) This AD supersedes AD 2002–23–14, Amendment 39–12958.

Applicability

(c) This AD applies to the following Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, with 8th stage high pressure compressor (HPC) front hubs:

TABLE 1.—AD APPLICABILITY

If the HPC front hub is coated with:	And if the stage 8–9 spacer is coated with:	And the HPC front hub:	Then this AD is:
(1) PWA 110–21 at any time	Any	Operated in a JT8D–15, 15A, –17, –17R, or –17AR engine.	Applicable. See paragraph (f) and Table 2 of this AD.
(2) PWA 110–21 at any time	Any	Operated in a JT8D–209, –217, –217A, –217C, or –219 engine.	Applicable. See paragraph (h) and Table 4 of this AD.
(3) Nickel-Cadmium	PWA 110–21 at any time	Operated in a JT8D–209, –217, –217A, –217C, or –219 engine.	Applicable. See paragraph (i) and Table 5 of this AD.
(4) Nickel–Cadmium	PWA 110–21 at any time	Operated in a JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17R, or –17AR engine.	Not applicable.
(5) PWA 110–21 at any time	Any	Operated in a JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, or –11, but never operated in a JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, or –219 engine.	Not applicable.
(6) Nickel–Cadmium	Any type but PWA 110–21		Not applicable.

These engines are installed on, but not limited to, Boeing DC–9, MD–80 series, 727 series, and 737 series airplanes.

Unsafe Condition

(d) This AD results from an investigation by PW which concluded that any HPC front hub or HPC disk coated with PWA 110–21 that ever operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, could crack before reaching their published life limit. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You must accomplish the actions required by this AD within the compliance times specified, unless the actions have already been done. Any engine with an HPC front hub that has been inspected using AD 2002–23–14, AD 2003–12–07, or AD 2003–16–05, is considered in compliance with this AD.

JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines—Inspect or Replace HPC Front Hubs, HPC Disks, and Stage 8–9 Spacers

(f) For applicable JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines specified in Table 1 of this AD, do the following:

(1) Using the inspection schedule in Table 2 of this AD, strip the protective coating, visually inspect for fretting wear, fluorescent magnetic particle inspect (FMPI) for cracks, reidentify, replate HPC front hubs and stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1. through 3.B.(7)(b) under ''For Rear Compressor Front Hubs that Have Operated With PWA 110–21 coating AT ANY TIME During Their Service Life in JT8D–15, –15A, –17, –17A, –17R, –17AR Engine Models.'' of PW Alert Service Bulletin (ASB) JT8D A6468, dated December 23, 2004.

TABLE 2.—HPC FRONT HUB INSPECTION SCHEDULE

HPC front hub cycles-Since-New (CSN) on the effective date of this AD	Inspect before additional cycles-in-service (CIS) or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (f)(3) of this AD.
(ii) 15,500 or more, but fewer than 19,000.	1,000 CIS or 19,500 CSN	Paragraph (f)(3) of this AD.
(iii) 5,000 or more, but fewer than 15,500.	16,500 CSN	Paragraph (f)(3) of this AD.
(iv) Fewer than 5,000 that are accessible.	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this Table.	Paragraph (f)(3) of this AD.

(3) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage-through-12th stage HPC disks. Inspection information can be found in the applicable sections of JT8D Engine Manual Part Number (P/N) 481672, listed in the following Table 3:

TABLE 3.—SEVENTH STAGE HPC DISKS AND 9TH STAGE-THROUGH-12TH STAGE HPC DISKS INSPECTION INFORMATION

Stage	Chapter/ section	Visual inspection	Fretting inspection	FMPI
7	72–36–41	Inspection–01	Inspection–04	Inspection–03.
9	72–36–43	Inspection–01	Inspection–04	Inspection–03.
10	72–36–44	Inspection–01	Inspection–04	Inspection–03.
11	72–36–45	Inspection–01	Inspection–04	Inspection–03.
12	72–36–46	Inspection–01	Inspection–04	Inspection–03.

JT8D–15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(g) For JT8D–15, –15A, –17, –17A, –17R, and –17AR turbofan engines with front hubs that entered service with Nickel-Cadmium plating and PWA 110–21 coating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment if the hub was never operated with a PWA 110–21-coated stage 8–9 spacer.

(2) Use the information under ''Compliance'' of PW ASB JT8D A6468, dated December 23, 2004, to determine the adjustment.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Inspect or Replace HPC Front Hubs and Stage 8–9 Spacers

(h) For applicable JT8D–209, –217, –217A, –217C, and –219 turbofan engines specified in Table 1, Row (1) of this AD, do the following:

(1) Using the inspection schedule in Table 4 of this AD, strip the protective coating, visually inspect for fretting wear, FMPI for cracking, reidentify, replate HPC front hubs and the stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1. through 1.A. and paragraphs 2. through 2.C.(2)(g)2 of Accomplishment Instructions of PW ASB JT8D A6430, Revision 2, dated December 23, 2004.

TABLE 4.—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH PWA 110–21

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (h)(3) of this AD.
(ii) 15,500 or more, but fewer than 19,000.	1,000 CIS or 19,500 CSN	Paragraph (h)(3) of this AD.
(iii) 5,000 or more, but fewer than 15,500.	16,500 CSN	Paragraph (h)(3) of this AD.
(iv) Fewer than 5,000 that are accessible.	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this Table.	Paragraph (h)(3) of this AD.

(i) For applicable JT8D–209, –217, –217A, –217C, and –219 turbofan engines specified in Table 1, Row (2) of this AD, do the following:

(1) Using the inspection schedule in Table 5 of this AD, strip the protective coating, visually inspect for fretting wear, FMPI for cracking, reidentify, replate HPC front hubs and the stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1., 1.C, and 4. through 4.C.(2)(g)2 of Accomplishment Instructions of PW ASB JT8D A6430, Revision 2, dated December 23, 2004, for all applicable hubs with any type of coating.

TABLE 5.—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH NICKEL-CADMIUM

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (h)(3) of this AD.
(ii) 17,000 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (h)(3) of this AD.
(iii) 9,000 or more, but fewer than 17,000, that have not been inspected.	18,000 CSN	Paragraph (h)(3) of this AD.
(iv) 9,000 or more, but fewer than 17,000, that were inspected before accumulating 9,000 CSN.	15,500 CSN	Paragraph (h)(3) of this AD.

(j) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage-through-12th stage HPC disks. Inspection information can be found in the applicable sections of JT8D–200 Engine Manual P/N 773128, listed in Table 3 of this AD.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(k) For JT8D–209, –217, –217A, –217C, and –219 turbofan engines with HPC front hubs

that entered service with Nickel-Cadmium plating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment.

(2) Use the information under ''CONDITION A'' of PW ASB JT8D A6430, Revision 2, dated December 23, 2004, to determine the adjustment.

Replacement of HPC Front Hubs and Stage 8–9 Spacers That Have Operated With PWA 110–21 Coating, As Optional Action—All Engines

(l) For all applicable engines, as an optional action for the visual inspections in this AD, replace HPC front hubs and stage 8–9 spacers that have operated with PWA 110–21 coating in the interface between the hub and the stage 8–9 spacer and HPC disks currently coated with PWA 110–21, as follows:

(1) Install a Nickel-Cadmium plated HPC front hub that has never operated with PWA 110–21 coating in the interface between the HPC front hub and the stage 8–9 spacer.

(2) Install a Nickel-Cadmium plated or Electroless Nickel-plated stage 8–9 spacer.

(3) Install HPC disks that have never operated with PWA 110–21 coating.

Prohibition Against Recoating the HPC Front Hub, Stage 7 HPC Disk, and Stage 8–9 Spacer With PWA 110–21—All Engines

(m) Do not recoat the HPC front hub with PWA 110–21 (Repair-23 of Chapter/Section 72–36–42 of JT8D–200 Engine Manual, P/N 773128, and Repair-27 and Repair-28 of Chapter/Section 72–36–42 of JT8D Engine Manual, P/N 481672).

(n) Do not recoat the 7th stage disk with PWA 110–21 (Repair-15 of Chapter/Section 72–36–41 of JT8D–200 Engine Manual, P/N 773128, and Repair-15 of Chapter/Section 72–36–41 of JT8D Engine Manual, P/N 481672).

(o) Do not recoat the stage 8–9 spacer with PWA 110–21 (Repair-03, Task 72–36–12–30–003–002, of Chapter/Section 72–36–12 of JT8D–200 Engine Manual, P/N 773128, and Repair-01, Task 72–36–12–30–001–002, of Chapter/Section 72–36–12 of JT8D Engine Manual, P/N 481672).

Prohibition Against Reinstalling HPC Front Hubs and Stage 8–9 Spacers Coated With PWA 110–21

(p) After the effective date of this AD, do not reinstall HPC front hubs and stage 8–9 spacers coated with PWA 110–21.

Definition

(q) For the purpose of this AD, ''accessible'' is defined as when the HPC front hub is removed from the engine and the hub is debladed.

Alternative Methods of Compliance

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

Related Information

(s) None.

Material Incorporated by Reference

(t) You must use the service information specified in Table 6 of this AD to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 6 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 6.—INCORPORATION BY REFERENCE

Pratt & Whitney Alert Service Bulletin No.	Page	Revision	Date
JT8D A6430, Total Pages: 35	ALL	2	December 23, 2004.
JT8D A6468, Total Pages: 20	ALL	Original	December 23, 2004.

Issued in Burlington, Massachusetts, on August 21, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–14238 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24439; Directorate Identifier 2006–NM–039–AD; Amendment 39–14741; AD 2006–18–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145XR Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–145XR airplanes. This AD requires modification of the flap system interface wiring. This AD results from a finding that the aural and visual warnings, which should be activated when the flaps are set to 22 degrees during takeoff, were not enabled during the manufacture of certain Model EMB–145XR airplanes. We are issuing this AD to prevent overrunning the runway during takeoff.

DATES: This AD becomes effective October 4, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 4, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would

apply to certain EMBRAER Model EMB–145XR airplanes. That NPRM was published in the **Federal Register** on April 13, 2006 (71 FR 19138). That NPRM proposed to require modification of the flap system interface wiring.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for NPRM

The Air Line Pilots Association supports the NPRM.

Request To Withdraw NPRM

EMBRAER requests that we withdraw the NPRM. EMBRAER states that, according to section 39.5 of the Federal Aviation Regulations (14 CFR 39.5), an AD is issued when an unsafe condition exists in a product and is likely to exist or develop in other products of the same type design. However, EMBRAER asserts that the missing aural and visual takeoff warnings for flaps selected to 22 degrees do not cause an unsafe condition. EMBRAER states that its analysis has shown that erroneously selecting the flaps to 22 degrees would not affect the controllability, stall, or maneuver margins of Model EMB–145XR airplanes. Also, EMBRAER states that the approved airplane flight manual prohibits takeoff with flaps selected to 22 degrees. Its analysis has also shown that airplane performance would be an issue during climb only when associated with an engine shutdown. EMBRAER maintains that this combined failure is remote or extremely improbable and would lead to a catastrophic event only if limited by the climb gradient or an obstacle. EMBRAER states that the effect of this failure is similar to the inability to retract flaps.

We do not agree to withdraw the NPRM, since we have determined that an unsafe condition does exist. An erroneous flap selection (set to 22 degrees instead of 18) in combination with engine failure during takeoff could result in an overrun of the runway. In its comment, EMBRAER considers only a combined failure (wrong flap configuration plus an engine failure). Such consideration is unacceptable since the human failure rate for a given operation depends on a large number of factors. No adequate models exist that will enable the failure rate of a given human, carrying out a given operation, to be accurately predicted. Furthermore, the Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, issued Brazilian airworthiness directive 2006–02–01, effective February 24, 2006, to address this same unsafe condition and ensure the continued airworthiness of these airplanes in Brazil. We have not revised this AD in this regard.

Request To Require Additional Action

ExpressJet Airlines and a private citizen both request that EMBRAER provide an engine indication and crew alerting system (EICAS) message, in addition to the aural and visual takeoff warnings proposed in the NPRM. To accomplish this request, ExpressJet Airlines proposes that EMBRAER revise Service Bulletin 145–31–0049 to provide procedures for updating the IC–600 configuration files. The commenter states that this change would allow the EICAS visual warning, ''No Takeoff Config,'' to be displayed. As justification, the commenter states that this change would provide indications consistent with other takeoff related warnings such as pitch trim settings.

The private citizen specifically requests that the manufacturer provide an EICAS configuration file with the ''FLAPS 22 AVAIL'' parameter set to ''UNAVAILABLE.'' As justification, the commenter states if the modification is accomplished as proposed in the NPRM, the warnings associated with an attempted takeoff in a prohibited condition will be inconsistent. The commenter points out that if takeoff is attempted with the flaps set to 0 degrees or to 45 degrees, the flightcrew will receive an aural warning, a master warning light, and an EICAS message. The commenter asserts that the manufacturer cannot justify omission of the EICAS message, and that including an EICAS message would add less than 1 work hour to the proposed modification.

We do not agree. We have determined that the addition of the aural and visual takeoff warnings is adequate for addressing the unsafe condition of this AD. We have not revised this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects about 97 airplanes of U.S. registry. The actions required by this AD take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $60 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $44,620, or $460 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(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) 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2006–18–03 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14741. Docket No. FAA–2006–24439; Directorate Identifier 2006–NM–039–AD.

Effective Date

(a) This AD becomes effective October 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–145XR airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145–27–0113, dated December 6, 2005.

Unsafe Condition

(d) This AD results from a finding that the aural and visual warnings, which should be activated when the flaps are set to 22 degrees during takeoff, were not enabled during the manufacture of certain Model EMB–145XR airplanes. We are issuing this AD to prevent overrunning the runway during takeoff.

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 2,500 flight hours after the effective date of this AD, modify the flap system interface wiring, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0113, dated December 6, 2005.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, 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.

Material Incorporated by Reference

(h) You must use EMBRAER Service Bulletin 145–27–0113, dated December 6, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 17, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14288 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24368; Directorate Identifier 2005–NM–230–AD; Amendment 39–14740; AD 2006–18–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. This AD requires replacing the clamp bases for the fuel vent pipe with improved clamp bases. This AD results from reports that the foil wrapping on existing plastic clamp bases has migrated out of position, which compromises the bonding of the fuel vent lines to the airplane structure. We are issuing this AD to ensure that the fuel vent lines are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, and create an ignition source, which could result in a fuel tank explosion.

DATES: This AD becomes effective October 4, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 4, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. That NPRM was published in the **Federal Register** on April 11, 2006 (71 FR 18249). That NPRM proposed to require replacing the clamp bases for the fuel vent pipe with improved clamp bases.

New Relevant Service Information

Since we issued the NPRM, Boeing has issued Service Bulletin DC9–28–211, Revision 1, dated June 21, 2006. (The NPRM referred to the original issue of that service bulletin, dated February 23, 2005, as the appropriate source of service information for the replacement of the clamp bases.) The instructions in Revision 1 are essentially the same as those in the original issue of the service bulletin. Among other things, Revision 1 of the service bulletin reduces the recommended compliance time from 10 years to 5 years, and revises the cost of parts. The NPRM specified a

compliance time of 60 months, so no change to the compliance time in this AD is needed. We have, however, revised the Costs of Compliance section of this AD to reflect the increased parts cost. We have also added a new paragraph (g) to give credit for actions accomplished before the effective date of this AD in accordance with the original issue of the service bulletin, and re-identified subsequent paragraphs accordingly.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Extend Compliance Time

The Air Transport Association, on behalf of its member Northwest Airlines (NWA), agrees with the intent of the NPRM. However, NWA notes that the proposed 60-month compliance time is significantly less than the 10-year compliance time recommended in the original issue of Boeing Service Bulletin DC9–28–211. NWA states that its current maintenance program necessitates gaining access to the outboard fuel tanks every 9 years. NWA notes that the 60-month compliance time would necessitate additional work hours and more out-of-service time.

We infer that NWA is requesting that we extend the compliance time to agree with the original issue of the Boeing service bulletin. We do not agree that any change is necessary. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with the subject unsafe condition and the average utilization of the affected fleet. In light of all of these factors, we have determined that a 60-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. Further, we note that the 60-month compliance time is consistent with the recommended 5-year compliance time specified in Revision 1 of Boeing Service Bulletin DC9–28–211. We have not changed the AD in this regard.

Request To Revise Costs of Compliance

Boeing comments that the service bulletin estimates that it will take 8 work hours to do the actions therein, but the NPRM estimates 4 work hours are needed to do the proposed actions.

We infer that Boeing is requesting that we revise the Costs of Compliance section to reflect the 8-work-hour estimate in the service bulletin. We do not agree. The cost information below describes only the direct costs of the specific actions required by this AD. The estimate of 4 work hours represents the time necessary to perform only the actions actually required by this AD. The cost analysis in AD rulemaking actions typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. We have not changed the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 640 airplanes of the affected design in the worldwide fleet. This AD affects about 413 airplanes of U.S. registry. The required actions will take up to 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts will cost between $1,034 and $2,068 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is between $559,202 and $986,244, or $1,354 and $2,388 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(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) 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2006–18–02 McDonnell Douglas: Amendment 39–14740. Docket No. FAA–2006–24368; Directorate Identifier 2005–NM–230–AD.

Effective Date

(a) This AD becomes effective October 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–

9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports that the foil wrapping on existing plastic clamp bases has migrated out of position, which compromises the bonding of the fuel vent lines to the airplane structure. We are issuing this AD to ensure that the fuel vent lines are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, and create an ignition source, which could result in a fuel tank explosion.

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.

Clamp Base Replacement

(f) Within 60 months after the effective date of this AD, replace the existing clamp bases for the fuel vent line with improved metal clamp bases, by doing all of the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–28–211, Revision 1, dated June 21, 2006. Any corrective action that is required following the conductivity verification, which is included in the replacement procedures, must be done before further flight.

Replacement Accomplished in Accordance With Previous Issue of Service Bulletin

(g) Replacement of clamp bases accomplished before the effective date of this AD in accordance with Boeing Service Bulletin DC9–28–211, dated February 23, 2005, is acceptable for compliance with the corresponding action required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles 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.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin DC9–28–211, Revision 1, dated June 21, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 18, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14289 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30510; Amdt. No. 463]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: 0901 UTC, September 28, 2006.

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

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

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on August 23, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation

Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 28, 2006.

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

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

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

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 463 effective date, September 28, 2006]

From	To	MEA	MAA
§ 95.1001 Direct Routes—U.S.			
Atlantic Routes—AR3			
Is amended to read in part:			
Carps, FL FIX	Perie, OA FIX	2500	45000
Oldey, SC FIX	Panal, OA FIX	2500	45000
Panal, OA FIX	Carolina Beach, NC NDB	2500	45000
Atlantic Routes—AR4			
Is amended to read in part:			
Ashly, SC NDB	Metta, SC FIX	.....	9000
§ 95.6001 Victor Routes—U.S.			
§ 95.6027 VOR Federal Airway V27			
Is amended to read in part:			
*EUGEN, CA FIX *7000–MRA. **7000–MRA. ***3000–MOCA.	**TAILS, CA FIX	.....	***6000
§ 95.6452 VOR Federal Airway V452			
Is amended to read in part:			
Bachs, CA FIX *10200–MOCA.	Halle, NV FIX	.....	*14000
Halle, NV FIX *9500–MOCA.	Mustang, NV VORTAC	.....	*11000
§ 95.6593 Alaska VOR Federal Airway V431			
Is amended to delete:			
Sisters Island, AK VORTAC *8000–MRA. **5800–MOCA. **5800–GPS MEA.	*Lyric, AK FIX	**8000	.....
*Lyric, AK FIX *8000–MRA.	Biorka Island, AK VORTAC	5000	.....
§ 95.6593 Alaska VOR Federal Airway V593			
Is added to read:			
Sisters Island, AK VORTAC *8000–MRA. **5800–MOCA. **5800–GPS MEA.	*Lyric, AK FIX	**8000	.....
*Lyric, AK FIX *8000–MRA.	Biorka Island, AK VORTAC	5000	.....

[FR Doc. E6–14446 Filed 8–29–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9282]

RIN 1545–BE74

Dividends Paid Deduction for Stock Held in Employee Stock Ownership Plan

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 162(k) and 404(k) of the Internal Revenue Code (Code) providing that a payment in redemption of employer securities held by an employee stock ownership plan (ESOP) is not deductible. These regulations generally affect administrators of, employers maintaining, participants in, and beneficiaries of ESOPs. In addition, they will affect corporations that make distributions in redemption of stock held in an ESOP.

DATES: *Effective Date:* These regulations are effective on August 30, 2006.

Applicability Dates: These regulations apply with respect to payments to reacquire stock that are made on or after and amounts paid or incurred on or after August 30, 2006. See §§ 1.162(k)–1(c) and 1.404(k)–3, Q&A–2.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 with respect to section 404(k) or Jennifer D. Sledge at (202) 622–7750 with respect to section 162(k) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations (26 CFR part 1) under sections 162(k) and 404(k) of the Code.

Section 162(k)(1) generally provides that no deduction otherwise allowable under chapter 1 of the Code is allowed for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or the stock of any related person (as defined in section 465(b)(3)(C)). The legislative history of section 162(k) states that the phrase ''in connection with'' is ''intended to be construed broadly.'' H.R. Conf. Rep. No. 99–841, at 168 (1986).

Section 404(k)(1) provides a deduction for an applicable dividend paid in cash by a C corporation with respect to applicable employer securities held by an ESOP, as defined in section 4975(e)(7). Section 404(k)(2) generally provides that the term *applicable dividend* means any dividend which, in accordance with the plan provisions, is either paid in cash to plan participants or beneficiaries or paid to the plan and distributed in cash to participants or beneficiaries not later than 90 days after the close of the plan year in which paid. An applicable dividend also includes a dividend which, at the election of participants or their beneficiaries, is payable as provided in the preceding sentence or paid to the plan and reinvested in qualifying employer securities. Finally, an applicable dividend also includes a dividend that is used to make payments on a loan described in section 404(a)(9), the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid. Under section 404(k)(4), the deduction is allowable in the taxable year of the corporation in which the dividend is paid or distributed to the participant or beneficiary.

Prior to 2002, section 404(k)(5)(A) provided that the Secretary may disallow the deduction under section 404(k) for any dividend if the Secretary determines that such dividend constitutes, in substance, an evasion of taxation. Section 662(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 38, 2001) amended section 404(k)(5)(A) to provide that the Secretary may disallow a deduction under section 404(k) for any dividend the Secretary determines constitutes, in substance, an avoidance or evasion of taxation.

Rev. Rul. 2001–6 (2001–1 CB 491) (see § 601.601(d)(2) of this chapter), states that distributions to participants of amounts paid by an employer to reacquire shares of its stock from the employer's ESOP (redemption proceeds) are made in connection with the reacquisition of the employer's stock and that section 162(k)(1) therefore bars the deduction under these circumstances regardless of whether the distributions to participants would otherwise be deductible under section 404(k). The revenue ruling also states that the treatment of redemption proceeds as ''applicable dividends'' under section 404(k) would produce such anomalous results that the section cannot reasonably be construed as encompassing such payments. The revenue ruling states that the application of section 404(k) to redemption proceeds not only would allow employers to claim deductions for payments that do not represent true economic costs, but also, as further explained below, would vitiate important rights and protections for recipients of ESOP distributions. Finally, the ruling states that a deduction would be disallowed under section 404(k)(5)(A) because a deduction under these circumstances would constitute, in substance, an evasion of taxation.

These positions were reiterated in Notice 2002–2, Q&A–11 (2002–2 CB 285) (See § 601.601(d)(2) of this chapter), which states that, in accordance with Rev. Rul. 2001–6, payments in redemption of stock held by an ESOP that are used to make distributions to terminating ESOP participants constitute an evasion of taxation under section 404(k)(5)(A) and are not applicable dividends under section 404(k)(1). Moreover, the notice states that any deduction for such payments in redemption of stock is barred under section 162(k).

Notice 2002–2 (Q&A–7) also discusses the tax treatment of section 404(k) dividend distributions, stating that dividends paid in cash to a participant (rather than reinvested at the option of the participant under section 404(k)(2)(A)(iii)) are taxable without regard to the return of basis provisions under section 72, and are not subject to the consent requirements of section 411(a)(11) or the distribution restrictions of section 401(k)(2)(B). In addition, the Notice provides that dividends paid to participants under section 404(k) are not eligible rollover distributions under section 402(c), even if the dividends are distributed at the same time as amounts that do constitute an eligible rollover distribution (or are reported on Form 1099–R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) in accordance with Announcement 85–168).[1] See also § 1.402(c)–2, Q&A–4(e), under which dividends paid on employer securities under section 404(k) are not eligible rollover distributions under section 402(c).

In *Boise Cascade Corporation* v. *United States*, 329 F.3d 751 (9th Cir. 2003), the Court of Appeals for the Ninth Circuit held that payments made by the issuer of stock to redeem its stock held by its ESOP were deductible as dividends paid under section 404(k), and that the deduction was not

[1] Announcement 85–168 (1985–48 IRB 40) states that section 404(k) distributions are reportable as dividends on a recipient's tax return and that such distributions are fully taxable without regard to return of basis.

precluded by section 162(k). The IRS issued Chief Counsel Notice 2004–038 (October 1, 2004) (available at *http://www.irs.gov/foia* through the *electronic reading room*) to indicate that it disagreed with the Court's interpretation and would continue to assert in any matter in controversy outside the Ninth Circuit that sections 162(k) and 404(k) disallow a deduction for payments to reacquire employer securities held by an ESOP. For any matter in controversy within the Ninth Circuit, agents or district counsel attorneys are to consult the National Office.

A notice of proposed rulemaking containing proposed regulations under sections 162(k) and 404(k) was issued on August 25, 2005 (70 FR 49897) to address two issues: (1) Which corporation is entitled to the deduction for applicable dividends under section 404(k) where the payor and employer are different entities; and (2) whether a payment in redemption of employer securities held by an ESOP is deductible. The issue in the proposed regulations concerning which corporation is entitled to the deduction for applicable dividends under section 404(k) is expected to be addressed in future regulations.

The notice of proposed rulemaking included proposed regulations under section 404(k) that would provide that payments made to reacquire stock held by an ESOP are not deductible under section 404(k) because such payments would not constitute applicable dividends under section 404(k)(2) and a deduction for such payments would constitute, in substance, an avoidance or evasion of taxation within the meaning of section 404(k)(5) because it would allow a corporation to claim two deductions for the same economic cost. It also included proposed regulations under section 162(k) providing that section 162(k), subject to certain exceptions, would disallow any deduction for amounts paid or incurred by a corporation in connection with the reacquisition of its stock or the stock of any related person (as defined in section 465(b)(3)(C)). Finally, the proposed regulations provided that amounts paid or incurred in connection with the reacquisition of stock include amounts paid by a corporation to reacquire its stock from an ESOP that are then distributed by the ESOP to its participants (or their beneficiaries) or otherwise used in a manner described in section 404(k)(2)(A).

A public hearing on the proposed regulations was held on January 18, 2006. After consideration of the comments received, these final regulations adopt without material change the provisions of the proposed regulations concerning payments in redemption of employer securities held by an ESOP.

Explanation of Provisions

With respect to the treatment of payments in redemption of employer securities, these final regulations adopt the rule of the proposed regulations under which payments made to reacquire stock held by an ESOP are not deductible under section 404(k) because such payments do not constitute applicable dividends under section 404(k)(2) and a deduction for such payments would constitute, in substance, an avoidance or evasion of taxation within the meaning of section 404(k)(5). These final regulations also adopt the rule of the proposed regulations that explicitly provides that section 162(k) disallows any deduction, including any deduction under section 404(k), for amounts paid or incurred by a corporation in connection with the reacquisition of its stock or the stock of any related person (as defined in section 465(b)(3)(C)). In addition, these final regulations adopt the rule of the proposed regulations providing that amounts paid or incurred in connection with the reacquisition of stock include amounts paid by a corporation to reacquire its stock from an ESOP that are then distributed by the ESOP to its participants (or their beneficiaries) or otherwise used in a manner described in section 404(k)(2)(A).

These provisions aroused little opposition and only two comments were received regarding the treatment of payments made to reacquire stock. A trade association representing companies that sponsor ESOPs supported the position of the proposed regulations that a repurchase of shares of ESOP stock from ESOP participants in a stock redemption does not qualify as a deductible dividend under section 404(k).

The other commentator disagreed with the position in the proposed regulations, arguing that redemptions of stock held by an ESOP that are recharacterized as dividends under section 302 nevertheless are proper dividends that should be treated the same as ordinary dividends paid with respect to stock held by an ESOP. The commentator argued that, by enacting section 404(k), Congress intended to allow a double deduction for contributions to purchase employer stock because the value of stock purchased with employer contributions includes the present value of expected future dividends. Thus, the commentator argued, a deduction for redemptive proceeds should not be characterized as an avoidance or evasion of taxation within the meaning of section 404(k)(5). Finally, the commentator argued that, because the legislative history to section 162(k) does not specifically refer to section 404(k) dividends and section 162 was enacted only two years after section 404(k), section 162(k) does not preclude a deduction for a redemptive dividend under section 404(k).

These arguments are unpersuasive. Although the present value of expected future dividends is an element of the value of shares of stock at any point in time, and Congress did authorize a current deduction for the value of stock contributions to qualified plans, as well as a later deduction for certain dividends paid on those shares under section 404(k), these deductions are carefully limited to dividends actually paid in certain specified ways while the stock is held by the ESOP. There is no evidence that Congress intended to authorize yet another deduction for the full value of the shares upon their redemption. To allow a deduction for redemption proceeds would be to allow a second deduction that includes the present value of dividends that are paid out after the date of distribution from the ESOP, contrary to the intent of the statute. Moreover, the amount of the deduction with respect to a redemption could be many times the amount that would be deducted for that year for a conventional dividend. (In fact, permitting a second deduction for the full value of the shares would allow a corporation to claim one deduction for a share of stock contributed to an ESOP and allocated to an employee early in a tax year and another deduction if the share is redeemed to make a distribution to the employee later in the same tax year.) There is a no indication that such a result was intended and there is no obvious purpose that would be served by such a result.

Congress recognized that an arrangement that might be argued to come within the literal language of section 404(k) might nevertheless be inconsistent with its purpose. Congress therefore granted authority to the Secretary, in section 404(k)(5)(A), to disallow a deduction for any dividend that the Secretary finds to be, in substance, an evasion of taxation. The statute was clarified, for years beginning in 2002, to explicitly broaden that authority to permit the Service to disallow any deduction that is an avoidance or evasion of taxation. A deduction for redemption proceeds is both excessive in amount and inconsistent with the purpose of section

404(k), so that this is clearly an appropriate case for the authority under section 404(k)(5)(A) to be exercised.[2]

The IRS and Treasury Department also continue to believe, as provided in Rev. Rul. 2001–6, that a deduction for redemption of benefit distributions is appropriately disallowed under section 404(k)(5)(A) because a deduction under these circumstances would constitute, in substance, an evasion of taxation. As stated in Rev. Rul. 2001–6, the treatment of redemption proceeds as ''applicable dividends'' under section 404(k) would produce such anomalous results that the section cannot reasonably be construed as encompassing such payments. As one example, if a redemption of a benefit distribution were an applicable dividend under section 404(k), there would be no reason why such a redemption could only occur once with respect to a participant, so that multiple redemptions (or theoretically even an unlimited number of redemptions)[3] might be possible, a result that is clearly not consistent with the intent of section 404(k).

Further, as described in Rev. Rul. 2001–6, the application of section 404(k) to redemption amounts also would vitiate important rights and protections for recipients of ESOP distributions. These important rights and protections include the right to apply the return of basis provisions under section 72 (whereas an applicable dividend under section 404(k) is includible in gross income without regard to return of basis under section 72), and the protection against involuntary cash-outs (section 411(a)(11)). See section 72(e)(5)(D), and Q&A–7 of Notice 2002–2, 2002–1 CB 285. Similarly, if redemption amounts distributed as a normal benefit distribution were treated as an applicable dividend under section 404(k), then a participant would not have the right to elect a direct or indirect rollover with respect to redemption proceeds that are distributed from the ESOP, and any notice provided to the employee as required by section 402(f) would have to identify the loss of this valuable right to the participant. See § 1.402(c)–2, Q&A–4(e).

Congress also provided for other special treatment for applicable dividends under section 404(k) that would be inconsistent with redemption of a normal benefit distribution being treated as an applicable dividend under section 404(k). Section 72(t)(2)(A)(vi) provides for an exception to the 10 percent additional income tax for early distributions for dividends paid with respect to stock of a corporation which are described in section 404(k). Further, section 404(k)(5)(B) provides that a plan will not violate the requirements of sections 401, 409, or 4975(e)(7) or be engaging in a prohibited transaction merely by reason of distributing an applicable dividend under section 404(k). Thus, for example, a distribution of an applicable dividend under section 404(k) is not subject to the prohibition against in-service distributions of amounts attributable to elective deferrals under section 401(k)(2). Clearly, these broad exceptions under section 72(t)(2)(A)(vi) and 404(k)(5)(B) were not intended to apply to normal benefit distributions from ESOPs, essentially at the election of the employer or distributee.

Finally, even if the IRS declined to exercise its authority under section 404(k)(5)(A), the plain language of section 162(k) precludes the deduction for payments by a corporation to redeem its stock including deductions otherwise allowed under section 404(k). As described under the *Background* section of this preamble, section 162(k) provides that ''no deduction otherwise allowable shall be allowed *under this chapter* for any amount paid or incurred by a corporation in connection with the reacquisition of its stock'' (emphasis added) and section 404(k) is in the same chapter as section 162(k). The commentator's attempt to avoid the effect of the plain language of the statute by reference to a supposed negative inference in the legislative history is unavailing.

Accordingly, these regulations adopt the rule in the proposed regulations without material change.

Effective Date

Section 1.162(k)–1 applies with respect to amounts paid or incurred on or after August 30, 2006.

Section 1.404(k)–3 applies with respect to payments to reacquire stock that are made on or after August 30, 2006. Rev. Rul. 2001–6 remains in effect for all periods, including periods before the effective date of this regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are John T. Ricotta, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Jennifer D. Sledge, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.162(k)–1 is also issued under section 26 U.S.C. 162(k). * * *

Section 1.404(k)–3 is also issued under sections 26 U.S.C. 162(k) and 404(k)(5)(A). * * *

■ **Par. 2.** Section 1.162(k)–1 is added to read as follows:

§ 1.162(k)–1 Disallowance of deduction for reacquisition payments.

(a) *In general.* Except as provided in paragraph (b) of this section, no deduction otherwise allowable is allowed under Chapter 1 of the Internal Revenue Code for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or the stock of any related person (as defined in section 465(b)(3)(C)). Amounts paid or incurred in connection with the

[2] Given the special rules of section 409(h) which generally entitle participants to receive cash for employer securities that are not publicly traded, if Congress had so intended, it would likely have identified the interaction of these provisions in light of the potentially large additional deductions such a rule would permit. Cf., *Charles Ilfeld Co.* v. *Hernandez*, 292 U.S. 62 (1934).

[3] For example, a plan participant might elect to have his or her account balance redeemed to the extent invested in employer securities, and then promptly have the cash reinvested in employer securities, and then could immediately repeat this redemption/reinvestment process with no theoretical limit.

reacquisition of stock include amounts paid by a corporation to reacquire its stock from an ESOP that are used in a manner described in section 404(k)(2)(A). See § 1.404(k)–3.

(b) *Exceptions.* Paragraph (a) of this section does not apply to any—

(1) Deduction allowable under section 163 (relating to interest);

(2) Deduction for amounts that are properly allocable to indebtedness and amortized over the term of such indebtedness;

(3) Deduction for dividends paid (within the meaning of section 561); or

(4) Amount paid or incurred in connection with the redemption of any stock in a regulated investment company that issues only stock which is redeemable upon the demand of the shareholder.

(c) *Effective date.* This section applies with respect to amounts paid or incurred on or after August 30, 2006.

■ **Par. 3.** Section 1.404(k)–3 is added to read as follows:

§ 1.404(k)–3 Disallowance of deduction for reacquisition payments.

Q–1: Are payments to reacquire stock held by an ESOP applicable dividends that are deductible under section 404(k)(1)?

A–1: (a) Payments to reacquire stock held by an ESOP, including reacquisition payments that are used to make benefit distributions to participants or beneficiaries, are not deductible under section 404(k) because—

(1) Those payments do not constitute applicable dividends under section 404(k)(2); and

(2) The treatment of those payments as applicable dividends would constitute, in substance, an avoidance or evasion of taxation within the meaning of section 404(k)(5).

(b) See also § 1.162(k)–1 concerning the disallowance of deductions for amounts paid or incurred by a corporation in connection with the reacquisition of its stock from an ESOP.

Q–2: What is the effective date of this section?

A–2: This section applies with respect to payments to reacquire stock that are made on or after August 30, 2006.

Approved: August 22, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–14420 Filed 8–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 154

[DoD–2006–OS–0038]

Department of Defense Personnel Security Program Regulation

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This rule is published to streamline personnel security clearance procedures and make the process more efficient within the Department of Defense. This will simplify security processing and allow the deserving public to obtain a security clearance in a more efficient manner.

DATES: This rule is effective September 1, 2006. Written comments received at the address indicated below by October 30, 2006 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Charleen Wright, 703–697–3039.

SUPPLEMENTARY INFORMATION: This rule is published as an interim rule because it takes effect on September 1 under the authority of National Security Adviser directing immediate implementation.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 154 is not a significant regulatory action. The rule does not:

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

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

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

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

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part will streamline personnel security clearance procedures and make the process more efficient.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 154

Classified information; Government employees; Investigations; Security measures.

■ Accordingly, 32 CFR part 154 is amended as follows:

PART 154—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM REGULATION

■ 1. The authority citation for 32 CFR part 154 continues to read as follows:

Authority: E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12356, 47 FR

14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200

■ 2. Appendix H to part 154 is revised to read as follows:

Appendix H to Part 154—Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

1. *Introduction.* The following adjudicative guidelines are established for all U.S. Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees, and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations. Government departments and agencies may also choose to apply these guidelines to analogous situations regarding persons being considered for access to other types of protected information.

Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest and place a person in the position of having to choose between his or her commitments to the United States, including the commitment to protect classified information, and any other compelling loyalty. Accesses decisions also take into account a person's reliability, trustworthiness and ability to protect classified information. No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation's secrets as the most effective means of protecting them. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount.

2. *The adjudicative process.*

(a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) The individual's age and maturity at the time of the conduct;

(5) The extent to which participation is voluntary;

(6) The presence or absence of rehabilitation and other permanent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress; and

(9) The likelihood of continuation or recurrence;

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.

(c) The ability to develop specific thresholds for action under these guidelines is limited by the nature and complexity of human behavior. The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign Influence;

(3) GUIDELINE C: Foreign Preference;

(4) GUIDELINE D: Sexual Behavior;

(5) GUIDELINE E: Personal Conduct;

(6) GUIDELINE F: Financial Considerations;

(7) GUIDELINE G: Alcohol Consumption;

(8) GUIDELINE H: Drug Involvement;

(9) GUIDELINE I: Psychological Conditions;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Handling Protected Information;

(12) GUIDELINE L: Outside Activities;

(13) GUIDELINE M: Use of Information Technology Systems

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole-person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) Was truthful and complete in responding to questions;

(3) Sought assistance and followed professional guidance, where appropriate;

(4) Resolved or appears likely to favorably resolve the security concern;

(5) Has demonstrated positive changes in behavior and employment;

(6) Should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A: Allegiance To The United States

3. *The concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States of America;

(b) Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) Association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:

(1) Overthrow or influence the government of the United States or any state or local government;

(2) Prevent Federal, state, or local government personnel from performing their official duties;

(3) Gain retribution for perceived wrongs caused by the Federal, state, or local government;

(4) Prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) The individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) Involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) The involvement or association with such activities occurred under such unusual circumstances, or so much time has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or loyalty.

Guideline B: Foreign Influence

6. *The concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign

country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) Counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

(e) A substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) Failure to report, when required, association with a foreign national;

(g) Unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion;

(i) Conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

8. *Conditions that could mitigate security concerns include:*

(a) The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) The foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

(f) The value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Guideline C: Foreign Preference

9. *The concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) Possession of a current foreign passport;

(2) Military service or a willingness to bear arms for a foreign country;

(3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) Residence in a foreign country to meet citizenship requirements;

(5) Using foreign citizenship to protect financial or business interests in another country;

(6) Seeking or holding political office in a foreign country;

(7) Voting in a foreign election;

(b) Action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest;

(d) Any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) The individual has expressed a willingness to renounce dual citizenship;

(c) Exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) Use of a foreign passport is approved by the cognizant security authority.

(e) The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

(f) The vote in a foreign election was encouraged by the United States Government.

Guideline D: Sexual Behavior

12. *The concern.* Sexual behavior that involves a criminal offense indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) A pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) The behavior no longer serves as a basis for coercion, exploitation, or duress.

(d) The sexual behavior is strictly private, consensual, and discreet.

Guideline E: Personal Conduct

15. *The concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate omission, concealment, or falsification of relevant facts from any

personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) Disruptive, violent, or other inappropriate behavior in the workplace;

(3) A pattern of dishonesty or rule violations;

(4) Evidence of significant misuse of Government or other employer's time or resources;

(e) Personal conduct or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as:

(1) Engaging in activities which, if known, may affect the person's personal, professional, or community standing, or

(2) While in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;

(g) association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) The information was unsubstantiated or from a source of questionable reliability;

(g) Association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Guideline F: Financial Considerations

18. *The concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Inability or unwillingness to satisfy debts;

(b) Indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

(c) A history of not meeting financial obligations;

(d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;

(i) Compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, ''chasing losses'' (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) The affluence resulted from a legal source of income.

Guideline G: Alcohol Consumption

21. *The concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) Diagnosis by a duly qualified medical professional (e.g., physician, clinical

psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) Relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;

(g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

23. *Conditions that could mitigate security concerns include:*

(a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) The individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H: Drug Involvement

24. *The concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) Inhalants and other similar substances;

(b) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition); [1]

(b) Testing positive for illegal drug use;

(c) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) Diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(f) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) Any illegal drug use after being granted a security clearance;

(h) Expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

26. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) A demonstrated intent not to abuse any drugs in the future, such as:

(1) Disassociation from drug-using associates and contacts;

(2) Changing or avoiding the environment where drugs were used;

(3) An appropriate period of abstinence;

(4) A signed statement of intent with automatic revocation of clearance for any violation;

(c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;

(d) Satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Guideline I: Psychological Conditions

27. *The concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

(b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness; [2]

(c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

29. *Conditions that could mitigate security concerns include:*

(a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) The past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) There is no indication of a current problem.

Guideline J: Criminal Conduct

30. *The concern.* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A single serious crime or multiple lesser offenses;

(b) Discharge or dismissal from the Armed Forces under dishonorable conditions; [3]

(c) Allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) Individual is currently on parole or probation;

(e) Violation of parole or probation, or failure to complete a court-mandated rehabilitation program;

(f) Conviction in a Federal or State court, including a court-martial of a crime,

[1] Under the provisions of 10 U.S.C. 986 any person who is an unlawful user of, or is addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.

[2] Under the provisions of 10 U.S.C. 986, any person who is mentally incompetent, as determined by a credentialed mental health professional approved by the Department of Defense, may not be granted or have renewed their access to classified information.

[3] Under the provisions of 10 U.S.C. 986, a person who has received a dishonorable discharge or has been dismissed from the Armed Forces may not be granted or have renewed access to classified information. In a meritorious case, the Secretaries of the Military Departments or designee; or the Directors of WHS, DIA, NSA, DOHA or designee may authorize a waiver of this prohibition.

sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.[4]

32. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) Evidence that the person did not commit the offense;

(d) There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement;

(e) Potentially disqualifying conditions 31. (b) and (f) may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee has granted a waiver.

Guideline K: Handling Protected Information

33. *The concern.* Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences;

(b) Collecting or storing classified or other protected information at home or in any other unauthorized location;

(c) Loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, ''palm'' or pocket device or other adjunct equipment;

(d) Inappropriate efforts to obtain or view classified or other protected information outside one's need to know;

(e) Copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

(f) Viewing or downloading information from a secure system when the information is beyond the individual's need-to-know;

(g) Any failure to comply with rules for the protection of classified or other sensitive information;

(h) Negligence or lax security habits that persist despite counseling by management.

(i) Failure to comply with rules or regulations that results in damage to the National Security, regardless of whether it was deliberate or negligent.

35. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) The security violations were due to improper or inadequate training.

Guideline L: Outside Activities

36. *The concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any employment or service, whether compensated or volunteer, with:

(1) The government of a foreign country;

(2) Any foreign national, organization, or other entity;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology;

(b) Failure to report or fully disclose an outside activity when this is required.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States;

(b) The individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Guideline M: Use of Information Technology Systems

39. *The concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system or component thereof;

(b) Illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

(c) Use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;

(d) Downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

(e) Unauthorized use of a government or other information technology system;

(f) Introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations;

(g) Negligence or lax security habits in handling information technology that persist despite counseling by management;

(h) Any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

41. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

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L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

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[4] Under the above mentioned statute, a person who has been convicted in a Federal or State court, including courts martial, sentenced to imprisonment for a term exceeding one year and incarcerated for not less than one year, may not be granted or have renewed access to classified information. The same waiver provision also applies.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–083]

RIN 1625–AA09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes in the regulations that govern the operation of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This rule advises that the telephone number for the Woodrow Wilson Bridge Operator's Tower has changed from (202) 727–5522 to (703) 836–2396. The rule will have no substantive effect on the regulated public.

DATES: This rule is effective August 30, 2006.

ADDRESSES: Documents, indicated in this preamble as being available in the docket, are part of docket CGD05–06–083 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that that this rule is exempt from notice and comment rulemaking requirements. Good cause exists for not publishing an NPRM for the revision in this rule because this rule advises that the telephone number for the Woodrow Wilson Bridge Operator's Tower has changed from (202) 727–5522 to (703) 836–2396. This change will have no substantive effect on the public; therefore, it is unnecessary to publish a NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On July 27, 2006, the original telephone number was changed from (202) 727–5522 to (703) 836–2396 at the Operator's Tower for the Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. Any vessels calling the original number will receive the following message: ''The Woodrow Wilson Bridge Operator's Tower phone number has been changed. The new number is (703) 836–2396.'' This voice message will be in effect for one full year.

This rule to change the telephone number to the Woodrow Wilson Bridge Operator's Tower becomes effective August 30, 2006. This rule does not create any substantive requirements.

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 final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. As this rule involves non-substantive changes, it will not impose any costs on the public.

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.

This rule does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

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 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, eliminates 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.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 (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.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.255 [Amended]

■ 2. In § 117.255, in paragraphs (a)(3)(i) and (a)(5)(i) remove ''(202) 727–5522'', and add, in its place, ''(703) 836–2396''.

Dated: August 21, 2006.

L.L. Hereth,

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

[FR Doc. E6–14439 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[EPA–HQ–OAR–2005–0474; FRL–8214–9]

RIN 2060–AN70

Amendments to Regulations for Heavy-Duty Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In a rule published January 18, 2001, EPA promulgated several new standards for heavy-duty highway diesel engines and vehicles beginning in model year 2007. In this rulemaking we are making some technical amendments to the regulations to correct typographical errors, revise references, remove old provisions, and to revise some provisions regarding deterioration factors to be identical to those for nonroad diesel engines certified under the Tier 4 rule, published June 29, 2004.

DATES: This direct final rule is effective on October 30, 2006 without further notice, unless we receive adverse comments by September 29, 2006 or receive a request for a public hearing by September 14, 2006. If we receive any adverse comments on this direct final rule, or on one or more amendments in this direct final rule, or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule that are the subject of adverse comment, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0474, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: U.S. Environmental Protection Agency, EPA West Building, 1200 Pennsylvania Ave., NW., Room: B108 Mail Code: 6102T, Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. If your Docket requires the submission of multiple copies, please insert the following here:
  - ► Please include a total of copies.
  - ► If the NPRM involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''
- Hand Delivery: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: B108, Mail Code: 6102T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0474. 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 EPA Docket Center (EPA/DC), Air Docket, Public Reading Room, Room B108, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Assessment and Standards Division, e-mail *guerra.zuimdie@epa.gov*, voice-mail (734) 214–4387.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on October 30, 2006 without further notice unless we receive adverse comment by September 29, 2006 or a request for a public hearing by September 14, 2006. If we receive adverse comment on one more distinct provisions of this rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct provisions of today's rulemkaing for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct provisions of today's rule.

A. Regulated Entities

This action will affect companies that manufacture and certify heavy-duty highway diesel engines in the United States.

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	336112	Engine and Truck Manufacturers.
Industry	33612	Heavy-duty Engine and Truck Manufacturers.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket Number EPA–HQ–OAR–2005–0474. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR* (either select desired date or use Search features).

2. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

C. How and To Whom Do I Submit Comments?

You may summit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the ''Proposed Rules'' section of today's **Federal Register,** which matches the substance of this direct final rule. Your comments on this direct final rule will be considered to also be applicable to that notice of proposed rulemaking. If we receive any

adverse comments on this direct final rule or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule receiving adverse comment, will not take effect. We may then take final action in a final rule based on the accompanying proposal. We will not institute a second comment period.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments directly to EPA Dockets at *www.regulations.gov* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. EPA–HQ–OAR–2005–0474. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov* Attention Air Docket ID No. EPA–HQ–OAR–2005–0474. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES** above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West Building, 1200 Pennsylvania Ave., NW., Room: B108 Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0474.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: B108 Mail Code: 6102T, Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR–2005–0474. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2005–0474.

II. Summary of Rule

EPA is making the following minor amendments to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions:

- Removing several sections that describe regulatory requirements for model years before 1996, and before 2001 for Selective Enforcement Auditing. Discontinuing publication of these sections does not affect the manufacturers' responsibility to continue meeting standards for any vehicles or engines that may still be operating within the regulatory useful life.
- Revising the provisions for certification fees in part 86 subpart J and referring to part 85 subpart Y, since they have been completely replaced in part 85 starting with the 2004 model year.
- Adding a provision to part 86 to require manufacturers of all types of engines, vehicles, and motorcycles to name an agent for service of process in the United States. This provision does not place additional burden on engine, vehicle, and motorcycle manufacturers because they already need to do this to comply with our certification requirements. This simply formalizes an existing policy to allow us to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of our effort to certify engines and oversee compliance of certified products. This applies to § 86.007–21, § 86.416–80, § 86.437–78, and § 86.1844–01.
- Re-publishing § 86.004–28(c)(4)(iii)(B) to establish deterioration factor provisions applicable to a highway heavy-duty engine identical to the options available to nonroad certified heavy-duty diesel engines certified under 40 CFR 1039.240. The new provisions establish additive deterioration factors as the default but require the use of multiplicative deterioration factors if, based on good engineering judgment, they are more appropriate for a particular engine family.
- Re-publishing § 86.007–11(a)(2)(v) to correct a typographical error in the equation.
- Adding paragraph (j) to § 86.007–35 to ensure that the recently added provision that allows labeling flexibility to heavy-duty engines extends to 2007 and later model years. EPA inadvertently forgot to add this provision to the 2007 model year regulations.
- Revising § 86.1213–94 to reference the fuel specifications in part 86, subpart N. This avoids a duplication of regulatory text and does not change the applicable test procedures in any way.
- Republishing § 86.1360(c), which was removed in the migration of test procedures to 40 CFR part 1065. This paragraph needs to be added back because there is a reference to it in § 86.1370–2007 and in § 86.1380–2004.
- Revising § 86.1806–01 to properly cite the incorporation by reference of several technical standards related to on-board diagnostics. These documents are formally incorporated by reference in § 86.1, so the text in § 86.1806–01 is revised to describe how the standards apply, with a straightforward reference to § 86.1 for the full description of the standards with instructions for readers to obtain the documents.
- Revising the language in CFR § 86.1806–04(j) and § 86.1806–05(j) to correctly refer to LDVs, LDTs and

heavy-duty vehicles weighing 14,000 pounds GVWR or less. Inadvertently we referenced ''heavy-duty engines weighing 14,000 pounds GVWR or less'' instead of LDVs, LDTs and heavy-duty vehicles weighing 14,000 pounds GVWR or less.

• Correcting a mistake made in the 2004 Heavy-Duty rule that revised § 86.1840–01. This rule revision included only paragraphs (a) and (b) and therefore paragraphs (c) and (d) were omitted from § 86.1840–01. EPA had no intention of removing paragraphs (c) and (d). This rule is adding these two paragraphs back.

EPA does not expect that these minor revisions will have any adverse cost impact to the manufacturers. There are no testing costs associated with the revisions. There is no environmental impact associated with this regulatory action because this rulemaking does not change the heavy-duty highway diesel engine emission standards that manufacturers have to meet; it simply makes some minor amendments to the regulations.

III. Statutory and Executive Order 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 review under the EO.

This direct final rule is not a significant regulatory action as it merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. There are no new costs associated with this rule.

B. Paperwork Reduction Act

This proposed rule does not include any new collection requirements, as it merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. There are no new paperwork requirements associated with this rule. The information collection requirements (ICR) for the original heavy-duty diesel engines and vehicles rulemaking were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0104, EPA ICR number 0783.47. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

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

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

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

This direct final rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. We have therefore concluded that today's final rule will relieve regulatory burden for all 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 of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

This direct final rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.,* the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This 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 direct final rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to 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 rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) 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 direct final rule does not involve technical standards. This direct final rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended 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 Congress and the Comptroller General of the United States. We 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 before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule is effective on October 30, 2006.

K. Statutory Authority

The statutory authority for this action comes from section 202 of the Clean Air Act as amended (42 U.S.C. 7521). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 24, 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 set forth below.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended by removing from the table the following entries:

86.085–13	86.091–21	86.092–15
86.090–14	86.091–23	86.092–23
86.090–21	86.091–28	86.092–24
86.090–25	86.091–30	86.092–26
86.090–26	86.092–14	86.092–35
86.091–15		86.094–7—86.094–9
86.094–24(a)(3)(iii)	86.608–96	86.1313–84
86.094–35	86.609–84	86.1313–87
86.095–24	86.609–96	86.1313–90
86.113–82	86.612–84	86.1313–91
86.113–87	86.908–01	86.1314–84
86.113–90	86.909–93	86.1316–84
86.113–91	86.1003–97	86.1316–90
86.135–82	86.1008–90	86.1319–84
86.135–90	86.1008–96	86.1321–84
86.135–94	86.1009–84	86.1321–90
86.144–90	86.1009–96	86.1327–84
86.608.88	86.1213–85	86.1327–88
86.608.90	86.1213–87	86.1327–90

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 4. Subpart A is amended by removing the following sections:

86.084–40	86.091–11	86.092–35
86.085–1	86.091–15	86.093–11
86.085–13	86.091–21	86.093–35
86.088–10	86.091–23	86.094–8
86.090–1	86.091–28	86.094–11
86.090–9	86.091–30	86.094–24
86.090–14	86.091–35	86.094–35
86.090–21	86.092–1	86.094–38
86.090–22	86.092–14	86.095–24
86.090–24	86.092–15	
86.090–25	86.092–23	
86.090–26	86.092–24	
86.091–9	86.092–26	

■ 5. Section 86.004–28 is amended by redesignating the paragraph (c)(4)(iii)(B)(iv) as (c)(4)(iii)(B)(4) and revising paragraphs (c)(4)(iii)(B)(1) and (c)(4)(iii)(B)(2) to read as follows:

§ 86.004–28 Compliance with emission standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(B) * * *

(*1*) Additive deterioration factor for exhaust emissions. Except as specified in paragraph (c)(4)(iii)(B)(2) of this section, use an additive deterioration factor for exhaust emissions. An additive deterioration factor for a pollutant is the difference between exhaust emissions at the end of the useful life and exhaust emissions at the low-hour test point. In these cases, adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero. Additive deterioration factors must be specified to one more decimal place than the applicable standard.

(*2*) Multiplicative deterioration factor for exhaust emissions. Use a multiplicative deterioration factor if good engineering judgment calls for the deterioration factor for a pollutant to be the ratio of exhaust emissions at the end of the useful life to exhaust emissions at the low-hour test point. For example, if you use aftertreatment technology that controls emissions of a pollutant proportionally to engine-out emissions, it is often appropriate to use a multiplicative deterioration factor. Adjust the official emission results for each tested engine at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one. A multiplicative deterioration factor may not be appropriate in cases where testing variability is significantly greater than engine-to-engine variability. Multiplicative deterioration factors must be specified to one more significant figure than the applicable standard.

* * * * *

■ 6. Section 86.007–11 is amended by revising paragraph (a)(2)(v) to read as follows:

§ 86.007–11 Emission standards and supplemental requirements for 2007 and later model year heavy-duty engines and vehicles.

* * * * *

(a) * * *

(2) * * *

(v) Determine your engine's brake-specific emissions using the following calculation, which weights the emissions from the cold-start and hot-start test intervals:

$$\text{brake-specific emissions} = \frac{m_{\text{cold-start}} + 6 \cdot m_{\text{hot-start}}}{W_{\text{cold-start}} + 6 \cdot W_{\text{hot-start}}}$$

* * * * *

■ 7. Section 86.007–21 is amended by adding paragraph (q) to read as follows:

§ 86.007–21 Application for certification.

* * * * *

(q) The manufacturer must name an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

■ 8. Section 86.007–35 is amended by adding paragraph (j) to read as follows:

§ 86.007–35 Labeling.

* * * * *

(j) The Administrator may approve in advance other label content and formats provided the alternative label contains information consistent with this section.

Subpart B—[Amended]

■ 9. Subpart B is amended by removing the following sections:

86.106–90
86.106–94
86.107–90
86.109–90
86.113–91
86.114–79
86.116–90
86.117–90
86.120–82
86.121–82
86.127–90
86.127–94
86.130–78
86.131–90
86.132–90
86.133–90
86.138–90
86.140–82
86.140–90
86.143–90
86.144–90

Subpart E—[Amended]

■ 10. Subpart E is amended by removing the following sections:

86.401–90
86.410–80

■ 11. Section 86.416–80 is amended by adding paragraph (a)(2)(ix) to read as follows:

§ 86.416–80 Application for certification.

(a) * * *

(2) * * *

(ix) The name of an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

* * * * *

■ 12. Section 86.437–78 is amended by adding paragraph (b)(1)(iii) to read as follows:

§ 86.437–78 Certification.

* * * * *

(b) * * *

(1) * * *

(iii) The name of an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

* * * * *

Subpart F—[Amended]

■ 13. Subpart F is amended by removing the following sections:

86.513–87
86.513–90
86.519–78
86.529–78

Subpart G—[Amended]

■ 14. Subpart G is amended by removing the following sections:

86.602–97
86.603–97
86.608–88
86.608–90
86.608–96
86.608–97
86.609–84
86.609–96
86.609–97
86.610–96
86.612–84

Subpart J—[Amended]

■ 15. Subpart J is revised to read as follows:

Subpart J—Fees for the Motor Vehicle and Engine Compliance Program

§ 86.901 Assessment of fees.

See 40 CFR part 85, subpart Y, for the applicable fees associated with certifying engines and vehicles under this part.

Subpart K—[Amended]

■ 16. Subpart K is amended by removing the following sections:

86.1002–84
86.1002–97
86.1003–97
86.1008–90
86.1008–96
86.1008–97
86.1009–84
86.1009–96
86.1009–97
86.1010–96
86.1012–84

Subpart M—[Amended]

■ 17. Subpart M is amended by removing the following sections:

86.1206–90
86.1207–90
86.1213–04
86.1213–90
86.1217–90
86.1227–90
86.1230–85
86.1232–90
86.1233–90
86.1235–85
86.1238–90
86.1243–90

■ 18. Section 86.1213–94 is revised to read as follows:

§ 86.1213–94 Fuel specifications.

Use the fuels specified in subpart N of this part for evaporative emission testing.

Subpart N—[Amended]

■ 19. Subpart N is amended by removing the following sections:

86.1306–90
86.1311–90
86.1313–91
86.1314–84
86.1316–90
86.1319–84
86.1321–90
86.1327–90
86.1327–94
86.1330–84
86.1337–90
86.1344–90

■ 20. Section 86.1360–2007 is amended by adding paragraph (c) to read as follows:

§ 86.1360–2007 Supplemental emission test; test cycle and procedures.

* * * * *

(c) *Determining engine speeds.* (1) The engine speeds A, B and C, referenced in the table in paragraph (b)(1) of this section, and speeds D and E, referenced in § 86.1380, must be determined as follows:

Speed A = $n_{lo} + 0.25 \times (n_{hi} - n_{lo})$
Speed B = $n_{lo} + 0.50 \times (n_{hi} - n_{lo})$
Speed C = $n_{lo} + 0.75 \times (n_{hi} - n_{lo})$
Speed D = n_{hi}
Speed E = $n_{lo} + 0.15 \times (n_{hi} - n_{lo})$

Where: n_{hi} = High speed as determined by calculating 70% of the maximum power. The highest engine speed where this power value occurs on the power curve is defined as n_{hi}.

n_{lo} = Low speed as determined by calculating 50% of the maximum power. The lowest engine speed where this power value occurs on the power curve is defined as n_{lo}.

Maximum power = the maximum observed power calculated according to the engine mapping procedures defined in § 86.1332.

* * * * *

Subpart P—[Amended]

■ 21. Subpart P is amended by removing the following sections:

86.1501–90
86.1504–90
86.1505–84
86.1505–90
86.1506–90
86.1513–90

Subpart S—[Amended]

■ 22. Section 86.1806–01 is amended by revising paragraphs (e) introductory text, (f)(2), (f)(3), and (h) to read as follows:

§ 86.1806–01 On-board diagnostics.

* * * * *

(e) *Storing of computer codes.* The emission control diagnostic system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per SAE J1979 specifications as described in paragraph (h) of this section.

* * * * *

(f) * * *

(2) The following data in addition to the required freeze frame information shall be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals shall be provided in standard units based on SAE specifications described in paragraph (h) of this section. Actual signals shall be clearly identified separately from default value or limp home signals.

(3) For all emission control systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared shall be available through the standardized data link connector per SAE J1979 specifications as described in paragraph (h) of this section.

* * * * *

(h) *Reference materials.* The emission control diagnostic system shall provide for standardized access and conform with the following standards that we incorporate by reference in § 86.1:

(1) Except as specified in paragraph (h)(2) of this section, SAE J1850 ''Class B Data Communication Network Interface,'' (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(2) ISO 9141–2 February 1994 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(3) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 July 1996 E/E Diagnostic Test Modes.''

(4) Diagnostic trouble codes shall be consistent with SAE J2012 July 1996 ''Recommended Practices for Diagnostic Trouble Code Definitions.''

(5) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 January 1995 ''Diagnostic Connector.''

* * * * *

■ 23. Section 86.1806–04 is amended by revising paragraph (j) to read as follows:

§ 86.1806–04 On-board diagnostics.

* * * * *

(j) California OBDII compliance option. For light-duty vehicles, light-duty trucks, and heavy-duty vehicles weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 24. Section 86.1806–05 is amended by revising paragraph (j) to read as follows:

§ 86.1806–05 On-board diagnostics.

* * * * *

(j) California OBDII compliance option. For light-duty vehicles, light-duty trucks, and heavy-duty vehicles weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBDII requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 25. Section 86.1840–01 is amended by adding paragraphs (c) and (d) to read as follows:

§ 86.1840–01 Special test procedures.

* * * * *

(c) Manufacturers of vehicles equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such vehicles including SFTP testing for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

(d) The provisions of paragraph (a) and (b) of this section also apply to MDPVs.

■ 26. Section 86.1844–01 is amended by adding paragraph (d)(17) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(17) The name of an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

* * * * *

[FR Doc. E6–14429 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0399; FRL–8214–5]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Allen County 8-hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 30, 2006, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted, in final: A request to redesignate the 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Allen County, Indiana, to attainment for the 8-hour ozone NAAQS; and a request for EPA approval of an Indiana State Implementation Plan (SIP) revision containing a 14-year maintenance plan for Allen County. Today, EPA is making a determination that the Allen County, Indiana ozone nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is also approving the request to redesignate the area to attainment for the 8-hour ozone standard and the State's maintenance plan. EPA's approval of the 8-hour ozone redesignation request is based on its determination that Allen County, Indiana has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is also approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2020 that are contained in the 14-year 8-hour ozone maintenance plan for Allen County.

DATES: This rule is effective on October 30, 2006, unless EPA receives adverse written comments by September 29, 2006. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0399, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov.*
- Fax: (312) 886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0399. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *Rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Actions Are EPA Taking?
III. What Is the Background for These Actions?
IV. What Are the Criteria for Redesignation?
V. Why Is EPA Taking These Actions?
VI. What Is EPA's Analysis of the Request?
VII. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used To Support Conformity Determinations?
VIII. What Is the Effect of EPA's Actions?
IX. Statutory and Executive Order Reviews.

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

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

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

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

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

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

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

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

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

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

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

II. What Actions Are EPA Taking?

EPA is taking several related actions. EPA is making a determination that the Allen County nonattainment area has attained the 8-hour ozone standard. EPA is also approving the State's request to change the legal designation of the Allen County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving Indiana's maintenance plan SIP revision for Allen County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep Allen County in attainment for ozone for the next 14 years, through 2020. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2020 VOC and NO_X MVEBs for Allen County for transportation conformity purposes.

These actions pertain to the designation of Allen County for the 8-hour ozone standard and to the emission controls in this area related to attainment and maintenance of the 8-hour ozone NAAQS. The emissions of concern are VOC and NO_X. If you own or operate a VOC or NO_X emission source in Allen County or live in this area, this rule may apply to you. It may also apply to you if you are involved in transportation planning or implementation of emission controls in this area.

III. What Is the Background for These Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2— that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Allen County was originally designated as an 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857). The 2004 classification for Allen County as a subpart 1 8-hour ozone nonattainment area was based on air quality monitoring data from 2001–2003.

Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. For example, marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (i.e., 0.084 ppm) is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

On May 30, 2006, Indiana submitted a request for redesignation to attainment for the 8-hour ozone standard for Allen County. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved for the Allen County. The data satisfy the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or

equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

State Implementation Plans; ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. Why Is EPA Taking These Actions?

On May 30, 2006, the State submitted in final, after an April 18, 2006, public hearing, a request to redesignate the area to attainment for the 8-hour ozone standard. EPA believes that Allen County has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

VI. WhatI Is EPA's Analysis of the Request?

EPA is making a determination that the Allen County nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The basis for EPA's determination is as follows:

1. *Allen County has attained the 8-hour ozone NAAQS:* EPA is making a determination that Allen County has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Indiana submitted ozone monitoring data for the April through September ozone seasons from 2003 to 2005. This data has been quality assured and is recorded in AIRS. In its May 30, 2006, redesignation request, Indiana certified that the Allen County 2003–2005 data is accurate. The 4th high averages are summarized in Table 1, in which the values are in ppm ozone.

TABLE 1.—4TH HIGH VALUES IN PPM OZONE

Monitor	County	2003–2005	2003	2004	2005
Leo	Allen	0.083	0.090	0.073	0.086
Ft. Wayne	Allen	0.076	0.084	0.069	0.076

In addition, as discussed below with respect to the maintenance plan, Indiana has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that Allen County has attained the 8-hour ozone NAAQS.

2. *Allen County has met all applicable requirements under section 110 and part D of the CAA and the Area has a fully approved SIP under section 110(k) for Purposes of Redesignation.*

EPA has determined that Indiana has met all applicable SIP requirements for Allen County for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Indiana SIP meets applicable SIP requirements under Part D of Title I of the Clean Air Act (requirements specific to Subpart 1 nonattainment areas). Section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation. Section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. *Allen County has met all applicable requirements for purposes of redesignation under Section 110 and Part D of the CAA.*

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003 (St. Louis NFR)

General SIP requirements: Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emission limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of Title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD) and part D requirements (New Source Review (NSR) for major new sources or major source modifications; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001)

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard are expected to be due prior to submission of the redesignation request. Therefore EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

Part D requirements: EPA has also determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no such requirements are expected to become due for the 8-hour ozone standard prior to submission of the area's redesignation request. Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Because Allen County is a subpart 1 8-hour ozone nonattainment area and is not classified under subpart 2 of part D of the CAA for the 8-hour ozone standard, subpart 2 of part D of the CAA does not apply to this area.

Part D, Subpart 1 applicable requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). [See also 68 FR 4852–3 in St. Louis NPR

for discussion of section 172 requirements.]

It is not anticipated that any requirements under part D will become due prior to submission of the complete redesignation request, and, therefore, none is expected to be applicable to the area for purposes of redesignation. For example, the requirement for an ozone attainment demonstration to meet the requirement of section 172(c)(1) is not yet applicable, nor are the requirements for Reasonably available Control Measures (RACM) and Reasonably Available Control technology (RACT) (section 172(c)(1)), Reasonable Further progress (RFP) (section 172(c)(2)), and contingency measures section 172(c)(9)).

Since it is expected that Indiana will submit a complete ozone redesignation request for Allen County prior to the deadline for any submissions, we are determining that the part D requirements do not apply to Allen County for purposes of redesignation. In addition to the fact that certain Part D requirements applicable for purposes of redesignation are not expected to be due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity and New Source Review requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure the Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal confomity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL)

EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' The State has demonstrated that the area will be able to maintain the standard without Part D NSR in effect, and therefore, the State need not have a fully approved Part D NSR program prior to approval of the redesignation request. The State's Prevention of Significant Deterioration (PSD) program will become effective in the area upon redesignation to attainment. Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458–20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31827, June 21, 1996).

Thus, EPA finds that the area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

b. *The area has a fully approved applicable SIP for purposes of redesignation under section 110(k) of the CAA.*

EPA has fully approved the applicable Indiana SIP for purposes of redesignation for Allen County under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3 *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Indiana has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Allen County area under the one-hour ozone standard. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet come due, and therefore they need not be approved into the SIP prior to redesignation.

3. *The air quality improvement in Allen County is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.* EPA believes that the State of Indiana has demonstrated that the observed air quality improvement in Allen County is due to permanent and enforceable emission reductions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this demonstration, the State has documented the changes in VOC and NO_X emissions from all anthropogenic (man-made or man-based) sources in Allen County between 1999 and 2004 and the changes in NO_X emissions from Electric Generating Units (EGUs) in Indiana between 1999 and 2005. Allen County was monitored in violation of the 8-hour ozone NAAQS in 1999 and in attainment with the NAAQS during the period of 2003 through 2005. The VOC and NO_X emissions for Allen County are given in Table 2.

TABLE 2.—VOC AND NO_X EMISSION TRENDS IN ALLEN COUNTY FOR ANTHROPOGENIC SOURCES—EMISSIONS IN TONS/SUMMER DAY

Pollutant	1999	2002	2004	Percent reduction 2002 to 2004
VOC	68.65	57.16	52.28	8.5
NO_X	48.87	48.75	44.94	7.8

The NO_X emissions trends for EGUs for the 1999–2005 period in Indiana statewide are given in Table 3. The NO_X emissions for Allen County and the statewide EGU NO_X emissions have shown significant downward trends from 1999, an 8-hour standard violation year, to 2004 and 2005, attainment years. IDEM notes that the NO_X emissions statewide have declined significantly as a result of the implementation of the Indiana NO_X SIP and acid rain control regulations, both of which lead to permanent, enforceable emission reductions.

TABLE 3.—NO_X EMISSION TRENDS FOR ELECTRIC GENERATING UNITS IN INDIANA STATEWIDE—EMISSIONS IN THOUSANDS OF TONS PER OZONE SEASON (APRIL–OCTOBER)

Year	1999	2000	2001	2002	2003	2004	2005
Statewide	149.8	133.9	136.1	114.0	99.3	66.6	55.5

As noted in Table 2, the VOC emissions in Allen County have also declined between 1999 and 2004. VOC emission control measures have been implemented in Allen County. Statewide RACT rules have applied to all new sources locating in Indiana since the mid-1990s and include the following VOC control rules: 326 Indiana Administrative Code (IAC) 8–1–6 (Best Available Control Technology (BACT) for non-specific sources); 326 IAC 8–2 (surface coating emission limitations); 326 IAC 8–3 (organic solvent degreasing operations); 326 IAC 8–4 (petroleum sources, including storage, transport, and marketing sources and petroleum refining); 326 IAC 8–5 (miscellaneous sources); and 326 IAC 8–6 (organic solvent emission limitations). Compliance with these rules has controlled point source VOC emissions in Allen County, offsetting some source growth, as well as controlling VOC emissions in the remainder of Indiana. The VOC emission reductions resulting from the implementation of the VOC emission control rules are permanent and enforceable.

Since Allen County was not previously designated as a 1-hour ozone nonattainment area, no ozone precursor emission controls were specifically targeted at this County. Therefore, statewide and Federal emission control requirements have provided the majority of the VOC and NO_X emission reductions in Allen County.

Besides the statewide VOC RACT rules and NO_X emission control requirements, other Federal emission reduction requirements have resulted in decreased ozone precursor emissions in Allen County and will produce future emission reductions that will lead to maintenance of the ozone standard in Allen County (see a more detailed discussion on maintenance of the 8-hour ozone standard in Allen County below). These emission reduction requirements include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules are being phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent; and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are also expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of these emission reductions have already occurred by the 2004 attainment year, most of these emission reductions will occur during the maintenance period for Allen County.

Heavy-Duty Diesel Engines. In July 2000, EPA issued a final rule to control the emissions from highway heavy duty diesel engines, including low-sulfur diesel fuel standards. These emission reductions are being phased in between 2004 and 2007. This rule is expected to result in a 40 percent decrease in NO_X emissions from heavy duty diesel vehicles.

Non-Road Diesel Rule. This rule generally applies to new stationary diesel engines used in certain industries, including construction, agriculture, and mining. In addition to affecting engine design, this rule includes requirements for cleaner fuels. This rule is expected to reduce NO_X emissions from these engines by up to 90 percent, and to significantly reduce particulate matter and sulfur emissions from these engines in addition to the NO_X emission reduction. This rule did not affect 2004 emissions from these sources, but will limit emissions from new engines beginning in 2008.

Indiana commits to maintain all existing emission control measures that affect Allen County after this area is designated to attainment. All changes in existing rules affecting Allen County and new rules subsequently needed for continued maintenance of the 8-hour ozone NAAQS in Allen County will be submitted to the EPA for approval as SIP revisions. Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

4. *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.* In conjunction with its request to redesignate Allen County to attainment status, Indiana submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in Allen County for 14 years after redesignation.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions: The attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan.

b. Attainment Emissions Inventory

IDEM prepared comprehensive VOC and NO_X emission inventories for Allen County, including point (significant stationary sources), area (smaller and widely-distributed stationary sources), mobile on-road, and mobile non-road sources for 2004 (the base year/attainment year). To develop the attainment year emission inventories, IDEM used the following approaches and sources of data:

Area Sources—Area source VOC and NO_X emissions were grown from Indiana's 2002 periodic emissions inventory, which was previously submitted to the EPA.

Mobile On-Road Sources—Mobile source emissions were calculated using the MOBILE6 emission factor model and traffic data (vehicle miles traveled, vehicle speeds, and vehicle type and age distributions) extracted from the region's travel-demand model.

Point Source Emissions—2004 point source emissions were compiled using IDEM's 2004 annual emissions statement database and the 2005 EPA Air Markets acid rain emissions inventory database.

Mobile Non-Road Emissions—Non-road mobile source emissions were generated by the EPA and documented in the 2002 National Emissions Inventory (NEI). IDEM used these emissions estimates along with growth factors to grow the non-road mobile source emissions to 2004. To address concerns about the accuracy of some of the emissions for various source categories in EPA's non-road emissions model, the Lake Michigan Air Directors Consortium (LADCO) contracted with several companies to review the base data used by the EPA and to make recommendations for corrections to the model. Emissions were estimated for commercial marine vessels and railroads. Recreational motorboat population and spatial surrogates (used to assign emissions to each county) were updated. The populations for the construction equipment category were reviewed and updated based on surveys completed in the Midwest, and the temporal allocation for agricultural sources was also updated. The EPA provided a revised non-road estimation model for the 2002 analysis.

The 2004 attainment year VOC and NO_X emissions for Allen County are summarized along with the 2010 and 2020 projected emissions for this County in Tables 4 and 5 below, which provide a demonstration of maintanance of this area. It is our conclusion that the State has acceptably derived and documented the attainment year VOC and NO_X emissions for Allen County.

c. Demonstration of Maintenance

As part of its May 30, 2006 redesignation request, IDEM included a requested revision to the SIP to incorporate a 14-year ozone maintenance plan, as required under section 175A of the CAA. Included in the maintenance plan is a maintenance demonstration. This demonstration shows maintenance of the 8-hour ozone NAAQS by documenting current and projected VOC and NO_X and showing that future emissions of VOC and NO_X remain at or below the attainment year emission levels.[1] Note that a maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 4 specifies the VOC emissions in Allen County for 2004, 2010, and 2020. IDEM chose 2020 as a projection year to meet the 10-year maintenance projection requirement, allowing additional time for the State to complete its adoption of the ozone redesignation request and ozone maintenance plan and for the EPA to approve the redesignation request and maintenance plan. IDEM also chose 2010 as an interim year to demonstrate that VOC and NO_X emissions will remain below the attainment levels throughout the 14-year maintenance period.

Table 5, similar to Table 4, specifies the NO_X emissions in Allen County for 2004, 2010, and 2020. Together, Tables 4 and 5, in terms of projected emissions, demonstrate that Allen County should remain in attainment of the 8-hour ozone NAAQS between 2004 and 2020, for more than 10 years after EPA is expected to approve the redesignation of Allen County to attainment of the 8-hour ozone NAAQS.

TABLE 4.—ATTAINMENT YEAR (2004) AND PROJECTED VOC EMISSIONS IN ALLEN COUNTY (TONS PER SUMMER DAY)

Source sector	Year		
	2004	2010	2020
Point	9.33	7.91	9.74
Area	18.99	20.00	22.17
On-Road Mobile	13.86	9.14	5.57
Off-Road Mobile	10.10	7.02	6.57
Total	52.28	44.07	44.05

TABLE 5.—ATTAINMENT YEAR AND PROJECTED NO_X EMISSIONS IN ALLEN COUNTY (TONS PER SUMMER DAY)

Source sector	Year		
	2004	2010	2020
Point	4.88	4.69	4.78
Area	3.89	4.09	4.33
On-Road Mobile	23.17	14.57	6.19
Off-Road Mobile	13.01	9.84	6.98
Total	44.95	33.19	22.28

[1] The attainment year can be any of the three consecutive years in which the area has clean (below violation level) air quality data (2003, 2004, or 2005 for Allen County).

IDEM also notes that Indiana's and 21 other states' EGU NO_X emission control rules stemming from EPA's NO_X SIP call and CAIR, to be implemented beginning in 2006, will further lower NO_X emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Allen County (the State did not project emission decreases resulting from CAIR and did not document future NO_X emissions in upwind counties). This will also support maintenance of the ozone standard in Allen County.

The emission projections for Allen County coupled with the expected impacts of the State's EGU NO_X rules and CAIR lead to the conclusion that Allen County should maintain the 8-hour ozone standard throughout the 14-year maintenance period. The decrease in local VOC and local and regional NO_X emissions indicate that peak ozone levels in Allen County may actually further decline during the 14-year ozone maintenance period.

IDEM has documented some of the procedures used to project emissions. On-road mobile sources were projected using the MOBILE6 emission factor model and projected traffic data obtained from the Northwest Indiana Regional Planning Commission (NIRPC), who maintains a travel demand forecast model that is capable of projecting changes in total daily Vehicle Miles Traveled (VMT). Emissions for the other major source sectors were determined using source activity/growth data provided by the Lake Michigan Air Director's Consortium, as well as major source emissions data obtained periodically for all major sources statewide. Emissions projections for Allen County are consistent with the planning analyses being conducted to attain the 8-hour ozone and fine particle ($PM_{2.5}$) standards throughout Indiana and throughout the Lake Michigan area.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in Allen County. We believe that this is especially likely given the expected impacts of the NO_X SIP call and CAIR. As noted by IDEM, this conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO_X emissions through implementation of their own NO_X emission control rules for EGUs and other NO_X sources and through implementation of CAIR.

d. Monitoring Network

IDEM commits to continue operating and maintaining an approved ozone monitoring network in Allen County, in accordance with 40 CFR part 58, throughout the 14-year maintenance period. This will allow the confirmation of the maintenance of the 8-hour ozone standard in this area.

e. Verification of Continued Attainment

Continued attainment of the 8-hour ozone NAAQS in Allen County depends, in part, on the State's efforts toward tracking applicable indicators during the maintenance period. The State's plan for verifying continued attainment of the 8-hour ozone standard in Allen County consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO_X emissions inventories for Allen County to assure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard in this area. Revised emission inventories for this area will be prepared for 2005, 2008, and 2011 as necessary to comply with the emission inventory reporting requirements established in the CAA. The revised emissions will be compared with the 2004 attainment emissions and the 2020 projected maintenance year emissions to assure continued maintenance of the ozone standard.

f. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were controlled in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan to address a possible future ozone air quality problem. The contingency plan that Indiana has adopted has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred (Action Level Response).

A Warning Level Response will be prompted whenever an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 89 ppb (or greater) occurs at any monitor in Allen County, or a 2-year averaged annual fourth-high daily peak 8-hour ozone concentration of 85 ppb or greater occurs at any monitor in Allen County. A Warning Level Response will consist of a study to determine whether the monitored ozone level indicates a trend toward higher ozone levels or whether emissions are increasing, threatening a future violation of the ozone NAAQS. The study will evaluate whether the trend, if any, is likely to continue, and, if so, the emission control measures necessary to reverse the trend, taking into consideration the ease and timing of implementation, as well as economic and social considerations, will be selected, adopted, and implemented. Implementation of necessary controls will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season. If new emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level Response will be followed.

An Action Level Response will occur (be triggered) when a violation of the 8-hour ozone standard is monitored at any of the monitors in Allen County (when a 3-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb is recorded at any monitor in Allen County). In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented within 18 months from the close of the ozone season in which the ozone standard violation is monitored.

Adoption of any additional emission control measures prompted by either of the two response levels will be subject to the necessary administrative and legal process dictated by State law. This process will include publication of public notices, providing the

opportunity for a public hearing, and other measures required by Indiana law for rulemaking by State environmental boards. If a new State emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and that emission control is determined to be sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. IDEM will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in Allen County.

Contingency measures contained in the maintenance plan are those emission controls or other measures that the State may choose to adopt and implement to correct existing or possible air quality problems in Allen County. These include, but are not limited to, the following:

i. Lower Reid vapor pressure gasoline requirements;

ii. Broader geographic applicability of existing emission control measures;

iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1999 CAA amendments;

iv. Application of RACT to smaller existing sources;

v. Vehicle Inspection and Maintenance (I/M);

vi. One or more Transportation Control Measure (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area-wide VOC emissions, to be selected from the following:

A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area-wide rideshare programs, work schedule programs, and telecommuting;

B. Transit improvement;

C. Traffic flow improvements; and

D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;

vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

viii. Controls on consumer products consistent with those adopted elsewhere in the United States;

ix. VOC or NO_X emission offsets for new or modified major sources;

x. VOC or NO_X emission offsets for new or modified minor sources;

xi. Increased ratio of emission offset required for new sources; and

xii. VOC or NO_X emission controls on new minor sources (with VOC or NO_X emissions less than 100 tons per year).

g. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Allen County to attainment of the 8-hour ozone NAAQS. The updated maintenance plan would provide for maintenance of the 8-hour ozone standard in Allen County for an additional 10 years beyond the period covered by the initial ozone maintenance plan.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan submitted by Indiana meets the requirements of section 175A of the CAA.

VII. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used To Support Conformity Determinations?

A. How Are the Motor Vehicle Emission Budgets Developed and What Are the Motor Vehicle Emission Budgets for Allen County?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan. The MVEBs serve as ceilings on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas: Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determination.

The Transportation Conformity rule in section 93.118(f) provides for adequacy findings through two mechanisms. Section 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: *http://www.epa.gov/otaq/stateresources/*

transconf/adequacy.htm and providing a 30 day public comment period. The second mechanism is described in section 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan. In this notice, EPA is simultaneously reviewing the adequacy of the motor vehicle emission budgets as part of this review and proposal on the overall maintenance plan. Indiana has requested parallel processing and the expediency of the process is best suited to following section 93.118(f)(2).

The Allen County 14-year maintenance plan contains VOC and NO_X MVEBs for 2020. EPA has reviewed the submittal and the VOC and NO_X MVEBs for Allen County and finds that the budgets meet the adequacy criteria in the Transportation Conformity rule. The 30-day comment period for adequacy will be the same as the comment period for approval of the budgets and maintenance plan. Any and all comments on the adequacy or approvability of the budgets should be submitted during the comment period stated in the **DATES** section of this notice.

EPA, through this rulemaking is approving the MVEBs for use to determine transportation conformity in Allen County because EPA has determined that the budgets are consistent with the control measures in the SIP and that Allen County can maintain attainment of the 8-hour ozone NAAQS for the relevant required 14-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2020 MVEBs for Allen County to be 6.5 tons per day for VOC and 7.0 tons per day for NO_X. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO_X emissions projected by IDEM for 2020, as summarized in Tables 4 and 5 above (''On-Road Mobile'' source sector). Through discussions with all organizations involved in transportation planning for Allen County, IDEM decided to include safety margins of 0.93 tons per day for VOC and 0.81 tons per day for NO_X in the MVEBs to provide for mobile source growth not anticipated in the projected 2020 emissions. Indiana has demonstrated that Allen County can maintain the 8-hour ozone NAAQS with mobile source emissions of 5.57 tons per day of VOC and 6.19 tons per day of NO_X in 2020 since total source emissions will remain under the attainment year levels.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 4 and 5, Allen County VOC and NO_X emissions are projected to have safety margins of 8.23 tons per day for VOC and 22.66 tons per day for NO_X in 2020 (the difference between the 2004, attainment year, and 2020 VOC and NO_X emissions for all sources in Allen County).

The MVEBs requested by IDEM contain safety margins (selected by the State) significantly smaller than the safety margins reflected in the total emissions for Allen County. The State is not requesting allocation of the entire available safety margins actually reflected in the demonstration of maintenance (in Tables 4 and 5). Therefore, even though the State is requesting MVEBs that exceed the on-road mobile source emissions for 2020 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration.

C. Are the MVEBs Approvable?

The VOC and NO_X MVEBs for Allen County are approvable because they maintain the total emissions for Allen County at or below the attainment year emission inventory levels, as required by the transportation conformity regulations.

VIII. What Is the Effect of EPA's Actions?

EPA is making a determination that Allen County has attained the 8-hour ozone NAAQS, and EPA is approving the redesignation of Allen County from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating Indiana's redesignation request, EPA is making a determination that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Final approval of this redesignation request would change the official designation for Allen County from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision for Allen County. The approval of the maintenance plan is based on Indiana's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. Additionally, EPA is finding adequate and approving the 2020 MVEBs submitted by Indiana in conjunction with the redesignation request.

IX. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 16, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (ff) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(ff) Approval—On May 30, 2006, Indiana submitted a request to redesignate Allen County to attainment of the 8-hour ozone National Ambient Air Quality Standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. Also included were motor vehicle emission budgets for use to determine transportation conformity in Allen County. The 2020 motor vehicle emission budgets are 6.5 tons per day for VOC and 7.0 tons per day for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

■ 2. Section 81.315 is amended by revising the entry for Fort Wayne, IN: Allen County in the table entitled ''Indiana Ozone (8-Hour Standard)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Fort Wayne, IN:				
Allen County	September 29, 2006	Attainment		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 06–7248 Filed 8–29–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0327; FRL–8090–1]

Bifenazate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of bifenazate in or on pea, garden; pea, edible podded; vegetable, tuberous and corm, subgroup 1C; fruit, stone, group 12, except plum; plum; cattle fat; goat fat; hog fat; horse fat; and sheep fat. Interregional Research Project Number 4 (IR-4) requested these tolerances 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 30, 2006. Objections and requests for hearings must be received on or before October 30, 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–2006–0327. 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: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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–2006–0327 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 30, 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–2006–0327, 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 May 3, 2006 (71 FR 26087) (FRL–8058–6), 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 petitions (PP 3E6762 and 5E6992) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902. The petition requested that 40 CFR 180.572 be amended by establishing tolerances for combined residues of the insecticide, bifenazate, (1 methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-

[1,1′-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in or on fruit, stone, group 12 at 2.0 parts per million (ppm); pea, garden at 0.2 ppm; pea, edible podded at 4.0 ppm; and vegetable, tuberous and corm at 0.01 ppm.

PP 3E6762 proposed to amend 40 CFR 180.572 by deleting existing peach and nectarine tolerances, and establish a tolerance for fruit, stone (Group 12) at 2.0 ppm. Following review of the residue chemistry data, EPA determined that the commodity terms and tolerances levels should be revised to the following: Pea, garden, succulent at 0.20 ppm; vegetable, tuberous and corm, subgroup 1C at 0.10 ppm; and fruit, stone, group 12, except plum at 2.5 ppm. Additionally, EPA determined subsequent revisions for existing tolerances for plum at 0.20 ppm, and fat of cattle, goat, hog, horse, and sheep at 0.10 ppm (previously established at 0.3 ppm (plum) and 0.1 ppm (animal fat commodities).

EPA is also deleting established tolerances in §180.572(a) for peach and nectarine since they will be replaced by the establishment of the tolerance for residues of bifenazate on fruit, stone, group 12, except plum. Additionally, EPA is deleting the time-limited tolerance for tomato under §180.572(b) since that tolerance has expired.

The notices referenced above included a summary of the petitions prepared by Crompton Uniroyal Chemical, the registrant. There were no comments received in response to the notice of filing.

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 of bifenazate on pea, garden, succulent at 0.20 ppm; pea, edible podded, succulent at 4.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.10 ppm; fruit, stone, group 12, except plum at 2.5 ppm; plum at 0.20 ppm; and fat of cattle, goat, hog, horse, and sheep at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

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 bifenazate 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 www.regulations.gov (Docket ID EPA–HQ–OPP–2006–0327–0002, pages 10–12).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which 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 lowest dose at which the LOAEL of concern is identified 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 bifenazate used for human risk assessment can be found at www.regulations.gov (Docket ID EPA–HQ–OPP–2006–0327–0002, page 15).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.572) for the combined residues of bifenazate, in or on a variety of raw agricultural and livestock commodities. A tolerance is also established for milk. Risk assessments were conducted by EPA to assess dietary exposures from bifenazate 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 1–day or single exposure. No such effects were identified in the toxicological studies for bifenazate, therefore a quantitative acute dietary exposure assessment is not performed.

ii. *Chronic exposure*. In conducting the chronic 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 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 chronic exposure assessments: The chronic analyses incorporated tolerance-level residues for all commodities excluding squash, peach, tomato, and soybean (anticipated residues based on average field-trial residues were assumed) and milk (anticipated residue was assumed). The chronic analyses incorporated average percent crop treated (PCT) information. DEEM (ver. 7.81) default processing factors were assumed for all commodities excluding apple juice, grape juice, wine/sherry, tomato paste, and tomato puree. The processing factors for these commodities

were reduced to 0.23, 0.17, 0.17, 5.0, and 5.0, respectively, based on data from processing studies.

iii. *Cancer*. Bifenazate has been classified as ''not likely'' to be a human carcinogen. Therefore, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 1% for almonds, apples, apricots, cucumbers, pecans, peppers, walnuts, and watermelons; 5% for grapes, nectarines, prunes, plums, and tomatoes; 10% for peaches and pears, and 25% for strawberries.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

The Agency believes that the three conditions listed have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenazate may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenazate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenazate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Parent bifenazate degrades rapidly in aerobic soil conditions with a half-life of approximately 30 minutes. The first degradate formed (D3598; half-life of 7 hours) was reported in a concentration of 95% of the applied radioactivity. D3598 degrades to D1989 (reported at a maximum of 26% of the applied radioactivity), which is moderately persistent with an EFED-calculated half-life of approximately 96 days. Photodegradation and other routes of dissipation of parent bifenazate do not appear to be significant.

EPA concluded that the residue of concern in drinking water is D1989. Parent and D3598 were not included as a residue of concern in drinking water due to the short half-lives of these compounds and the lack of an acute dietary endpoint (toxicity of D3598 is assumed to be equivalent to bifenazate). Since ground water or surface water monitoring data are not available, a Tier I screening concentration in ground water (SCI-GROW) and surface water first index sceening tool reservoir (FIRST) were provided for the EECs of D1989. Both models were conducted using the strawberry application scenario (2 x 0.50 lbs ai/acre; 21–day RTI; highest registered/proposed application rate).

Based on the SCI-GROW and FIRST models, the estimated environmental concentrations (EECs) of bifenazate are estimated to be 6.38 parts per billion (ppb) for chronic surface water and <0.001 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™). For chronic dietary risk assessment, the annual average concentration of 6.38 ppb was used to access the contribution to drinking 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).

Bifenazate is currently registered for use on the following residential non-dietary site: Ornamentals. The risk assessment was conducted using the following residential exposure assumptions: EPA anticipated only short-term dermal and inhalation exposure for residential handlers. The proposed formulation was appropriate for application via pump up sprayers, garden hose-end sprayers, or similar ''homeowner'' pesticide devices. A

larger area per day may be treated with a hose-end sprayer than with a ''pump-up'' compressed-air sprayer, which in turn results in possibly greater contact with the active ingredient per day. Therefore, exposure from a hose-end sprayer was assessed rather than that of a compressed-air sprayer. With respect to post-application residential exposures, no significant post-application exposure is anticipated from landscape ornamentals, either by residents or professional applicators; therefore, no residential post-application assessment was conducted.

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 bifenazate and any other substances and bifenazate 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 bifenazate 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 uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The developmental studies in rats and rabbits did not demonstrate any qualitative or quantitative *in utero* extra sensitivity of fetuses to bifenazate. Similarly, increased qualitative or quantitativesusceptibility to offspring was not observed from bifenazate during prenatal or postnatal development in the reproduction study.

3. *Conclusion*. The Agency evaluated the bifenazate toxicological database in reference to the potential for enhanced sensitivity to infants and children. Acceptable developmental toxicity studies in the rat and rabbit are available, as is an acceptable 2–generation reproduction study in the rat. EPA concluded that a bifenazate developmental neurotoxicity study is not required. EPA also concluded the 10X FQPA safety factor could be reduced to 1X for bifenazate for the following reasons:

i. There is no indication of quantitative or qualitative increased susceptibility of rats and rabbits to *in utero* or postnatal exposure.

ii. A bifenazate developmental neurotoxicity study is not required.

iii. The toxicological database, the residue chemistry database and the environmental fate database, are complete for FQPA assessment.

iv. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

v. The residential handler assessment is based upon the residential standard operating procedures (SOPs). The residential SOPs are based upon reasonable worst-case assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to bifenazate.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. No acute risk is expected from exposure to bifenazate since no acute endpoints were identified for the general U.S. population (including infants and children) or the females 13-50 years old population subgroup.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenazate from food and water will utilize 38% of the chronic population adjusted dose (cPAD) for the U.S. population, 79% of the cPAD for all infants (<1 year old), and 94% of the cPAD for children 1-2 years old. There are no residential uses for bifenazate that result in chronic residential exposure to bifenazate. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bifenazate is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenazate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate margin of exposures (MOEs) of 1,600 for the U.S. population, 1,900 for females 13-49 years old, and 2,000 for adults 50 years and older. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water, and residential uses. Therefore, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Bifenazate has been classified as ''not likely'' to be a human carcinogen by any relevant route of exposure. Therefore, bifenazate is expected to pose at most a negligible cancer risk.

5. *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 bifenazate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A method (UCC-D2341) is available for enforcement of the currently established plant tolerances. The methods used in the field trial and processing studies were similar to the current enforcement method. Since the

procedures are similar and adequate method validation and concurrent recoveries were attained in the field trial and processing studies, EPA concludes that the current enforcement method is appropriate for enforcement of the tolerances associated with this petition.

Adequate enforcement methodology 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

Canada, Codex, and Mexico do not have maximum residue limits (MRLs) for residues of bifenazate in/on tuberous and corm vegetables or succulent pea; therefore, harmonization is not an issue for these crops. However, Codex MRLs are established in/on peach, nectarines, plum, and prunes (no Canadian or Mexican stone fruit MRLs) at 2.0 ppm. The Codex MRL residue definition is for bifenazate per se. The U.S. and Codex tolerances/MRLs are not compatible with regard to tolerance expression and therefore, the levels can not be harmonized.

V. Conclusion

Therefore, the tolerance is established for combined residues of bifenazate, (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl), 1-methylethyl ester, in or on pea, garden, succulent at 0.20 ppm; pea, edible podded, succulent at 4.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.10 ppm; fruit, stone, group 12, except plum at 2.5 ppm; plum at 0.20 ppm; and fat of cattle, goat, hog, horse, and sheep at 0.10 ppm.

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–). 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. 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 23, 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 180.572 is amended by:

i. In paragraph (a)(1), in the table, by removing the commodities ''peach'' and ''nectarine''; revising the tolerance levels for the commodities ''cattle, fat''; ''goat, fat''; ''hog, fat''; ''horse, fat''; and ''sheep, fat'' and by alphabetically adding commodities ''fruit, stone, group 12, except 12''; ''pea, garden, succulent''; ''pea, edible podded, succulent''; and ''vegetable, tuberous and corm''; and

ii. In paragraph (b), in the table, by removing the commodity tomato.

The amendments read as follows.

§ 180.572 Bifenazate; tolerances for residues.

(a)(1) * * *

Commodity	Parts per million
* * * *	*
Cattle, fat	0.10
* * * *	*
Fruit, stone, group 12, except plum	2.5
Goat, fat	0.10
* * * *	*
Hog, fat	0.10
* * * *	*
Horse, fat	0.10
* * * *	*
Pea, garden, succulent	0.20
Pea, edible podded, succulent	4.0
* * * *	*
Plum	0.20
Sheep, fat	0.10
* * * *	*
Vegetable, tuberous and corm, subgroup 1C	0.10

* * * * *

FR Doc. E6–14427 Filed 8–29–06; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0292; FRL–8090–2]

S-metolachlor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of S-metolachlor in or on pumpkin, and squash, winter. Interregional Research Project Number 4 (IR-4) requested these tolerances 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 30, 2006. Objections and requests for hearings must be received on or before October 30, 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–2006–0292. 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: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e–mail address: *brothers.shaja@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–2006–0292 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 30, 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–2006–0292, 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 April 21, 2006 71 FR 20663 FRL–8064–6, 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 5E7015) by IR–4, 681 Highway 1 South, North Brunswick, NJ 08902–3390. The petition requested that 40 CFR 180.368(a)(3) be amended by establishing tolerances for combined residues of the herbicide S–metolachlor, S–2–chloro–N–(2–ethyl–6–methylphenyl)–N–(2–methoxy–1–methylethyl)acetamide], its R–enantiomer, and its metabolites, determined as the derivatives, 2–[2–ethyl–6–methylphenyl)amino]–1–propanol and 4–(2–ethyl–6–methylphenyl)–2–hydroxy–5–methyl–3–morpholinone, in or on pumpkin and squash, winter at 1.0 part per million (ppm), respectively. The tolerances were subsequently amended to 0.1 ppm for raw agricultural commodities previously mentioned. This notice included a summary of the petition prepared by Syngenta, the registrant. There were no comments received in response to the notice of filing.

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 tolerances for combined residues of S–metolachlor on pumpkin at 0.1 ppm, and squash, winter at 0.1 ppm. EPA's assessment of exposure and risk associated with establishing the tolerances 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 metolachlor and S–metolachlor 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 www.regulations.gov (Docket No. EPA–HQ–OPP– 2006–0292–0003; pages 53-64).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (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 lowest dose at which adverse effects of concern are identified (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 metolachlor and S-metolachlor used for human risk assessment is discussed at www.regulations.gov (Docket No. EPA–HQ–OPP–2006–0292; pages 20-21).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.368) for the combined residues of S-metolachlor, in or on a variety of raw agricultural commodities. Meat, milk, poultry and egg tolerances have also been established. Risk assessments were conducted by EPA to assess dietary exposures from S-metolachlor in food as follows:

Both the acute and chronic analyses assume tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor. In cases where separate tolerance listings occur for both metolachlor and S-metolachlor on the same commodity, the higher value of the two is used in the analyses.

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.

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 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: An acute dietary analysis for S-metolachlor was conducted using tolerance level residues and 100 % crop treated (CT) for all existing and proposed uses.

ii. *Chronic exposure*. In conducting the chronic 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 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 chronic exposure assessments: A chronic dietary analysis for S-metolachlor was conducted using tolerance level residues and 100 %CT data for all existing and proposed uses.

iii. *Cancer*. Metolachlor has been classified as a Group C, possible human carcinogen based on liver tumors in rats at the highest dose tested (HDT). The chronic NOAEL of 15 mg/kg/day that was established based on tumors in the rat (seen at the HDT of 150 mg/kg/day) is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. EPA has concluded that the chronic dietary PAD is protective for cancer dietary risk. Therefore, a separate cancer aggregate risk assessment was not conducted.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for s-metolachlor drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of s-metolachor. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

A drinking water assessment was conducted based on monitoring data from several sources, as well as on Tier 1 FIRST and SCI-GROW modeling results. This assessment is a worst-case scenario and demonstrates high end numbers. The analytical methods used to obtain the monitoring data are not able to distinguish between metolachlor and S-metolachlor; therefore, the estimated environmental concentrations (EECs) presented in this risk assessment are representative of both racemic metolachlor and S-metolachlor.

EECs for metolachlor and S-metolachlor were calculated for both the parent compound and the ethanesulfonic acid (ESA) and oxanilic acid (OA) degradates. Although it was determined by the EPA that the ESA and OA metabolites appear to be less toxic than parent metolachlor, they are included in the risk assessment since they were found in greater abundance than the parent in water monitoring studies.

The crops with the highest maximum seasonal application rates are turf (S-metolachlor only) and corn (racemic metolachlor and S-metolachlor) with a maximum seasonal application rate of 4.0 lbs ai/A. Based on PRZM/EXAMS modeling the maximum peak and annual average concentrations of metolachlor/ S-metolachlor in surface water were 199 ug/l and 9.2 ug/l, respectively. Based on FIRST modeling results, the estimate of the drinking water concentration from surface water sources of metolachlor ESA, a major degradate of metolachlor, is not likely to exceed 31.9 ug/L for the annual peak concentration and 22.8 ug/L for the annual average exposure for use on turf/corn at a maximum annual application rate of 4.0 lbs ai/A. Based on FIRST modeling results, the estimate of the drinking water concentration from surface water sources of metolachlor OA, another major degradate of metolachlor, is not likely to exceed 91.4 ug/L for the annual peak concentration and 65.1 ug/L for the annual average exposure for use on turf/corn at a maximum annual application rate of 4.0 lbs ai/A (ground application with no spray drift).

The SCI-GROW screening model was used to estimate groundwater concentrations. The estimated concentration of metolachlor/ S-metolachlor in drinking water from shallow groundwater sources is 5.5 ug/l for application on corn at a seasonal maximum rate of 4.0 lbs ai/A. This concentration is appropriate for both the peak and annual average exposures. The EEC for metolachlor degradate ESA based on metolachlor use on turf/corn is not expected to exceed 65.8 ug/l for peak and annual average exposures. The EEC for metolachlor OA from metolachlor use on turf/corn is not expected to exceed 31.7 ug/l for peak and annual average exposures.

TABLE 1: METOLACHLOR EEC'S

	Surface Water (peak)	Surface Water (average)	Ground Water
Parent	199	9.2	5.5
metolachlor ESA	31.9	22.8	65.8
metolachlor OA	91.4	65.1	31.7
Total EECs (ppb)	322.3	97.1	103.0

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™). For acute dietary risk, since the surface water EDWCs are higher than the groundwater EDWC, the peak concentration of 322.3 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, since the ground water EDWCs are higher than the surface water EDWC the ground water concentration of 103.0 ppb was used to access the contribution to drinking 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).

The formulated S-metolachlor end-use product is labeled under the trade name Pennant MAGNUM™ (EPA Reg. No. 100-950) to distinguish the new product from the original metolachlor formulation named Pennant™ (EPA Reg. No. 100-691). Pennant MAGNUM™ (7.62 lbs. active ingredient per gallon) is labeled for use on commercial (sod farm) and residential warm-season turfgrasses and other

noncrop land including golf courses, sports fields, and ornamental gardens. Although not labeled as a restricted-use pesticide, Pennant MAGNUM™, as currently marketed, is not intended for homeowner purchase or use (intended for use by professionals). On this basis, with regard to the requirements of FQPA, metolachlor and S-metolachlor are assessed only for post application exposure and risk. Pennant MAGNUM™ and Pennant™ are both emulsifiable concentrates (EC).

For this risk assessment, small children are the population group of concern. Although the type of site that S-metolachlor may be used on varies from golf courses to ornamental gardens, the scenario chosen for risk assessment (residential turf use) represents what the Agency considers the likely upper-end of possible exposure. Post application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. Since toxicity was not observed in a dermal toxicity study, up to a dose level of 1,000 mg/kg/day, the only parameter of risk addressed in this assessment is the possible oral exposure of small children from treated turf, or soil.

The estimate for hand-to-mouth exposure on the day of treatment is 0.037 mg/kg/day (MOE = 1,400) for S-metolachlor and 0.06 mg/kg/day (MOE = 840) for metolachlor. (MOE estimates are based on the short-term NOAEL of 50 mg/kg/day).

The estimate for object-to-mouth exposure on the day of treatment is 0.0092 mg/kg/day (MOE = 5,400) for S-metolachlor and 0.015 mg/kg/day (MOE = 3,300) for metolachlor. (MOE estimates are based on the short-term NOAEL of 50 mg/kg/day).

The estimate for soil ingestion exposure on the day of treatment is 0.00012 mg/kg/day (MOE = 400,000) for S-metolachlor and 0.0002 mg/kg/day (MOE = 250,000) for metolachlor. (MOE estimates are based on the short-term NOAEL of 50 mg/kg/day).

The estimate for hand-to-mouth, object-to-mouth, and soil ingestion combined (on the day of treatment) is 0.046 mg/kg/day (MOE = 1,100) for S-metolachlor and 0.075 mg/kg/day (MOE = 670) for metolachlor. (MOE estimates are based on the short-term NOAEL of 50 mg/kg/day).

The MOE estimates are greater than 100 and indicate that the potential metolachlor/S-metolachlor exposure (to children) associated with residential use is not of concern. Although considered an upper-bound, the exposure estimate for the three scenarios, combined, is recommended for aggregate (residential, food, and drinking water) risk estimates.

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 S-metolachlor and any other substances and S-metolachlor 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 S-metolachlor 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 uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*—i. *Metolachlor*. The prenatal developmental studies in the rat and rabbit revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. In the rabbit prenatal developmental toxicity study, at 360 mg/kg/day, maternal animals had persistent anorexia and decreased body weight gain; the NOAEL was 120 mg/kg/day. In the rat prenatal developmental toxicity study, frank toxicity [death, clinical signs (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain] was observed at the limit dose of 1,000 mg/kg/day in maternal animals; the NOAEL was 300 mg/kg/day. The developmental effects at 1,000 mg/kg/day included slightly decreased number of implantations per dam, decreased number of live fetuses/dam, increased number of resorptions/dam and significant decrease in mean fetal body weight.

In the two-generation reproduction study in rats, there was no evidence of parental or reproductive toxicity at approximately 80 mg/kg/day, the HDT. At this dose, there was a minor decrease in fetal body weight beginning at lactation day 4; the NOAEL was approximately 25 mg/kg/day. Since a similar body weight decrease was not seen on lactation day zero, the cause of the effect on later lactation days is most likely due to exposure of the pups to metolachlor in the diet and/or milk and therefore is not evidence of an increased quantitative susceptibility in post-natal animals.

ii. *S-metolachlor*. There was no evidence of increased quantitative or qualitative fetal susceptibility in the prenatal developmental studies in rats and rabbits. In the rat, maternal toxicity [increased clinical signs of toxicity (pushing head through bedding) and decreased body weights/body weight gains, food consumption and food efficiency was observed at 500 mg/kg/day; the NOAEL was 50 mg/kg/day. There were no developmental effects at 1,000 mg/kg/day, the HDT. In the rabbit, clinical signs of toxicity (little/none/soft stool) were observed at 100 mg/kg/day; the NOAEL was 20 mg/kg/day. No developmental effects were observed at 500 mg/kg/day, the HDT.

3. *Conclusion*. There is a complete toxicity data base for S-metolachlor and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

i. The toxicology database is complete for the FQPA assessment.

ii. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to metolachlor or S-metolachlor in the available toxicity data.

iii. A developmental neurotoxicity study is not required for metolachlor or S-metolachlor.

iv. The dietary (food and drinking water) and non-dietary exposure (residential) assessments will not underestimate the potential exposures for infants and children from the use of metolachlor or S-metolachlor.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to S-metolachlor will occupy <1% of the aPAD for the US population and other population subgroups, and 2% of the aPAD for all infants <1 year old. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to S-metolachlor from food and water will utilize 4% of the cPAD for the U.S. population, 10% of the cPAD for all infants < 1 year old, and 8% of the cPAD for children 1-2 years old. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term aggregate risk assessment considers potential exposure from food, drinking water, and short-term, non-occupational (residential) pathways of exposure for a duration of 1 to 30 days.

Potential short-term, non-occupational risk scenarios for S-metolachlor consist of oral exposure of children to treated lawns only. In this aggregate short-term risk assessment, exposure from food, drinking water, and residential lawns has been considered. The exposure to food and water has already been considered in the chronic dietary risk assessment. Since only children have the potential for non-occupational, short-term risk, they are the only population subgroup for which an aggregate short-term risk assessment was conducted. Toddlers' S-metolachlor incidental oral exposure is assumed to include hand-to-mouth exposure, object-to-mouth exposure and exposure through incidental ingestion of soil.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO S-METOLACHLOR

Population	Short-Term Scenario				
	NOAEL mg/kg/day	LOC[1]	Average Food and Water Exposure mg/kg/day	Residential Exposure mg/kg/day[2]	Aggregate MOE (food, water and residential)[3]
All infants <1 yr old	50	100	0.010003	0.046	890

[1] The level of concern (LOC) MOE is 100, based on inter- and intra-species safety factors totaling 100.
[2] Residential Exposure = [Incidental Oral exposure from all possible sources-combined hand-to-mouth, object-to-mouth, and soil ingestion oral exposure]. No residential oral exposure is expected for adults
[3] Aggregate MOE = [NOAEL ÷ (Avg Food and Water Exposure + Residential Exposure)]

4. *Aggregate cancer risk for U.S. population*. S-metolachlor is classified as classified as a Group C, possible human carcinogen. EPA has concluded that the chronic dietary PAD is protective for cancer dietary risk and, as noted above, chronic exposure is below the chronic dietary PAD.

5. *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 S-metolachlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methodology is available for enforcing the current and proposed tolerances. The Pesticide Analytical Manual (PAM, Vol. II) lists a GC/NPD method (Methods I) for determining residues in/on plants and a GC/MSD method (Method II) for determining residues in livestock commodities. These methods determine residues of S-metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis. A modified version of this method (Syngenta Method No. 1848-01) which uses liquid chromotography/mass spectrometry/mass spectrometry (LC/MS/MS) has also been used. Adequate data are available on the recovery of metolachlor through Multi-residue Method Testing Protocols. The FDA PESTDATA database indicates that S-metolachlor is completely recovered through Method 302, PAM Vol. I.

B. International Residue Limits

There are currently no Codex, Canadian or Mexican MRLs for S-metolachlor; therefore there are no international harmonization issues for these actions.

V. Conclusion

Therefore, the tolerances are established for combined residues of S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer, and its metabolites, determined as the derivatives, 2-[2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, in or on pumpkin and squash, winter at 0.1 ppm.

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. 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 23, 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 180.368 is amended in paragraph (a)(3) by adding commodities to the table to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a)* * *

(3) * * *

Commodity	Parts per million
* * *	* *
Pumpkin	0.1
* * *	* *
Squash, winter	0.1
* * *	* *

* * * * *

[FR Doc. E6–14443 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0537; FRL–8086–2]

Ethofumesate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of the herbicide, ethofumesate in or on carrot, roots (with regional restrictions for use in the States of Washington and Oregon), beet, garden, tops and beet, garden, roots; onion, bulb; garlic, bulb; shallot, bulb; and shallot, fresh leaves. The Interregional Research Project #4 (IR-4), 681 Highway 1 South, North Brunswick, NJ 08902–3390 requested these tolerances 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 30, 2006. Objections and requests for hearings must be received on or before October 30, 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–2005–0537. 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: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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–2005–0537 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 30, 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–2005–0537, 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 March 22, 2006 (71 FR 14522) (FRL–7767–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of (pesticide petitions (PP) 3E6564, 3E6565 and 5E6914) by IR-4, 681 Highway 1 South, North Brunswick, NJ 08902–3390 on behalf of the registrant, Bayer CropScience. The petition requested that 40 CFR 180.345 be amended by establishing tolerances for combined residues of the herbicide ethofumesate (2-ethoxy -2, 3-dihydro-3, 3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the raw agricultural commodities: Carrots (with regional restrictions for use in the States of Washington and Oregon) at 10 parts per million (ppm) (PP 3E6565), garden beets tops at 4 ppm, garden beet roots at 0.5 ppm (PP 3E6564), onion, dry bulb at 0.30 ppm (PP 5E6914), garlic, bulb at 0.30 ppm (PP 5E6914), and shallot at 0.30 ppm (PP 5E6914). That notice included a summary of the petitions prepared by Bayer CropScience, P. O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, the registrant. There were no comments received in response to the notice of filing.

Supporting documents including the Reregistration Eligibility Decision (RED) for Ethofumesate, EPA 738-R-05-010, Sept. 2005, can be viewed on-line along with the Agency's Human Health Risk Assessment of ethofumesate and other supporting documents at *www.regulations.gov* under the index of the docket for this action, Docket ID number: EPA–HQ–OPP–2005–0537. The Agency's reregistration and tolerance reassessment of ethofumesate are completed. Due to its uses, risks, and other factors, ethofumesate was reviewed/reassessed through the modified 4-Phase process as outlined in the **Federal Register** on May 14, 2004 (69 FR 26819)(FRL–7357–9). Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ethofumesate.

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 tolerances for combined residues of ethofumesate on: Carrot (with regional restrictions for use in Washington and Oregon) at 7.0 ppm, beet, garden, tops at 4.0 ppm, beet, garden, roots at 0.5 ppm, onion, dry bulb at 0.25 ppm, garlic, bulb at 0.25 ppm, and shallot at 0.25 ppm. It can be noted that the tolerance level for certain commodities was revised, based on current data evaluations and differ from the proposed level presented in the Notice of Filing on March 22, 2006 or as recommended in the RED for ethofumesate. These revisions include: Carrot tolerance at 7.0 ppm, reduced from 10.0 ppm; and garlic, bulb; onion, dry bulb and shallot tolerances set at 0.25 ppm, reduced from 0.30 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 their 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 ethofumesate 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 *www.regulations.gov*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at 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 ethofumesate used for human risk assessment can be found in the index of this document, Docket ID number EPA–HQ–OPP–2005–0537, entitled, ''Human Health Risk Assessment for Proposed Uses on Onion, Bulb'', (Table 3.4.15) (dated April 24, 2006).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.345 for the combined residues of ethofumesate, in or on a variety of raw agricultural commodities; plant commodities range from 0.1 ppm in/on sugar beet roots to 1.0 ppm in/on sugar beet tops and grass straw. Tolerances on animal commodities including fat, meat and meat byproducts are set at 0.05 ppm. A process feeds tolerance in sugar beet molasses is set at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from ethofumesate 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 1–day or single exposure.

No appropriate endpoint was identified for the general population and infants since no such effects were identified in the toxicological studies for ethofumesate; therefore, a quantitative acute dietary exposure assessment was not conducted for these populations. For females, 13 plus years of age, in conducting the acute dietary (food + water) exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID(™) Version 2.03), which incorporates food consumption data as reported by respondents in the 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: A conservative acute dietary assessment was performed using tolerance level residues and 100 % crop treated (PCT) in the assessment.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™. The following assumptions were made for the chronic exposure assessments: A conservative chronic dietary (food + water) assessment was performed using tolerance level residues and 100 PCT.

iii. *Cancer.* Ethofumesate is classified as ''not likely to be a human carcinogen,'' based on bioassays in the rat and the mouse. An exposure assessment for the purpose of assessing cancer risk is not needed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for ethofumesate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of ethofumesate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found *http://www.epa.gov/oppefed1/models/water/index*. Typically EPA evaluates the potential for human exposure to pesticides in drinking water through an assessment of available surface water and ground water monitoring data and modeling.

For ethofumesate, no monitoring data were available for use in this drinking water assessment. Therefore, potential human exposures to ethofumesate were evaluated through modeling. Estimated exposure concentrations (EECs) in surface water were calculated using Pesticide Root Zone Model/Exposure Analyses Modeling System (PRZM/EXAMS). Ground water concentrations were modeled using screening concentration in ground water (SCI-GROW) (version 2.3). Drinking water residues were then incorporated into the DEEM-FCID(™) into the food categories ''water, direct, all sources'' and ''water, indirect, all sources.'' The Agency concluded that degradates of ethofumesate are of toxicological equivalence to the parent. Because these degradates were detected in environmental fate studies in relatively low amounts (10%), only the parent needs to be assessed for drinking water.

Based on the PRZM/EXAMS - Index Reservoir and SCI-GROW models, the estimated environmental concentrations (EECs) of ethofumesate for acute exposures are estimated to be 154 parts per billion (ppb) for surface water and 8.4 ppb for ground water. The EECs for chronic exposures are estimated to be 45.5 ppb for for surface water and 8.4 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™). For the acute assessment, the peak concentration of 154 ppb was used to access the contribution to drinking water; for the chronic assessment, the annual mean value of 45.5 ppb was used to access the contribution to drinking 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).

Ethofumesate is currently registered for use on the following residential non-dietary sites: Turf grasses/lawns. The risk assessment was conducted using the following residential exposure assumptions: All ethofumesate products are intended for either agricultural use or require professional application for ornamental turf. For potential ethofumesate residential post-application exposure, the Agency conducted screening level calculations on the scenarios most likely to result in highest possible exposure to this herbicide. The other aspects of the turf exposure scenario involve calculating dose from non-dietary ingestion that arises from the hand-to-mouth, object-to-mouth and soil ingestion pathways. These processes are:

For toddlers: Incidental ingestion (hand-to-mouth);

Incidental ingestion (turf-to-mouth);

Incidental ingestion (soil-to-mouth);

Incidental dermal;

For adults: Jazzercise (on treated turf).

EPA believes that this screening level assessment will be protective of other possible residential exposures to ethofumesate such as golfing, and mowing the lawn. Exposures were calculated by considering the potential sources of exposure then calculating dermal exposure, and risks.

The Agency calculated Margin of Exposure (MOE)s for each exposure pathway and for all pathway combinations.

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 ethofumesate and any other substances and ethofumesate 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 ethofumesate 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 database 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*. The Agency determined based on the weight-of-the-evidence considerations that there are no concerns or uncertainties for prenatal and/or postnatal toxicity resulting from exposure to ethofumesate. There is evidence for increased quantitative susceptibility following *in utero* exposure to rabbits. At 300 milligrams/kilograms/day (mg/kg/day), no maternal toxicity was reported but developmental toxicity was observed as increased resorptions, post-implantation loss and skeletal abnormalities (incomplete ossification of vertebral arches). No evidence of increased susceptibility was observed in the rat in either the developmental or reproductive toxicity study. In the rat developmental toxicity study, no developmental effects were reported at the highest dose tested (limit dose of 1,000 mg/kg/day). In the 3-generation rat reproductive toxicity study, maternal, reproductive and offspring toxicity were not observed at any dose tested up to 5,000 ppm (396.8 and 462.5 mg/kg/day, males and females, respectively).

The Agency concluded that although increased prenatal quantitative susceptibility was observed in the rabbit developmental toxicity study, there is no concern that the risk assessment will not adequately safeguard against potential prenatal and postnatal toxicity because the developmental toxicity NOAELs/LOAELs are well characterized and are used as endpoints for risk assessment for the appropriate population subgroups.

3. *Conclusion*. The toxicity database for ethofumesate is adequate in terms of endpoint studies and dose response information to characterize any potential prenatal or postnatal risk for infants and children. However, a 28–day inhalation toxicity study has been required to assess inhalation exposure, due to the potential for inhalation exposure during application. In the absence of this study, the inhalation exposure used a 100% default assumption. Additionally, a dermal

absorption (or penetration) study to determine the dermal absorption potential has been required since data on dermal penetration of ethofumesate are unavailable at this time. A default assumption of 100% dermal absorption was selected due to the unavailability of comparative oral and dermal toxicity data with a common endpoint in the same species. There are several uncertainties present in this risk assessment:

i. While ethofumesate toxicological databases are substantially complete, confidence in several areas of the risk assessment would improve with more data. In addition to the requirement for the 28–day inhalation study, data are needed for residue chemistry (i.e, a new cattle feeding study and recovery data for metabolites) as well as for metabolism (i.e. extensive field rotational crop studies).

ii. The extrapolation from oral studies for both the dermal and inhalation portions of the risk assessment in conjunction with a dose spacing concern for the developmental study used to develop residential or occupational assessments for women 13+ years render a highly conservative analysis.

iii. There are uncertainties associated with the drinking water assessment but the limitations related to modeling drinking water exposure did not contribute to an overall concern because the highest aggregate food and water values did not exceed Agency's LOC. Based on the available data, EPA is confident that the values used in this risk assessment are protective. No increase in susceptibility of rats was seen in developmental studies or in a rat 3-generation reproductive study. Although increased prenatal quantitative sensitivity was observed in the rabbit developmental toxicity study, the developmental toxicity NOAELs and LOAELs are well characterized and are used as endpoints for risk assessment for the appropriate population subgroups. The Agency evaluated the potential for increased susceptibility of infants and children from exposure to ethofumesate as required by the FQPA of 1996. All doses for risk assessment purposes were assessed using UFs of 10X for interspecies extrapolation and 10X for intraspecies variability. Acceptable developmental and reproduction studies have been submitted and reviewed.

The Agency evaluated the quality of the exposure data to determine if the the special FQPA (10X) Safety Factor can be reduced based on the following considerations:

Dietary food exposure assessment utilizes proposed tolerance level or higher residues and 100 PCT information for all commodities. By using these screening-level assessments, chronic exposures/risks will not be underestimated.

Dietary drinking water assessment (Tier 1 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations.

Residential exposure assessment utilizes: Activity specific transfer coefficients and chemical-specific turf transferable residue (TTR) studies for the post-application scenario. The refined residential assessment is based on reliable data and is unlikely to underestimate exposure/risk.

The Agency concluded that there is no concern for prenatal and/or postnatal toxicity resulting from exposure to ethofumesate. Therefore, no special FQPA Safety Factor (i.e. 10X) is needed since there are no residual uncertainties for prenatal and/or postnatal toxicity. Hence, a Safety Factor (1X) was applied.

E. Aggregate Risks and Determination of Safety

In examining aggregate risk, the Agency takes into account all available reliable information concerning exposures from pesticide residues in food and other exposures including drinking water and potential residential exposure to pesticides from such uses as lawn care applications (turf), golf course and others. Aggregate risk assessment considerations must also include potential exposures from oral, dermal and inhalation routes.

1. *Acute risk*. For the acute aggregate risk scenario, food and drinking water exposures were taken into account in the dietary exposure assessment. The estimated dietary exposures (food and water) for females 13–49 years, the only population subgroup of toxicological concern identified at this time, at 4% of the acute Population Adjusted Dose (aPAD). The contribution of food and food forms to this estimate, at the 95th percentile, is 2.1%. A risk estimate that is less than 100% of the aPAD, the dose at which an individual could be exposed on any given day with no adverse health effects, does not exceed the Agency's LOC.

2. *Chronic risk*. For the chronic aggregate risk scenario, food, drinking water, and residential exposures were taken into account. Chronic exposure in residential settings is not expected and the aggregate chronic assessment included food and drinking water only. Since the dietary exposure assessment already includes the highest chronic exposure from the drinking water modeling data, i.e., an estimated maximum 1 in 10 year average concentration of 45.5 ppb no further calculations are necessary. The dietary exposure estimate for all population subgroups was <1% of the chronic Population Adjusted Dose (cPAD) with the most highly exposed subgroup being all infants <1 yrs old. Risk estimates for all population subgroups are below the Agency's LOC (100% of the cPAD).

3. *Short- and intermediate-term aggregate risk*. Short- and Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Ethofumesate is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for ethofumesate.

For short- and intermediate-term assessments, the oral, dermal and inhalation pathways can be combined due to the common toxicity endpoint via the oral, dermal (oral equivalent) and inhalation (oral equivalent) routes for the appropriate population of concern. For the short-and intermediate-term aggregate risk scenarios, food, drinking water and residential exposures are taken into account. The aggregate short- and intermediate-term MOEs, combining food, drinking water and residential exposures ranged from 160 for all infants <1 yrs old to 270 for the U.S. population. With the exception of women of child-bearing years, residential post-application MOEs for toddlers and adults to ethofumesate on treated turf, regardless of the pathway of exposure, do not exceed the EPA's LOC.

In the case of women of child-bearing years, MOEs are 73 for 1.5 pounds active ingedient/Acre (lb ai/A) application rate for turf and 27 for the 3.0 lb ai/A application rate for turf. The rate of 1.5 lb ai/A covers the majority of uses; however, the label does permit a 3.0 lb ai/A rate specifically for suppression of Bermuda grass in St Augustine grass turf. While the residential postapplication scenarios for females resulted in apparent risks of concern, the Agency believes that these scenarios are very conservative and unlikely to occur. The developmental endpoint used to estimate risk for females was based on a study with a NOAEL (30 mg/kg/day) that is 10X lower than the LOAEL (300 mg/kg/day); therefore the NOAEL may be an artifact of dose selection. Additionally, for the

residential exposures, the endpoint is oral while the assessed exposures are dermal and conservative standard operating procedure (SOP)-based default assumptions such as 100% dermal absorption, default turf transferable residue dissipation assumptions, contact with turf immediately post-treatment and maximum application rates were used in this assessment.

Further, it should be noted that estimated exposures are extremely conservative due not only to assumption of 100% dermal absorption but also because they assume exposure at levels immediately after application, maximal levels of dermal exposure activity, maximum dermal contact, and maximum dermal surface contact areas. Additionally, ethofumesate has minimal lawncare and commercial turf uses, which is the scenario where high dermal exposure activities would occur. The predominant use is on golf courses and sod farms. High exposure activities would likely not occur on a golf course. Ethofumesate residues resulting from sod farm application would likely dissipate significantly before sod was transplanted to residential or commercial turf.

However, to address this concern, the Agency is requiring a dermal absorption study to permit more realistic estimation of dermal absorption. Nonetheless, Agency scientist's consider this a highly conservative estimate of post-application risk for the population females 13-49 years of age exposed to ethofumesate on turf and based on the available data, the EPA is confident that the values used in this risk assessment are protective.

4. *Aggregate cancer risk for U.S. population*. Ethofumesate is classified as ''not likely to be a carcinogen to humans'' based on the lack of carcinogenicity in the mouse carcinogenicity study and lack of convincing evidence for carcinogenicity in the rat chronic toxicity/carcinogenicity study. In addition, no evidence of genotoxicity of ethofumesate was observed in available genotoxicity studies. Therefore, ethofumesate is not expected to pose a cancer risk and a cancer aggregate risk assessment was not performed.

5. *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 ethofumesate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A tolerance enforcement method is listed as Method I in PAM Vol. II (Section 108.345) for determining the currently regulated residues in plants, which include ethofumesate and its metabolites (free and conjugated). Residues are determined using gas chromatography with flame ionization detector (GC/FID) in the sulfur mode with an internal standard. The reported limit of quantification(LOQ) for each analyte is 0.02 ppm.

Aequate enforcement methodology (gas chromatography with flame ionization detector (GC/FID)) 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

There is currently no Codex, Canadian, or Mexican maximum residue levels (MRLs) established for ethofumesate, therefore there are no international harmonization issues for this action.

V. Conclusion

Therefore, the tolerance is established for combined residues of ethofumesate, (2-ethoxy -2, 3-dihydro-3, 3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the raw agricultural commodities: Carrot, roots (with regional restrictions for us in the States of Washington and Oregon) at 7.0 ppm; beet, garden, tops at 4 ppm; beet, garden, roots at 0.5 ppm; onion, bulb at 0.25 ppm; garlic, bulb at 0.25 ppm; shallot, bulb and shallot, fresh leaves at 0.25 ppm.

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 23, 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 180.345 is amended as follows:

i. In paragraph (a) by designating the introductory text and table as paragraph (a)(1) and by alphabetically adding commodities to the table; and

ii. Paragraph (c) is amended by adding text and a table.

The amendments read as follows:

§ 180.345 Ethofumesate; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Beet, garden, roots	0.5
Beet, garden, tops	4.0
* * *	* *
Garlic, bulb	0.25
* * *	* *
Onion, bulb	0.25
Shallot, bulb	0.25
Shallot, fresh leaves	0.25
* * *	* *

* * * * *

(c) *Tolerances with regional registration.* Tolerances with regional registration as defined in 40 CFR 180.1(m) are established for the combined residues of ethofumesate,(2-ethoxy -2, 3-dihydro-3, 3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the raw agricultural commodities:

Commodity	Parts per million
Carrot, roots	7.0

* * * * *

[FR Doc. E6–14431 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1585; MB Docket No. 05–32; RM–10988]

Radio Broadcasting Services; Homerville, GA and Jacksonville, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Association for the Studies of American Heritage Corporation, the Audio Division allots Channel 246A at Homerville, Georgia, as that community's second local aural transmission service. To accommodate the Homerville allotment, Station WKQL(FM), Jacksonville, Florida, Channel 245C, is reclassified to specify operation on Channel 245C0. Channel 246A is allotted at Homerville with a site restriction of 11.1 kilometers (6.9 miles) northwest of the community at coordinates 31–07–16 NL and 82–48–51 WL. Station WKQL(FM) is reclassified to specify operation on Channel 245C0 rather than Channel 245C, at Jacksonville, Florida at its license coordinates 30–16–34 NL and 81–33–53 WL. 11.7 kilometers. A filing window period for Channel 246A at Homerville 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 25, 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. 05–32, adopted August 9, 2006, and released August 11, 2006. At the request of Association for the Studies of American Heritage Corporation, the Audio Division allots Channel 246A at Homerville, Georgia, as that community's first local aural transmission service. 70 FR 8333 (February 18, 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 20554, telephone 1–800–378–3160 or *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 Florida is amended by removing Channel 245C at Jacksonville and adding Channel 245C0 at Jacksonville.

■ 3. Section 73.202(b), the Table of FM Allotments under Georgia is amended by adding Channel 246A at Homerville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E6–14156 Filed 8–29–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 211

[Docket No. FRA–2006–24838]

RIN 2130–AB79

Establishment of Emergency Relief Dockets and Procedures for Handling Petitions for Emergency Waiver of Safety Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: FRA is issuing procedures governing the creation of Emergency Relief Dockets (ERD) as well as procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or event. FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events.

DATES: This interim final rule is effective August 30, 2006; written comments must be received on or before October 30, 2006. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Comments:* Any comments related to Docket No. FRA–2006–24838, may be submitted by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the General Information heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Public Hearing: Due to the limited scope of this interim final rule, FRA is not scheduling a public hearing at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed as noted above by the deadline for written comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., RRS–2, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6302), or Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

Background

FRA is establishing emergency waiver procedures so that the agency can quickly address waiver requests in emergency situations while continuing to provide an opportunity for public input in the process. Based on lessons learned from last year's Hurricane Katrina, FRA is establishing procedures that allow the agency to expeditiously handle waiver requests that are directly related to an emergency situation or event. This will permit FRA to provide railroads necessary operational relief in a more timely manner during emergencies while at the same time maintaining public safety.

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of Hurricane Katrina, FRA published a notice in the **Federal Register** establishing a temporary means for handling petitions for waiver from the Federal rail safety regulations that were directly related to the effects of the hurricane or were necessary to effectively address the relief efforts being undertaken in the area. *See* 70 FR 53413 (September 8, 2005). FRA recognized that these types of petitions had to be afforded special consideration and had to be handled expeditiously in order to ensure that the emergency operational needs of the railroads were addressed while at the same time ensuring the safety of the public, including railroad employees. Such emergency waivers would help ensure that routine safety regulations would not stand in the way of railroad efforts to cope with the emergency and to provide timely relief and recovery efforts. FRA's existing procedures related to the handling of petitions for waiver from the Federal rail safety regulations contained in 49 CFR part 211, do not lend themselves to quick and immediate decisions by the agency, nor were they intended to. The existing procedures establish a process whereby FRA publishes a notice of any petition for waiver in the **Federal Register**. This notice then allows interested parties a period of time in which to comment on any such petition, generally thirty (30) days, and provides for a public hearing should one be requested. This process generally takes several months to accomplish. Accordingly, FRA

instituted a temporary set of expedited procedures for handling petitions for waivers that were directly related to the effects and aftermath of Hurricane Katrina.

To prepare for future emergencies, FRA is issuing procedures for handling petitions for waivers in emergency situations. These procedures are based on the temporary procedures that were instituted in response to Hurricane Katrina. FRA believes that the emergency procedures contained in this interim final rule provide the agency with the ability to promptly and effectively address waiver requests directly related to an emergency while ensuring that the public and all interested parties are afforded proper notice of any such request, and are provided a sufficient opportunity to comment on any such request.

When faced with a sudden emergency event or situation the Administrator may activate the emergency waiver procedures contained in this interim final rule. FRA will consider local, state and Federal declarations of emergency when determining whether circumstances qualify as an emergency event. To declare that the emergency waiver procedures are in effect, the Administrator will issue a statement in the Document Management System (DMS) at *http://dms.dot.gov*. The DMS will automatically notify parties that have signed up for the Emergency Waiver Listserv. (Instructions on how to sign up for automatic notification of additions to a docket are found at *http://dms.dot.gov*.) In addition, FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/*. FRA will also publish a notice in the **Federal Register** alerting interested parties that the emergency waiver procedures will be utilized. FRA anticipates that the circumstances that constitute the occurrence of, or imminent threat of an emergency event will occur infrequently.

The types of emergency events intended to be covered by this interim final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic outbreaks, releases of dangerous radiological, chemical, or biological material, or war-related activities. Not only will our Nation's railroads be directly affected by many emergency events, they will also play a key role in the aftermath of those events, by providing necessary supplies and by moving displaced families and relief personnel to and from an affected area. Although the type of relief that might be granted under these provisions would vary greatly based on the type of emergency event involved, it is expected that the relief would generally involve such things as: Temporary postponement of required maintenance, repair, or inspection related to railroad equipment, track, and signals; temporary relief from certain record keeping or reporting requirements; or short-term relief from various operational requirements. Relief granted will not extend for more than nine months. For matters that may significantly impact the missions of the Department of Homeland Security (DHS), FRA will consult and coordinate with DHS as soon as practicable.

FRA will establish a new ERD each calendar year. FRA will publish a notice in the **Federal Register** identifying the new docket number by January 31st of each year. When the Administrator determines the occurrence of, or imminent threat of, an emergency event, FRA will accept emergency waiver petitions for review. If FRA determines that a petition is directly related to an emergency situation, the petition will be placed in the ERD for that year. FRA will receive comments on a petition for 72 hours from the time the petition is posted on the ERD. During that time, FRA will arrange a telephone conference for any party that requests a public hearing. If, after the telephone conference, a public hearing is still desired, then FRA will arrange for such a hearing pursuant to 49 CFR part 211 as soon as practicable. These procedures are intended to balance the need for expedited waiver procedures during an emergency event to ensure public safety, and the need for adequate time to allow full public participation. The ERD and emergency waiver procedures contained in this interim final rule do not waive any regulatory requirements. They only reduce the length of the notice and comment period to permit FRA to act on the request as quickly as possible.

Section-by-Section Analysis

Processing of Emergency Waivers § 211.45

§ 211.45(a). This paragraph makes clear that the emergency waiver procedures are intended to go into effect when there is an occurrence of, or imminent threat of, an emergency event and public safety would benefit from providing the railroad industry with operational relief. The types of emergency events intended to be covered by this interim final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic releases of dangerous radiological, chemical, or biological material, or war-related activities.

§ 211.45(b). This paragraph contains information regarding FRA's creation of ERDs. Establishing a new ERD each year allows FRA to receive petitions for emergency waivers as soon as the occurrence of, or imminent threat of an emergency event is determined to have occurred. A yearly ERD is also a convenient way to organize the emergency waiver petitions and related documents. For reference purposes any petition can be located by the year in which the emergency event or situation occurred. The docket system will also provide notice to interested parties. The DMS internet site that is identified in this interim final rule allows any interested party to subscribe, without fee, to its list serve application which will automatically notify the party via e-mail when documents are added to the designated ERD. This paragraph also makes clear that FRA will publish by January 31st of each year, a **Federal Register** notice identifying the ERD for that year. This will inform interested parties where to find petitions for emergency waiver during an emergency and will allow such parties to subscribe to the DMS list serve application. Publishing a notice in the previous year's ERD will allow the parties interested in the prior year to automatically receive the new docket number.

§ 211.45(c). This paragraph identifies the Administrator as the individual responsible for determining when the emergency waiver procedures will be utilized. The Administrator is the appropriate person to determine whether a situation or set of circumstances constitutes an emergency for purposes of FRA's use of the emergency waiver procedures. The Administrator has a unique familiarity with the rail-industry through oversight of the following: Managing comprehensive safety programs and regulatory initiatives; enforcement of FRA safety regulations; development and implementation of national freight and passenger rail policy; and oversight of diverse research and development activities in support of improved railroad safety. During significant emergencies the Administrator has extensive interaction with the Department of Homeland Security, Director of National Intelligence, the

Federal Bureau of Investigation, the Surface Transportation Board and other Federal agencies responsible for addressing public safety, health, security and welfare. In addition, the Administrator maintains contemporaneous communication with relevant rail transportation entities, including passenger and freight railroads. This experience and interaction provides a basis from which the Administrator can assess whether a situation or set of circumstances rises to the level of an emergency event that would necessitate activation of the emergency waiver procedures. FRA's statement declaring that emergency procedures are in effect will be issued in the appropriate ERD. The DMS internet site that is identified in the rule text allows any interested party to subscribe, without fee, to its list serve application which automatically notifies the party via e-mail when documents are added to the appropriate ERD. The Administrator's determination that emergency waiver procedures are in effect, would be one of those documents automatically transmitted to interested parties via e-mail. In determining whether an emergency exists the Administrator may consider states of emergency issued by a local, state, or Federal official, and determinations by the Federal government that a credible threat of a terrorist attack exists. A determination made by one of these officials that a state of emergency exists, indicates that special attention is needed to address the situation, and railroad operations may be implicated. The Administrator will consider whether such emergencies significantly affect railroad operations, and whether it would be beneficial to activate the emergency waiver procedures.

§ 211.45(d). This paragraph identifies other methods by which interested parties may be notified of FRA's determination to utilize the emergency waiver procedures. If conditions permit, FRA will issue the Administrator's determination on FRA's Web site to quickly notify the public. FRA will also publish a notice in the **Federal Register** as soon as possible after the Administrator's determination to ensure full notification to all interested parties.

§ 211.45(e). This paragraph identifies the required content of a petition for emergency waiver. To be considered under the emergency waiver procedures, FRA must first determine that the petition is directly related to the occurrence of, or imminent threat of an emergency event. FRA will base its determination on the information provided in the petition. Thus, the petition should contain information that sufficiently demonstrates the relationship between the emergency event and the waiver relief being sought.

§ 211.45(f). This paragraph instructs the public how to submit a petition under the emergency waiver procedures. FRA is permitting submission by e-mail, fax, or mail. Permitting a variety of methods for submitting petitions for emergency waiver is intended to enhance the convenience and effectiveness of the process during the occurrence of, or imminent threat of an emergency event.

§ 211.45(g). This paragraph contains information regarding FRA's handling of waiver petitions under the emergency waiver procedures. After the FRA declares that the emergency procedures are in effect, it will accept petitions for emergency waivers. Petitions that are determined to be directly related to an emergency will be placed in the ERD for that year. The DMS numbers each document that is added to a docket. Thus, each petition submitted to the ERD will have a unique document number. For reference purposes, this document number should be identified on all communications related to that particular waiver petition.

§ 211.45(h). This paragraph explains the comment process. FRA believes that 72 hours is a reasonable length of time to consider comments in an emergency situation. During hurricane Katrina, public safety was well served by FRA's expedited emergency waiver procedures. Similarly, during future emergency situations the public interest will require an expedited review process to ensure public safety. FRA believes that the emergency waiver procedures and the need to quickly address these types of waiver petitions fall within the good cause exemption under section 553 of the Administrative Procedure Act relating to providing prior notice and comment. Nonetheless, FRA is providing notice to interested parties and is permitting a short comment period prior to taking any agency action. Moreover, FRA is providing an opportunity for a public hearing as soon as practicable after initial consideration of an emergency waiver petition.

§ 211.45(i). This paragraph describes how FRA will handle requests for hearing. FRA believes that a telephone conference will provide interested parties with an opportunity to present evidence regarding a particular petition to a neutral decision maker. If a party requests a public hearing after the telephone conference, FRA will provide one as soon as practicable. During an emergency the public interest requires that an expedited waiver process be utilized.

§ 211.45(j). This paragraph identifies the process by which FRA will make decisions on emergency waivers including: FRA's consideration of the petition; notification to the public of FRA's decision; and the limits of any relief granted under the procedures. The ability to grant or deny a petition without delay is essential to ensuring public safety during an emergency. The opportunity to reconsider a petition after the initial decision is made will ensure a robust deliberation. Under circumstances where reconsideration is appropriate, FRA will utilize additional time to consider the parties' input.

FRA's understanding of an emergency may change as the emergency event develops. Accordingly, the public will benefit from FRA's ability to reconsider decisions, and make appropriate adjustments based on further information. This will also ensure that FRA has the opportunity to address all relevant arguments made by interested parties anytime after its initial consideration of a petition. During an emergency it is a priority to address petitions for emergency waiver and make a decision without delay. Relevant comments may be submitted after the 72-hour comment period, and the public will benefit from ensuring that FRA has the opportunity to address those comments as soon as practicable.

Posting the decision letters in the appropriate ERD will provide notice to interested parties. The DMS internet site that is identified in the rule text allows any interested party to subscribe, without fee, to its list serve application which will automatically notify the party via e-mail when documents are added, including the Administrator's determination that emergency waiver procedures are in effect, to the designated ERD.

This paragraph also makes clear that any relief granted under these procedures will be limited to no more than nine months. If relief is needed for a period of time beyond nine months, a petition can be submitted through the traditional waiver process. Where issues of safety and security overlap, it may be necessary for FRA to coordinate with DHS.

General Information

Considering that the ERD and procedures for emergency waiver petitions are procedural modifications that will not change any regulatory requirements, together with the need to issue these procedural changes as soon as possible since we have entered the official hurricane season, FRA is issuing

this document as an interim final rule with a request for comments. Congress authored a good cause exemption to the informal rulemaking procedures to address emergencies (such as a response to a natural disaster) that might arise justifying issuance of a rule without prior public participation. As hurricane season begins again, unfortunately, another emergency event could occur immediately. The public would benefit from having the emergency waiver procedures in place before the emergency exists. Delay in the adoption of these procedures for expediting waivers could cause serious harm to the public and the rail industry. In contrast to the potential harm that could be caused by delay, the impact of the procedural modifications on the public will be minimal. This rule merely expedites the already-existing waiver process during an emergency.

Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA believes that good cause exists for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA is requesting written comments on the content of this interim final rule and, if any are received, FRA will address them when issuing the final rule.

Immediate action is necessary to avoid disruption to the rail industry during a future emergency. Delaying the effective date of this rule during hurricane season would be impracticable, unnecessary, and contrary to the public interest. The rule establishes procedures that will benefit the rail industry and general public during an emergency. Having expedited emergency waiver procedures available during a future emergency will allow FRA to make timely decisions and provide relief from safety regulations.

Privacy

All potential commenters should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this interim final rule are not considered significant because they are intended to merely institute an emergency relief docket, and establish internal FRA procedures for handling waivers directly related to an emergency. This interim final rule will not change any regulatory requirements. The economic impact of the procedures and establishment of the docket contained in this interim final rule will not affect the cost of compliance with the existing regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this interim final rule does not have a significant impact on a substantial number of small entities. Because the procedures and the establishment of an emergency docket contained in this rule does not change regulatory requirements, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This interim final rule does not change any of the information collection requirements.

Environmental Impact

FRA has evaluated this interim final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the emergency docket and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not have a substantial 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. This interim final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128,100,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because the ERD and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated interim final rule in accordance with Executive Order 13211. Because the emergency docket and procedures for emergency waiver petitions will not change any regulatory requirements, FRA has determined that

this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 211

Administrative practice and procedure, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, part 211 of Chapter II of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 211—RULES OF PRACTICE

■ 1. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

■ 2. Section 211.45 is added to subpart C to read as follows:

§ 211.45 Petitions for emergency waiver of safety rules.

(a) *General*. This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event. For purposes of this section an emergency event could be local, regional, or national in scope and includes a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, significant snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, or biological material, war-related activity, or other similar event.

(b) *Emergency Relief Docket*. Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible DOT Document Management System (DMS). The DMS can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at *http://dms.dot.gov*. All documents in the DMS are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the **Federal Register** identifying by docket number the ERD for that year. A notice will also be published in the previous year's ERD identifying the new docket number.

(c) *Determining the existence of an emergency event*. If the Administrator determines that an emergency event identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (d) of this section. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, state, or Federal officials, and determinations by Federal government that a credible threat of a terrorist attack exists.

(d) *Additional notification*. When possible, FRA will post the FRA Administrator's determination described in paragraph (b)(1) of this section on its Web site at *http://www.fra.dot.gov*. FRA will also publish a notice in the **Federal Register** alerting interested parties of the FRA Administrator's determination as soon as practicable.

(e) *Content of petitions for emergency waivers*. Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under § 211.9(a) and (b). The petition should at a minimum describe the following: How the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (e.g. movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements*. Petitions filed under this section, shall be submitted using any of the following methods:

(1) Direct e-mail to FRA at: *RRS.Correspondence@fra.dot.gov;*

(2) Direct fax to FRA at: 202–493–6309; or

(3) To FRA Docket Clerk, Office of Chief Counsel, RCC–10, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590, fax no. (202) 493–6068.

(g) *FRA Handling and Initial Review*. Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The DMS numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2006 will be identified as FRA–2006–XXX–1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments*. Comments should be submitted within 72-hours from the time the petition is entered into and available on the DMS. Any comment received after that period will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the DMS in the ERD. Interested parties commenting on a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) Direct e-mail to FRA at: *RRS.Correspondence@fra.dot.gov.*

(2) Direct fax to FRA at: 202–493–6309.

(3) Submission of comments to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 or electronically via the Internet at *http://dms.dot.gov*. Any comments or information sent directly to FRA will be immediately provided to the DOT DMS for inclusion in the ERD.

(i) *Request for hearing*. Parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72-hours from the time the petition is entered into and available on the DMS. In response to a request for a public hearing, FRA will arrange a telephone conference between all interested parties to provide an opportunity for oral comment. The conference will be arranged as soon as practicable. After such conference, if a party stills desires a public hearing on the petition, then a public hearing will be arranged as soon as practicable pursuant to the provisions contained in 49 CFR part 211.

(j) *Decisions*. FRA may grant a petition for waiver prior to conducting a public hearing if such action is in the public interest and consistent with safety or in situations where a hearing request is received subsequent to the 72-hour comment period. In such an instance, FRA will notify the party requesting the public hearing of its

decision and will arrange to conduct such hearing as soon as practicable.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments received subsequent to the 72-hour comment period or at a later scheduled public hearing.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) Relief granted shall not extend for more than nine months.

(4) For matters that may significantly impact the missions of the Department of Homeland Security, FRA consults with the Department of Homeland Security as soon as practicable.

Issued in Washington, DC on August 28, 2006.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 06–7292 Filed 8–28–06; 1:22 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–25725]

RIN 2127–AJ92

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to three petitions for reconsideration of our August 2005 final rule amending the Federal motor vehicle safety standard for seat belt assemblies. The amendments redefined and clarified certain requirements and established a new test methodology for emergency-locking retractors. The petitions for reconsideration requested that the agency adopt additional amendments. The petitions are granted in part and denied in part, and, through this document, we are amending the standard accordingly.

DATES: *Effective Date:* The amendments made in this final rule are effective October 30, 2006.

Compliance Date: The requirements of the August 2005 final rule, as amended by today's rule, become mandatory for all seat belt assemblies subject to the standard that are manufactured on or after February 22, 2007. Voluntary compliance is permitted before that date.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by October 16, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VI; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Christopher Wiacek, Office of Crashworthiness Standards (Telephone: 202–366–4801) (Fax: 202–493–2290).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

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I. Summary of Decision

This document responds to three petitions for reconsideration of our August 22, 2005 final rule [1] amending Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. That final rule amended the standard to redefine the requirements and to establish a new test methodology for emergency-locking retractors (ELRs). Specifically, the final rule established a new, more tightly defined acceleration-time (A–T) corridor, added a figure illustrating the new acceleration-time corridor, provided a tolerance on angle measurements, and adopted similar instrumentation specifications to those currently found in other FMVSSs containing dynamic tests.

Petitions for reconsideration of the August 2005 final rule were submitted by the Automotive Occupant Restraints Council (AORC) [2], BMW of North America (BMW) [3], and TAKATA–PETRI AG (TAKATA–PETRI).[4] The petitioners requested additional amendments to Standard No. 209.

The purpose of the August 2005 final rule was to clarify the test procedures for ELRs, while ensuring that those devices continue to perform their important safety function of locking up a seat belt in the event of a crash or emergency braking. These amendments to the standard apply to seat belt assemblies for use in passenger cars, multipurpose passenger vehicles, trucks, and buses.

In general, the petitions for reconsideration requested minor technical modifications to the ELR provisions of Standard No. 209, the most significant of which involved: (1) Modifications to various angle tolerances specified in the final rule, *e.g.*, in the acceleration tests (requested by the AORC) and the tilt lock requirements (requested by all three petitioners), and (2) specification of how to determine the point of ELR lock-up (requested by BMW and TAKATA–PETRI). In addition, all three petitioners sought clarification that the final rule did not overturn the agency's earlier interpretation that Standard No. 209 requires dual-sensing ELRs (*i.e.*, ELRs equipped with both vehicle acceleration-sensitive and webbing-sensitive retractors) to meet the requirements of the standard for either type of retractor, not both. One petitioner (AORC) also sought correction of certain typographical errors identified in the laboratory test procedure for the standard (*see* section IV of this document for a complete discussion of issues raised in the petitions and their resolution). We have decided to grant the petitions in part and to deny them in part.

The following points highlight the amendments to Standard No. 209 that we are adopting in response to the petitions for reconsideration.

- In order to resolve potential interpretation problems that could arise in determining ELR lock-up and to maintain an objective and repeatable test methodology, this final rule amends the standard's test procedures to provide that a belt load measurement of

[1] 70 FR 48883 (August 22, 2005) (Docket No. NHTSA–2005–22052–1).

[2] Docket No. NHTSA–2005–20052–3 and 4.

[3] Docket No. NHTSA–2005–20052–5.

[4] Docket No. NHTSA–2005–20052–7.

35 N or more will indicate ELR lock-up (see S4.3(j)(2)(ii)). This approach is consistent with industry practice and is the one utilized by the testing laboratories with which the agency contracts for the performance of compliance testing.

• This final rule eliminates the ± 0.5 degree tolerances specified for the acceleration requirements for ELRs stated in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), which ensure adequate occupant restraint in the event of a crash. Because those provisions require ELRs to meet the standard's requirements over a broad range of angles, we have determined that a tight tolerance on those angles is unnecessary.

Lead Time and Compliance Date

In amending Standard No. 209 in response to the petitions for reconsideration, the agency has decided to retain the mandatory compliance date of February 22, 2007 for the amended ELR provisions, as provided in the August 22, 2005 final rule. Voluntary compliance is permitted before that date.

In the August 2005 final rule, we stated our belief that existing ELRs will continue to meet the requirements of the standard, even though the amendments to the standard's test procedures may result in some minor costs to vehicle manufacturers and testing laboratories to reconfigure existing test equipment and/or purchase new test equipment. However, today's amendments to the standard involve only minor technical modifications in terms of how the test is conducted and how related results are interpreted. Accordingly, we believe that retention of the February 22, 2007 mandatory compliance date will continue to permit manufacturers and testing laboratories to comply with the standard's amended ELR requirements at minimal cost.

II. Background

On August 22, 2005, NHTSA published a final rule in the **Federal Register** to amend FMVSS No. 209, *Seat Belt Assemblies*, by redefining certain requirements and establishing a new test methodology for ELRs. That final rule established a new A–T (acceleration-time) corridor, added a figure illustrating the new A–T corridor, provided a tolerance on angle measurements, and adopted similar instrumentation specifications to those currently found in other FMVSSs containing dynamic tests. As noted above, the purpose of the amendments to Standard No. 209 was to clarify the test procedures for ELRs, while ensuring that those devices continue to perform their important safety function of locking up a seat belt in the event of a crash or emergency braking.

The following points highlight the key provisions of the August 2005 final rule.

• The final rule amended FMVSS No. 209 by adopting a specific A–T corridor for test pulses that includes an upper boundary onset rate of 375 g/sec and that permits an acceleration peak of 0.8 g. As amended, the standard sets a lower boundary for the A–T corridor with a minimum onset rate of 21.67 g/sec, and it further sets a steady state tolerance range of 0.65 g to 0.72 g. This new A–T corridor is intended to be sufficiently wide as to allow a range of onset rates to be tested that are more representative of real world crashes and emergency braking events.

• The final rule modified the dynamic test requirements for ELRs so as to specify that each acceleration pulse be recorded using an accelerometer having a full-scale range of ± 10 g and be processed according to the practices set forth in Society of Automotive Engineers (SAE) Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' Channel Frequency Class (CFC) 60. (That SAE standard has been incorporated by reference into FMVSS No. 209.) The rule also specified that webbing displacement is measured using a displacement transducer.

• Unless a range of angles is specified or a tolerance is otherwise explicitly provided, the final rule stated that all angles and orientations of seat belt assemblies and components specified in the standard have a tolerance of ± 3 degrees.

In terms of the rule's impacts, the agency anticipated that the final rule will not result in substantial changes to the performance of ELRs and that current ELRs will continue to comply with FMVSS No. 209 without the need for change. Additionally, we stated that we expect the final rule to clarify the specifications in the standard's test procedures. Furthermore, we stated our expectation that the final rule will result in only a minimal cost burden to vehicle manufacturers. Testing laboratories might need to reconfigure their testing equipment or purchase new equipment, but this one-time cost is likely to be minimal on a cost-per-vehicle basis.

Nevertheless, in implementing these amendments to the standard, NHTSA provided 18 months of lead time, which we believe is adequate to allow vehicle manufacturers and testing laboratories to reconfigure their testing equipment or purchase new equipment so as to be consistent with the amended standard. Accordingly, manufacturers of seat belt assemblies must comply with the requirements of the final rule commencing on February 22, 2007. Voluntary compliance is permitted prior to the mandatory compliance date.

III. Petitions for Reconsideration

NHTSA received three petitions for reconsideration submitted in response to the August 2005 final rule. One petition for reconsideration was submitted by the AORC,[5] the organization which submitted the original petition for rulemaking that resulted in the final rule amending the standard.

The other petitions for reconsideration were submitted by BMW, a vehicle manufacturer, and TAKATA–PETRI, a supplier of seat belt assemblies. We note, however, that the petitions submitted by BMW and TAKATA–PETRI are virtually identical. Accordingly, reference to the arguments of either of these petitioners may be presumed to apply to both petitions in the balance of this document. All of these petitions may be found in Docket No. NHTSA–2005–22052.

The petitioners requested further amendments to FMVSS No. 209 regarding issues they deemed either inadequately addressed by our August 2005 final rule or newly arising therefrom. The following discussion provides a general overview of the issues raised in the petitions for reconsideration. Specifically, the AORC asked the agency to amend the standard by increasing the angle tolerance in the standard from ± 0.5 degrees to ± 3 degrees for certain identified provisions where the ELR is to be rotated into multiple positions over a wide range of angles, thereby rendering a tight tolerance unnecessary. A wider tolerance in this case would not detract from safety and would presumably facilitate ease of testing. The AORC also sought clarification as to the applicability of angle tolerances to other identified provisions, and it requested correction of certain perceived errors in the Laboratory Test Procedure for Standard No. 209 (TP–209–06).[6]

In addition, the AORC requested that the standard be amended to ensure that the result of a 1981 letter of interpretation remains valid. In that interpretation, the agency addressed manufacturer responsibilities when

[5] The AORC is an industry association of 52 suppliers of occupant restraints, components/materials, and services to the automobile industry.

[6] *See http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP–209–06.pdf.*

''dual-sensing'' ELRs are installed (*i.e.*, ones utilizing both vehicle-sensitive and webbing-sensitive designs). The AORC expressed concern that the renumbering effected by the final rule would somehow alter the principle contained in that letter that manufacturers installing dual-sensing ELRs need only meet the requirements for one type of ELR, not both. (BMW's petition for reconsideration also discussed this issue, asking that the regulatory text of the standard be amended to clarify the requirements for dual-sensing retractors.)

BMW (and TAKATA–PETRI) requested that the standard be amended to specify a tolerance tighter than ± 3 degrees for the standard's 15-degree no-lock requirement, because it argued that such a large tolerance on this ''single-sided'' requirement would not only lead to ''nuisance locking,'' but it would also result in unnecessary financial costs for manufacturers whose ELRs must comply with both U.S. and European regulations. According to BMW, there is currently no ELR available that could comply with the requirements of both jurisdictions and the ± 3 degree tolerance.

Furthermore, according to BMW, the final rule's specification of a CFC 60 Filter results in a time shift of the peak value for the acceleration vs. time curve, as compared to the raw, unfiltered data. Because this time shift could impact a laboratory's ability to accurately determine the time of ELR lock-up, BMW recommended that the standard be amended to specify that a belt load sensor is to be used to determine when lock-up has occurred (*i.e.*, when a belt load of 35 N ± 5 N is registered).

All of the issues raised in the petitions for reconsideration are addressed in further detail in the section immediately below.

IV. Discussion and Analysis

A. Angle Tolerances

1. Acceleration Tests

The August 2005 final rule provided under paragraph S5.4, *Tolerances on angles*, that ''[u]nless a range of angles is specified or a tolerance is otherwise explicitly provided, all angles and orientations of seat belt assemblies and components specified in this standard shall have a tolerance of ± 3 degrees.''

In setting requirements for seat belt assemblies manufactured on or after February 22, 2007, the final rule provided specific tolerances for dynamic acceleration tests for retractors sensitive to vehicle acceleration and for retractors sensitive to webbing withdrawal. Specifically, under S5.2(j)(2)(iii)(A)(2), for a vehicle-sensitive ELR, ''[i]f the retractor does not meet the 45-degree tilt-lock requirement of S4.3(j)(2)(i)(D), accelerate the retractor in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45, 90, 135, and 180 degrees ± 0.5 degrees from the angle at which it is installed in the vehicle and measure webbing payout.'' For a webbing-sensitive ELR, S5.2(j)(2)(iii)(B)(2) provides: ''The retractor drum's central axis shall be oriented at angles of 45, 90, 135, and 180 degrees ± 0.5 degrees to the horizontal plane. Accelerate the retractor in the direction of the webbing retraction and measure the webbing payout.''

In its petition, the AORC generally welcomed the final rule's addition of angle tolerances to portions of the standard's ELR requirements that previously contained no tolerances. The AORC suggested that angle tolerances provide increased clarity in terms of the functional requirements and test procedures for ELRs. However, the AORC argued that the ± 0.5 degree tolerances in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2) are unnecessarily narrow.

The AORC argued that, under both of these provisions, because the retractor is rotated into multiple positions, a wide range of angular positions is already included as part of these tests, thereby rendering a tight ± 0.5 degree tolerance unnecessary. In other words, these provisions provide designated test points that allow the agency to ensure that the ELRs function properly over a large range of angles, not to determine whether action precisely tied to one key angle occurs. Therefore, the AORC petition stated that those provisions of the standard should be amended to specify an angle tolerance of ± 3 degrees. Presumably, a wider tolerance in this case would facilitate ease of testing.

After careful consideration, the agency agrees with the AORC that it would be possible to eliminate the ± 0.5 degree tolerances in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), particularly since such modification would not compromise the relevant functional requirements of the standard or have negative safety consequences. That is because the retractor is required to meet those functional requirements of the standard over a broad range of angles. In such case, the multiple test angles specified serve as test points within that range, rather than tying the specific angle values to the triggering of some critical event. Therefore, after consideration of the petitioners' arguments, we have decided that the angle tolerance of ± 0.5 degrees in the provisions in question are unnecessary. Accordingly, we have decided to delete the tolerances specified under S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), thereby implicitly providing for a default tolerance of ± 3 degrees under S5.4.

2. Tilt-Lock Requirements

The August 2005 final rule also set angle tolerances related to the tilt-lock requirements for ELRs, and of these, the petitions for reconsideration requested amendments to the following angle tolerance provisions.

The following provisions apply to seat belt assemblies manufactured before February 22, 2007. Under S4.3(j)(1)(iii), the final rule provided that an ELR ''[s]hall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15° or less from its orientation in the vehicle.'' Under S5.2(j)(1)(ii), the final rule stated that an ELR sensitive to vehicle acceleration is ''[a]ccelerated in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45°, 90°, 135°, and 180° from the angle at which it is installed in the vehicle, unless the retractor locks by gravitational force when tilted in any direction to any angle greater than 45° from the angle at which it is installed in the vehicle.''

The following provisions apply to seat belt assemblies manufactured on or after February 22, 2007. Under S4.3(j)(2)(i)(D), the final rule provided, ''For a retractor sensitive to vehicle acceleration, [the ELR must] lock when tilted at any angle greater than 45 degrees from the angle at which it is installed in the vehicle or meet the requirements of S4.3(j)(2)(ii).'' Furthermore, under S4.3(j)(2)(i)(E), the final rule provided, ''For a retractor sensitive to vehicle acceleration, [the ELR must] not lock when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle.'' Under S5.2(j)(2)(ii), the final rule stated: ''Gravitational locking: For a retractor sensitive to vehicle acceleration, rotate the retractor in any direction to an angle greater than 45 degrees from the angle at which it is installed in the vehicle. Apply a force to the webbing greater than the minimum force measured in S5.2(j)(2)(i) to determine compliance with S4.3(j)(2)(i)(D).''

As noted previously, the petitions for reconsideration submitted by the AORC, BMW, and TAKATA-PETRI requested

that the standard be amended with regard to the provisions discussed immediately above. The AORC requested that the agency clarify that the default tolerance provision in S5.4 (*i.e.*, ± 3 degrees) does not apply to these provisions, because the AORC interprets those provisions as explicitly stating the permissible angle measurement (*e.g.,* ''angle of 15 degrees or less,'' ''angle greater than 45 degrees'').

In their petitions, BMW and TAKATA-PETRI argued that a 3-degree tolerance for the 15-degree no-lock requirement would result in ''nuisance locking.'' Furthermore, BMW stated that such a large tolerance would also result in unnecessary financial costs for manufacturers whose ELRs must comply with both U.S. and European regulations. According to BMW, there is currently no ELR available that could comply with the requirements of both jurisdictions and the ± 3 degree tolerance, so manufacturers would be forced to design different retractors for the U.S. and European markets without a demonstrated safety need. Accordingly, BMW and TAKATA-PETRI requested that the standard be amended to specify a tighter tolerance of ± 0.5 degrees for the standard's 15-degree no-lock requirement, rather than the tolerance of ± 3 degrees currently specified.

In response to the petitioners, we clarify that there are no tolerances associated with the tilt-lock requirements specified in S4.3(j)(1)(iii), S4.3(j)(2)(i)(D), S4.3(j)(2)(i)(E), S5.2(j)(1)(ii), and S5.2(j)(2)(ii). Consistent with paragraph S5.4, *Tolerances on angles*, the standard provides for a tolerance of ± 3 degrees, *unless a range of angles is specified* or a tolerance is otherwise specifically provided. The tilt-lock requirements discussed above set ranges of angles, including everything above or below a specified value (*e.g.*, ''angle of 15 degrees or less,'' ''angle greater than 45 degrees''). Because a range of angles is specified, the ± 3 degree tolerance is not applicable, and therefore, the petitioners' concerns regarding ''nuisance locking'' and differences in products destined for the U.S. and European markets are not pertinent. Accordingly, we find it unnecessary to amend the standard regarding this issue.

B. Determination of Lock-Up

In the August 2005 final rule, the agency stated that we understand that there is currently more than one methodology used for determining the point of ELR lock-up. Specifically, some laboratories determine lock-up through observation of a sudden change in the A–T curve, whereas others utilize a 35 N threshold, consistent with industry practice.

In the final rule, we declined to adopt a specific requirement for determination of ELR lock-up. We stated that, like the observation of change in the A–T curve, the industry load threshold approach is also an indirect measurement of lock-up, and we noted that we were not aware of any problems associated with either of the existing methods for determining ELR lock-up.

BMW and TAKATA-PETRI petitioned the agency to amend the standard to set a specification for determination of ELR lock-up, based upon potential problems in determining lock-up when the CFC 60 Filter is utilized. As an example, the petitioners provided a graph comparing filtered and unfiltered data by plotting the acceleration vs. time curve for each. The data provided by the petitioners demonstrated a time shift in the accelerometer data, which the petitioners argued presents a problem in terms of determining the point of ELR lock-up in the absence of specification in the regulation as to how to interpret these data when determining lock-up (*i.e.*, defining ''lock-up''). Although the petitioners support use of the CFC 60 Filter (which helps conform the instrumentation requirements of FMVSS No. 209 to those of other FMVSSs with a dynamic performance component), they stated that if the testing laboratory uses the filtered peak as the time of ELR lock-up, the belt webbing payout measured could be erroneous; furthermore, the petitioners asserted that it is not clear at what point in the peak the laboratory would determine lock-up (onset, absolute peak, or descent) and start measuring belt webbing payout.

BMW and TAKATA-PETRI stated in their petitions for reconsideration that, in light of the information presented, this determination of lock-up is subjective, and, therefore, not acceptable, and does not support the agency's goal of clarifying the current ELR test procedures. Therefore, they recommended that the agency amend the standard to specify a belt load sensor to be used in the webbing path to indicate ELR lock-up. The petitioners recommended that ELR lock-up be the point at which the load sensor measures a 35 N ± 5 N belt load. According to the petitioners, this is the best method for evaluating ELR locking behavior, because it has a direct correlation to real world occupant loading and is consistent with standard industry practice.

After careful consideration, the agency agrees that, based upon the supporting data provided by BMW and TAKATA–PETRI, potential interpretation problems could arise regarding the determination of ELR lock-up, unless additional clarification is provided. In order to maintain an objective and repeatable test methodology, we have decided to amend the current ELR test procedures in response to the petitioners' request. We note that BMW stated that the standard industry practice is to use a 35 Newton (N) load as indication that ELR lock-up has occurred, and the testing laboratories with which the agency contracts to conduct compliance testing have utilized this same methodology since 2003.

Although the petitioners did not provide any data to support their view that their recommended test directly correlates to actual occupant loading, and even though we continue to believe that this methodology is an indirect means of determining ELR lock-up, we nonetheless believe that it provides an acceptable means of clarifying the ELR test procedures to ensure an objective and consistent determination of lock-up. Accordingly, we have decided to adopt the petitioners' recommendation and amend the standard's test procedures to provide that a belt load measurement of 35 N or more will indicate ELR lock-up. Although the agency considered various options, such as adopting a bilateral tolerance (i.e., ± x N) on the belt load, the agency feels that it is more appropriate to establish a minimum belt load for determining lock-up, because a minimum belt load provides an objective threshold when the ELR transitions from an unlocked state to a locked state. As the belt load continues to increase above the threshold, the ELR remains locked until the test is completed, so therefore, an upper belt load limit is not necessary. We have selected 35 N as the threshold for determining lock-up because it provides a consistent point of demarcation for lock-up and is also the nominal value recommended by the petitioners consistent with industry practice.

C. Requirements for Dual-Sensing ELRs

In addition to the substantive changes to the standard discussed above, the amendments adopted by the August 2005 final rule also resulted in a renumbering of certain ELR-related provisions in FMVSS No. 209, some of which did not change in substance.

The petitions of the AORC, BMW, and TAKATA–PETRI all requested that the agency clarify the responsibilities for manufacturers in terms of the standard's requirements for dual-sensing ELRs (i.e., retractors that are sensitive to both

vehicle acceleration and webbing withdrawal). According to the petitioners, the agency issued a letter of interpretation dated February 19, 1981 to Mr. Frank Pepe [7] which effectively resolved the issue of what requirements would apply to dual-sensing ELRs (stating that manufacturers must meet the requirements for either vehicle-sensitive ELRs or webbing-sensitive ELRs, not both).

However, in its petition, the AORC suggested that the agency's August 2005 final rule may have added confusion in this area by renumbering the relevant provisions of the standard. The AORC argued that direct traceability between the 1981 letter of interpretation and the relevant provisions of the standard will be lost under the amended standard. In order to clarify the requirements for dual-sensing ELRs after the final rule's amendments to the standard, the AORC asked the agency to provide an explicit statement that manufacturers of dual-sensing ELRs continue to be required to comply with only one of the permitted options (*i.e.*, either vehicle-acceleration-sensitive or webbing-withdrawal-sensitive ELRs), but not both. BMW and TAKATA–PETRI also addressed this point, although their petitions went a step further, asking the agency to clarify this matter by amending the standard's regulatory text to incorporate a manufacturer's compliance option in the case of dual-sensing ELRs.

In light of the petitioners' requests, we clarify that our renumbering of certain provisions in Standard No. 209 does not impact the validity or ongoing effect of our 1981 letter of interpretation. Our August 2005 final rule renumbered but did not make any substantive modifications to the applicable requirements for dual-sensing ELRs, so the interpretation letter to Mr. Pepe remains valid, despite such numbering changes. The agency will continue to treat dual-sensing ELRs as either vehicle-sensitive or webbing-sensitive retractors. We believe that such numbering changes are unlikely to result in any significant confusion. Therefore, we do not find it necessary to incorporate additional language in the standard, as recommended by BMW and TAKATA–PETRI.

D. Other Issues

In its petition for reconsideration, the AORC stated that it identified two typographical errors in the laboratory test procedure that the agency released concurrently with the final rule on August 22, 2005 (TP–209–06). Specifically, the AORC argued that a decimal point had inadvertently been omitted.

The agency has already revised TP–209–06 to remedy these errors. While we will also make additional modifications to the test procedure to reflect the amendments arising from today's final rule responding to petitions for reconsideration, we note that issues related to the agency's test procedures are not resolved through the rulemaking process. Those procedures do not vary from or add to the requirements of the FMVSS, but instead provide directions to be followed by the laboratories doing compliance testing for the agency. Any concerns related to a test procedure should be directed to NHTSA's Office of Vehicle Safety Compliance.

V. Benefits and Costs

Section V of the August 22, 2005 final rule stated that NHTSA did not estimate benefits for the rulemaking because we anticipated that it would not result in substantial changes to the performance of emergency-locking retractors. The final rule stated that it is expected that all current ELRs will continue to comply with FMVSS No. 209 without change under the final rule's amendments. The reason for this determination was that the amendments to FMVSS No. 209 in the final rule more directly affect test procedure specifications and are intended only to clarify the test specifications.

NHTSA anticipated only minimal cost burden to vehicle manufacturers from the final rule. Testing laboratories might have to develop new specifications for the instrumentation used to generate the acceleration pulses and may be required to obtain the specified accelerometer. However, the agency stated that we anticipate that only a small number of businesses will need to purchase new equipment as a result of the final rule, and for those that do, this would result in a one-time, minimal cost to the test laboratory.

The agency has determined that the technical amendments resulting from this final rule responding to petitions for reconsideration will not appreciably change the analysis of costs and benefits reported in the final rule. Accordingly, the agency has determined that that analysis remains valid and that additional analysis is not required.

VI. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[8] These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.[9] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[10] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[11] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[12]

In developing the August 22, 2005 final rule to further clarify the test procedures of FMVSS No. 209, *Seat Belt Assemblies*, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301. Since that time, the agency received three petitions for reconsideration of the final rule, which requested technical modifications and corrections to the standard. In this final rule responding to petitions for reconsideration, the agency has once again carefully considered the statutory requirements of 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in the petitions for reconsideration. In responding to the issues raised in these petitions, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available research, testing results, and other information related to various ELR technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the ELR requirements remain practicable, the agency evaluated the potential impacts of the petitions' requested actions on the form and functionality of currently compliant ELRs, consistent with our safety objectives and the statutory requirements. We note that ELRs are already required on light vehicles, and

[7] *See http://isearch.nhtsa.gov/gm/81/nht81–1.14.html.*

[8] 49 U.S.C. 30111(a).

[9] 49 U.S.C. 30102(a)(9).

[10] 49 U.S.C. 30111(b).

[11] *Id.*

[12] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

we believe that it will be practicable to adopt the technical modifications to the standard's requirements and test methodology in response to the petitions for reconsideration without necessitating redesigns on the part of ELR manufacturers. We expect that vehicle manufacturers will continue to have a number of technological choices available for meeting the requirements of FMVSS No. 209 for ELRs. As noted above, most of the changes resulting from this final rule involve relatively minor modifications. In sum, we believe that this final rule responding to petitions for reconsideration is practicable and will maintain the benefits of Standard No. 209.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, this final rule makes minor modifications to the performance requirements and test procedures for operation of the ELRs, in terms of determining when ELR lock-up occurs and by modifying certain angle tolerances. The standard's test procedures continue to carefully delineate how testing will be conducted. Thus, the agency continues to believe that this test procedure is sufficiently objective and would not result in uncertainty as to whether a given seat belt assembly satisfies the requirements of FMVSS No. 209.

Fourth, we believe that this final rule responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will better define the acceleration pulse that will be utilized in testing ELRs, mechanisms which serve the critical function of ensuring that seat belts are properly locked up in the event of sudden deceleration or a crash.

Finally, we believe that this final rule responding to petitions for reconsideration is reasonable and appropriate for seat belt assemblies subject to the applicable requirements. As discussed elsewhere in this notice, the agency is addressing the petitioners' requests for additional amendments to the standard to better define the ELR requirements and test procedures, actions which we do not expect will increase the present stringency of the standard or cause compliance problems for existing ELRs. Accordingly, we believe that this final rule responding to petitions for reconsideration is appropriate for the seat belt assemblies in covered vehicles that are subject to these provisions of FMVSS No. 209 because it furthers the agency's objective of preventing deaths and serious injuries by ensuring that ELRs in seat belt assemblies function properly.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

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

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

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

The August 22, 2005 final rule was not reviewed by the Office of Management and Budget under Executive Order 12866. Furthermore, that rule was not considered to be significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (February 26, 1979)). In that final rule, we stated that we do not expect the amendments to the standard to require substantial changes in the performance of ELRs. Testing laboratories might need to develop new specifications for the instrumentation used to generate the acceleration pulses, but it is not expected to result in more than a minimal cost burden for manufacturers.

We have likewise considered the impact of this final rule responding to petitions for reconsideration under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. This rulemaking document is also not considered to be significant under the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that the incremental costs associated with the minor technical modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 209.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present final rule responding to petitions for reconsideration only makes technical modifications and corrections to the safety standard for seat belt assemblies. As discussed in detail in the August 22, 2005 final rule's Regulatory Flexibility Act analysis (*see* section VI.C), we do not anticipate that the amendments to FMVSS No. 209 will have a significant economic impact on a substantial number of small entities, and nothing in this final rule would change either that assessment or its underlying reasoning.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism, and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have

any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. However, under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

E. Executive Order 12988 (Civil Justice Reform)

This rule will not have any retroactive effect. As noted above in the discussion of Executive Order No. 13132, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

F. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, 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 the agency 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 responding to petitions for reconsideration is not subject to E.O. 13045 because it is not an economically significant regulatory action under Executive Order 12866 and because it does not involve decisions based on environmental, health, or safety risks that disproportionately affect children.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule responding to petitions for reconsideration does not contain any collection of information requirements requiring review under the PRA.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

The amendments to Standard No. 209 adopted in the August 2005 final rule incorporated voluntary consensus standards promulgated by the Society of Automotive Engineers. This final rule responding to petitions for reconsideration makes additional, minor technical amendments to FMVSS No. 209. Accordingly, this final rule is in compliance with Section 12(d) of the NTTAA.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency 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 the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

As was the case with the August 2005 final rule, this final rule responding to petitions for reconsideration is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of $112 million annually. Because the present final rule responding to petitions for reconsideration only makes technical modifications to the standard, we do not believe that this final rule will appreciably change the costs of compliance with FMVSS No. 209. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.209 is amended by revising S4.3(j)(2)(ii), S5.2(j)(2)(iii)(A)(2), and S5.2(j)(2)(iii)(B)(2) to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S4.3 *Requirements for hardware.*

* * * * *

(j) * * *

(2) * * *

(ii) Shall lock before the webbing payout exceeds the maximum limit of 25 mm when the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(2)(iii)(A) or (B). The retractor is determined to be locked when the webbing belt load tension is at least 35 N.

* * * * *

S5.2 *Hardware.*

* * * * *

(j) * * *

(2) * * *

(iii) * * *

(A) * * *

(2) If the retractor does not meet the 45-degree tilt-lock requirement of S4.3(j)(2)(i)(D), accelerate the retractor in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45, 90, 135, and 180 degrees from the angle at which it is installed in the vehicle and measure webbing payout.

(B) * * *

(2) The retractor drum's central axis is oriented at angles of 45, 90, 135, and 180 degrees to the horizontal plane. Accelerate the retractor in the direction of the webbing retraction and measure the webbing payout.

* * * * *

Issued: August 23, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6–14479 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 081006A]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to allow for a reasonable opportunity to harvest the General category September time-period subquota. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29,1999; 64 FR 29090), and implementing regulations at § 635.27. A three-fish general category retention limit was set for the first subperiod (June through August) due to the large amount of available quota and the low catch rate at the opening of the season.

Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	June 1, 2006, through August 31, 2006, inclusive	All	*COM041*Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	September 1, 2006, through September 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	October 1, 2006, through January 31, 2007, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the

commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was to remain in effect through August 31, 2006, inclusive. From September 1, 2006, through January 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through August time-period subquota allocation for the 2006 fishing year totaled approximately 692 metric tons (mt). As of August 17, 2006, 34.6 mt have been landed in the General category and catch rates are less than 1.0 mt per day. If catch rates remain at current levels, approximately 14 mt would be landed during the remainder of August. This projection would bring the June though August time-period subquota landings to approximately 49 mt, resulting in an underharvest of approximately 643 mt. This carryover combined with the September time-period subquota allocation of 346 mt would allow for 989 mt to be harvested in the month of September. In combination with an expected subquota rollover from the June through August time-period, the September time-period subquota allocation, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2006, NMFS anticipates the full September time-period subquota will not be harvested. This could result in a potential excessive rollover into the October through January time-period. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the 1999 FMP.

Therefore, based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from September 1, 2006, through September 30, 2006, inclusive, is warranted. Thus, the General category daily retention limit of three large medium or giant BFT per vessel per day/trip (see Table 1) is extended through September 30, 2006. From October 1, 2006, through January 31, 2007, inclusive, the General category default daily BFT retention limit will be one large medium or giant BFT per vessel per day/trip. It is highly likely that with a combination of the default retention limit starting on October 1, 2006, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend into the winter months and allow for a southern Atlantic fishery to take place on an order of magnitude of prior years with minimal risk of landings exceeding available quota. In addition, one of the preferred alternatives in the proposed Consolidated Highly Migratory Species FMP (August 19, 2005; 70 FR 48804) would formally allocate General category sub-quota to the December and January individual time-frames to provide for a late-season south Atlantic fishery.

The intent of this adjustment is to allow for a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the 1999 FMP.

Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications and inseason management measures for the General category received during the 2006 BFT quota specifications rulemaking process, and analyzing the available quota for the 2006 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at *www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS has recently become aware of increased availability of large medium and giant BFT on the New England fishing grounds from fishing reports and conversations with fishermen. This increase in abundance provides the potential to increase General category landings rates for the New England fishery if participants are authorized to harvest three large medium or giant BFT per day. Also, since the end of the 2006 BFT specification comment period, NMFS has continued to receive more information refining its understanding of the commercial and charter/headboat sectors' specific needs regarding BFT retention limits. The regulations implementing the 1999 FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Adjustment of retention limits is also necessary to avoid excessive quota rollovers to subsequent General category time-period subquotas. NMFS needs to act promptly to enhance fishing opportunities for northern area fishermen while the BFT are still available on northern New England fishing grounds. Analysis of available data shows that the General category BFT retention limit may be increased for the Atlantic tuna General and HMS Charter/Headboat permit holders with minimal risks of exceeding the International Commission for the Conservation of Atlantic Tuna allocated quota.

Delays in increasing the retention limits would be contrary to the public interest. Such delays would adversely affect those General and HMS Charter/Headboat category vessels that could otherwise harvest more than one BFT per day and would further exacerbate the problem of quota rollovers, and/or lack of booked charters. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota within the time-periods designated in the 1999 FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the HMS Charter/Headboat sectors, the retention limits must be adjusted as expeditiously as possible so the impacted sectors can benefit from the adjustment.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons,

and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 24, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–14486 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051128313–6029–02; I.D. 081506B]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of Florida is transferring commercial bluefish quota to the State of New York from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for New York and Florida.

DATES: Effective August 29, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state as described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Florida has agreed to transfer 125,000 lb (56,699 kg) of its 2006 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2006 are: New York, 1,025,526 lb (465,171 kg); and Florida, 476,012 lb (215,915 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–14482 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293–5344–02; I.D. 082406A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the summer flounder commercial quota available to Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 2006, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Maine that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maine.

DATES: Effective 0001 hours, August 31, 2006, through 2400 hours, December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in Maine is 0.04756 percent, resulting in a commercial quota of 6,732 lb (3,054 kg). The 2006 allocation was reduced to 6,630 lb (3,007 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Maine has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 31, 2006, further landings of summer flounder in Maine by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 31, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or

until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–14474 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 082506A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowances of the 2006 total allowable catch (TAC) of pollock for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2006, through 1200 hrs, A.l.t., October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2006 TAC of pollock in Statistical Area 610 of the GOA is 10,249 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 3,850 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 610 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 610 is therefore 6,399 mt (10,249 mt minus 3,850 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2006 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,385 mt, and is setting aside the remaining 14 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 24, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–7261 Filed 8–25–06; 2:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 168
Wednesday, August 30, 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.

COMMISSION ON CIVIL RIGHTS

5 CFR Chapter LXVIII

RINs 3035–AA02, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the United States Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Proposed rule.

SUMMARY: The United States Commission on Civil Rights (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing a proposed rule for employees of the Commission that would supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule would require employees of the Commission, other than special Government employees, to obtain prior approval before engaging in outside employment.

EFFECTIVE DATE: Comments should be submitted on or before September 29, 2006 to be considered in the formulation of final rules.

ADDRESSES: Interested parties should submit written comments to: United States Commission on Civil Rights, Office of the Staff Director, Attn: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, 624 Ninth Street, NW., Suite 621, Washington, DC 20425. E-mail comments should be addressed to *emonroig@usccr.gov.* Please cite 5 CFR chapter LXVIII in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights, Office of the Staff Director, 624 Ninth Street, NW., Suite 621, Washington, DC 20425; Telephone: (202) 376–7796; Facsimile: (202) 376–1163.

SUPPLEMENTARY INFORMATION: In 1979, the United States Commission on Civil Rights adopted a set of Employee Responsibilities and Conduct as set forth in 45 CFR part 706. See 44 FR 75152, as revised in 2002 at 67 FR 70498. That rule in the pertinent part required employees to obtain approval, in writing, from their supervisors before engaging in outside employment. 45 CFR 706.7.

On August 7, 1992, OGE published new executive branch Standards of Ethical Conduct regulations, which became generally effective on February 3, 1993. The Standards, as corrected and amended, are codified at 5 CFR part 2635. These regulations, together with OGE's executive branchwide financial disclosure and financial interests regulations codified at 5 CFR parts 2634 and 2640, superseded the Commission's old Employee Responsibilities and Conduct regulations at 45 CFR part 706, including the provision requiring employees to obtain prior approval before engaging in outside employment. In a separate rulemaking also being published in the **Federal Register** today, the Commission is proposing to remove its old superseded conduct regulation and replace it with a residual cross-references provision.

The Commission, however, has determined, with OGE concurrence, that it is necessary and desirable for the purpose of administering its ethics program to require its employees again to obtain written approval before engaging in outside employment. Prior approval would be required pursuant to proposed § 7801.102 of new chapter LXVIII of 5 CFR as proposed, in order to ensure that the activity would not otherwise violate a Federal statute or regulation, including the branchwide Standards. The proposed section would include a definition at paragraph (d) of outside employment, basically any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It also would provide at paragraph (c) that upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee would have to submit a revised request for approval. The proposed rule would not include special Government employees in the prior approval provision, since they consist primarily of State Advisory Committee members who serve on the Commission as uncompensated employees. Accordingly, by this rulemaking, the Commission is proposing to reinstitute the prior approval requirement, albeit in a modified form in light of the promulgation of the branchwide Standards. Furthermore, in proposed § 7801.101 of 5 CFR the Commission would state the purpose of the supplemental regulation and would include cross-references to other Government ethics regulations applicable to Commission employees in addition to the proposed new part. The cross-referenced regulations are the executive branch Standards, as well as the financial disclosure, financial interests and employee responsibilities and conduct regulations noted above. Moreover, the section proposed would identify the Solicitor as the Designated Agency Ethics Official and require that employees seeking prior approval for outside employment obtain the approval of the Designated Agency Ethics Official.

Matters of Regulatory Procedure

Executive Orders 12866 and 12988

Because this proposed rule relates to Commission personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule as proposed would not have a significant economic impact on a substantial number of small entities because it would primarily affect Commission employees.

Paperwork Reduction Act

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rulemaking document, because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

List of Subjects in 45 CFR Part 7801

Conflict of interests, Government employees.

Dated: August 16, 2006.

Emma Monroig,

Solicitor and Designated Agency Ethics Official, United States Commission on Civil rights.

Dated: August 16, 2006.

Kenneth L. Marcus,

Staff Director, United States Commission on Civil Rights.

Approved: August 22, 2006.

Robert I. Cusick,

Director, Office of Government Ethics.

For the reasons set forth in this preamble, the United States Commission on Civil Rights, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LXVIII, consisting of part 7801, to read as follows:

CHAPTER LXVIII—COMMISSION ON CIVIL RIGHTS

PART 7801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Sec.
7801.101 General.
7801.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1975b(d); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 7801.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the United States Commission on Civil Rights (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained at 5 CFR part 2635. Employees of the Commission are required to comply with this part, 5 CFR part 2635, the financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and implementing guidance and procedures. Commission employees are also subject to the regulations on responsibilities and conduct at 5 CFR part 735.

(b) *Definition.* The Designated Agency Ethics Official (DAEO) is the Solicitor for the Commission.

§ 7801.102 Prior approval for outside employment.

(a) An employee, other than a special Government employee, of the Commission who wishes to engage in outside employment shall first obtain the approval, in writing, of the Designated Agency Ethics Official (DAEO).

(b) *Standard for approval.* Approval shall be granted by the DAEO only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee must submit a revised request for approval.

(d) For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 06–7232 Filed 8–29–06; 8:45 am]

BILLING CODE 6335–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AH90

Secure Transfer of Nuclear Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to implement requirements for secure transfer of nuclear materials as required by Section 656 of the Energy Policy Act of 2005 (EPAct), signed into law on August 8, 2005. The proposed amendment would implement Section 656 by specifically excepting certain licensees from provisions of Section 170I of the Atomic Energy Act (AEA), as amended.

DATES: The comment period expires September 29, 2006. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date. A copy of the draft proposed rule was made available for information only on July 6, 2006, on NRC's rulemaking Web site at: *http://ruleforum.llnl.gov.*

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH90) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail: *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. (Telephone (301) 415–1966.)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via NRC's rulemaking Web site at: *http://ruleforum.llnl.gov.*

Publicly available documents created or received at NRC after November 1,

1999, are available electronically at NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Cardile, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6185, e-mail: *fpc@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 2005

On August 8, 2005, the President signed into law the EPAct of 2005, Pub. L. 109–58, 119 Stat. 594 (2005). Section 656 of the EPAct added Section 170I to the Atomic Energy Act of 1954 (AEA), 42 U.S.C, 2210i, and requires that:

(a) A system be established by the Commission to ensure that materials transferred or received in the United States, by any party, pursuant to an import or export license issued by NRC, are accompanied by a manifest describing the type and amount of materials. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities. Section 656 also states that, except as provided by the Commission by regulation, the materials referred to are: Byproduct material; source material; special nuclear material; high-level radioactive waste; spent nuclear fuel; transuranic waste; and low-level radioactive waste; and

(b) The Commission issue regulations, within one year after enactment of the EPAct, identifying radioactive materials or classes of individuals that, consistent with the protection of the public health and safety and the common defense and security, are appropriate exceptions to the requirements in Section 170I [1] of the AEA.

II. Discussion

Based on the above, Section 656 of the EPAct amends the AEA by adding three broad elements: (a) Establish a system for manifests of import/export shipments of radioactive materials; (b) require security background checks of persons receiving or accompanying import/export shipments; and (c) issue a regulation within one year with provisions for excepting certain types of radioactive materials or classes of individuals from the requirements of Section 170I of the EPAct. Establishing a system for manifests, requiring security background checks, and issuing a regulation with provisions for exceptions, are discussed in Sections II.A, II.B, and II.C, respectively, of this document.

A. Establish a System for Manifests for Shipments of Radioactive Material

Requirements for a system of manifests for shipments of material would include maintaining appropriate paperwork with a shipment that identifies the material being shipped. Specifically, the EPAct requires that a manifest include a description of the type of material and an indication of the amount of material being transported.

Currently, requirements for manifesting shipments of radioactive materials already exist in U.S. Department of Transportation (DOT) regulations at 49 CFR part 172. Specifically, 49 CFR 172.202(a) requires that shipping papers with radioactive shipments must indicate the basic description of the material, the total quantity of material (by mass, volume, or activity level in appropriate units), and the number and type of packages. In addition, for the quantities of radioactive material covered by the EPAct, 49 CFR 172.203(d) contains requirements that descriptions of a shipment containing radioactive material must include the name (and/or chemical symbol) of each radionuclide in the material; a description of the physical and chemical form of the material, if not special form; the activity contained in each package of the shipment in terms of appropriate international units (e.g., Becquerels (Bq)) and/or appropriate customary units (Curies (Ci), etc.) in parentheses following the international units; and labeling of each package being transported.

NRC's current regulations cross-reference the DOT requirements applicable to the transportation of licensed materials at 10 CFR 71.5. Section 71.5 requires that each licensee who transports licensed material outside the site of usage, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the DOT regulations at 49 CFR parts 107, 171–180, and 390–397, as appropriate to the mode of transport.

Based on the existing DOT requirements for shipping papers for shipments of radioactive materials at 49 CFR part 172 and NRC's regulations at 10 CFR part 71, NRC believes that an appropriate system is already established to ensure that shipments of radioactive materials are accompanied by papers (i.e., a ''manifest'') appropriately describing the type and amount of materials being shipped. Thus, NRC considers that the requirements of the EPAct have been met in this area. Therefore, NRC is not including any additional requirements for manifesting of radioactive material shipments in this proposed rule.

B. Require Security Background Checks for Persons Accompanying or Receiving Shipments of Radioactive Materials

Section 656 of the EPAct states that each individual who ''accompanies'' or ''receives'' the transfer of radioactive materials in the United States, pursuant to an NRC import or export license, shall be subject to a security background check [2] conducted by appropriate Federal entities. Section 656(c) of the EPAct also indicates that such background check requirements would become effective on a date established by the Commission.

The NRC believes that the most appropriate and comprehensive approach for establishing requirements for security background checks is as part of the broader considerations of NRC's planned rulemaking to implement Section 652 of the EPAct. Section 652 mandates the Commission to require fingerprinting and criminal history record checks for any individual who is permitted unescorted access to radioactive material ''* * * that the Commission determines to be of such significance to the public health and safety or the common defense and security, as to warrant fingerprinting and background checks.'' The individuals referred to under Section 656 are a subgroup (i.e., those transferring radioactive material pursuant to an export or import license) of the larger group of individuals at a licensed facility, with unescorted access to radioactive material, who would

[1] The text of Section 656 actually refers to ''exceptions to the requirements of Section 170D of the AEA''; however, that is a misprint. The correct citation is Section 170I.

[2] The term ''security background check'' is not defined in Section 656. In related regulatory efforts, it has been noted that background checks form the basis of trustworthiness and reliability and are comprised of several elements (e.g., verification of identity; a check into employment history, education and personal references; and a criminal history record check requiring fingerprints).

ultimately be included under a Section 652 rulemaking. The goal of the Section 652 rulemaking is that requirements for access are coherent and use a graded approach for the wide range of licensees impacted by Section 652, including those who might import or export radioactive material, and that there be coordinated consideration of appropriate exceptions, and of both domestic and import/export transport.

Thus, NRC considers the rulemaking to implement Section 652 to be the most appropriate and comprehensive approach for establishing requirements for security background checks for licensees, and for licensee employees, for unescorted access to radioactive material and for the broad range of transportation networks that licensees use. The Section 652 rulemaking will incorporate technical basis development and will also provide opportunity for stakeholder comment. Those individuals involved in ''receiving'' and ''accompanying'' radioactive materials, addressed in Section 656, would be covered by the comprehensive Section 652 rulemaking.

In addition to the rulemaking to implement Section 652, there are various regulatory initiatives, in place or underway, at other Federal agencies who have authority in the area of transportation security, including the Department of Homeland Security (DHS) and the DOT (see further discussion below). NRC views the transport security requirements of DHS and/or DOT, that apply to the nation's hazardous material transportation infrastructure as a whole, as the most effective long-term solution to implementing certain provisions of Section 656 of the EPAct. NRC is aware of DHS initiatives, such as the Transportation Worker Identification Credential (TWIC) [3] program, that are being implemented and views such programs as an effective solution for security background checks on transportation workers. NRC will work with other Federal agencies with authority in the area of transport security during the Section 652 rulemaking to ensure a coordinated Federal approach and to consider other Federal agency programs that are developed and initiated.

The current schedule for the rulemaking to implement Section 652 calls for issuance of a proposed rule in the Fall of 2007 and a final rule in the Fall of 2008. While the more comprehensive Section 652 rulemaking is being conducted, the combination of NRC's system of Orders to a broad range of licensees setting conditions for access to radioactive material, as well as the system of DHS's and DOT's authorities and security regulations for transport personnel, provide adequate protection of the common defense and security, as they relate to persons accompanying and receiving material. These existing systems, described more fully below, include provisions for background checks for trustworthiness and reliability and provisions for fingerprinting for the purpose of obtaining a criminal history record check from the Federal Bureau of Investigation.

NRC issued an extensive series of Orders during 2002–2005 that included background check requirements for unescorted access to radioactive material for certain facilities which it licenses. NRC has also issued Orders to reactor and materials licensees for shipment of radioactive material in quantities of concern (RAMQC). The purpose of these Orders has been to impose certain security measures to supplement existing regulations at 10 CFR part 20, and equivalent Agreement State regulations, for securing licensed materials from unauthorized access, with the intent of providing the NRC with reasonable assurance that the common defense and security is protected. The Orders note that conditions for unescorted access to risk-significant sources of radioactive material are governed by an appropriate need-to-know and by background checks as input to a determination concerning the trustworthiness and reliability of individuals who have access to the material. The Orders for unescorted access to radioactive material issued to date do not include fingerprinting for a criminal history record check.

Currently, NRC is preparing additional Orders to pool-type irradiator licensees, manufacturing and distribution (M&D) licensees, and licensees making shipments of RAMQC, to require fingerprinting and criminal history checks for unescorted access to the risk-significant sources of radioactive material at their facilities. These Orders would cover all individuals with unescorted access to radioactive material at these facilities; persons ''receiving'' material at these licensee's facilities, pursuant to an import/export license, would be a subset of the persons covered by the Orders.

As noted above, other Federal agencies have separate statutory authority in the area of transportation security. DHS is responsible for protecting the movement of international trade across U.S. borders and maximizing the security of the international supply chain. DHS includes the Transportation Security Administration (TSA), U.S. Coast Guard (USCG), and U.S. Customs and Border Protection. Collectively, these agencies are responsible for protecting our nation's transportation systems and supervising the entry of goods into the United States. In carrying out these responsibilities, TSA has regulations for both civil aviation security (49 CFR parts 1540 to 1562) and maritime and land transportation security (49 CFR parts 1570 to 1572). Sections 1544.229 and 1544.230 of Title 49 require that each aircraft flight crew member, and each person with unescorted access authority and authority to perform checked baggage or cargo functions, undergo a Federal fingerprint-based criminal history record check. 49 CFR 1572.5 requires security threat assessments for individuals applying for, renewing, or transferring a commercial driver's license with a hazardous materials endorsement (radioactive material is a Class 7 hazardous material under DOT regulations). 49 CFR 1572.15 establishes procedures for security threat assessments. A TSA security threat assessment includes a fingerprint-based criminal history check, an intelligence-related background check, and a final disposition. Personnel involved in these functions can be disqualified if the checks indicate potential security risks. Similarly, the USCG has requirements for security at U.S. ports and background checks for maritime personnel (33 CFR part 110 and 46 CFR part 10). Recently, DHS announced that it would begin conducting name-based background checks on nearly 400,000 port workers in the U.S. as a initial measure as DHS expedites the comprehensive nationwide biometric-based TWIC program in 2006.

C. Issue Regulations With Exceptions

As discussed in Section I of this document, Section 656(b) of the EPAct mandates that the NRC issue regulations, within one year after enactment of the EPAct, identifying radioactive materials or classes of individuals that, consistent with the protection of the public health and safety and the common defense and security, are appropriate exceptions to provisions for security background checks in Section 170I of the AEA, as amended.

[3] TSA and USCG recently published a proposed rule in the **Federal Register** on implementing the TWIC program for the maritime sector (see 71 FR 29395; May 22, 2006).

Consistent with Section 656(b) of the EPAct, the Commission is proposing to amend its regulations to except, from the security background check requirements of Section 170I of the AEA, as amended, licensees who have not received NRC Orders restricting unescorted access to radioactive materials based on background checks for trustworthiness and reliability that include fingerprinting and criminal history record checks. As noted above, Orders restricting access based on fingerprinting and criminal history record checks will be issued for pool-type irradiator licensees, M&D licensees, and licensees who make shipments of RAMQC. Under this proposed rule, those licensees who did not receive Orders for background checks that include fingerprinting would be excepted from the security background check requirements at Section 170I of the AEA.

The rationale for the exceptions is that it is consistent with the system of Orders, issued to certain licensees, that the NRC has instituted for protection of the common defense and security. The materials possessed and transferred by the licensee groups who have received Orders have been deemed, during the process of issuance of the Orders, to be appropriate for immediately requiring certain security measures for unescorted access based on potential higher risk resulting from malevolent use of those materials. Those licensees excepted by this proposed amendment possess materials and use them in a manner that generally presents a lesser hazard for causing harm to the public health and safety and common defense and security, even if used for malevolent purposes. Generally, the basis for inclusion of materials within the system of Orders has been use of International Atomic Energy Agency (IAEA) Code of Conduct Category threshold quantity amounts which take account of the IAEA's categorization of sources found in IAEA Safety Guide No. RS–G–1.9, ''Categorization of Radioactive Sources'' (2005). The safety guide provides a risk-based ranking of radioactive sources in five categories in terms of their potential to cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal. Most licensees excepted under this proposed amendment are not expected to import or export radioactive material containing radionuclides in the higher risk categories of the IAEA Safety Guide 1.9.

Using the framework of the existing system of Orders to codify exceptions allows for a consistent approach for radioactive materials which NRC considers appropriate, at this time, for exception from the requirements of Section 170I of the AEA as amended by the EPAct. As discussed in Section II.B of this document, the NRC intends to address background checks and fingerprinting for criminal history record checks for licensees in a more comprehensive manner under the rulemaking to implement Section 652 of the EPAct. One of the elements of that rulemaking, as mandated by Section 652(B)(i)(ll), will be determining requirements for access to quantities of radioactive material, subject to regulation by the Commission, that the Commission determines to be of such significance to the public health and safety or to the common defense and security as to warrant fingerprinting and background checks. Thus, the proposed requirements for exceptions in this Section 656 rulemaking will be revisited and may be superseded by the more comprehensive Section 652 rulemaking. At this time, in this Section 656 rulemaking, NRC is making a risk-informed decision to except licensees other than those with risk-significant sources (i.e., pool-type irradiators, M&D, and those making shipments of RAMQC, who received Orders) from the security background check requirements of Section 170I. In the more comprehensive Section 652 rulemaking, NRC will consider whether the exceptions for security background checks should be modified.

Under this proposed amendment, licensees *not* excepted can use the provisions of their existing Orders (or new or amended Orders) to comply with Section 170I. As noted above, the Commission believes that this system of NRC Orders and the system of transport security of other Federal agencies provide adequate protection of the common defense and security while NRC is conducting the Section 652 rulemaking.

Also, under the proposed amendment, if additional Orders for fingerprinting and criminal history checks for unescorted access to radioactive material are issued to licensees other than those noted above (i.e., pool-type irradiators, M&Ds, and those making shipments of RAMQC), licensees who receive any such new Orders would no longer be excepted from the security background check requirements of Section 170I.

III. Effective Date of Implementation of Rule

Section 656(c) of the EPAct provides that amendments to the AEA take effect upon issuance of regulations by the Commission under Section 656(b) of the EPAct. Consistent with this provision, the requirements for exceptions proposed in this amendment would become effective on the date of issuance of a final rule.

Section 656(c) of the EPAct also provides that the security background check requirement is to become effective ''* * * on a date established by the Commission.'' As discussed above, the Commission is using its system of Orders to impose the security background check requirements. The Orders specify dates by which licensees must take specific actions. In addition, the Commission will issue more comprehensive security background check requirements in the future rulemaking to implement Section 652 and will establish an effective date for those requirements.

With regard to manifest requirements, the Commission notes, as discussed above, that current NRC and DOT regulations require shipments of radioactive material to be accompanied by shipping papers (i.e., a manifest).

IV. Section by Section Analysis of Substantive Changes

A new Section 73.28 would be added to note that licensees are excepted from the security background check provisions of Section 170I of the AEA, as amended by the EPAct, if they have not received Orders from the NRC containing requirements for background checks for trustworthiness and reliability that include fingerprinting and criminal history checks as a prerequisite for unescorted access to radioactive materials. Licensees subject to Orders would not be excepted from the security background check provisions, and would use the requirements in their existing Orders to comply with Section 170I.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, NRC would indicate specific exceptions to the requirements of Section 656 of the EPAct. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of

Agreement State Programs,'' which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories (Compatibility Category A through D). In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to NRC.

The proposed amendment to part 73 would be a program element designated ''NRC'' based on implementation of the procedure in NRC's Management Directive 5.9, ''Adequacy and Compatibility of Agreement States.'' The requirements in this proposed amendment are limited to providing exceptions to requirements in Section 170I of the AEA, as amended by the EPAct, and are based on a system of Orders that were developed under NRC's authority to protect the common defense and security which are areas of exclusive NRC regulatory authority and cannot be relinquished to the Agreement States. Therefore, the requirements of this proposed amendment should not be adopted by the Agreement States.

VII. Plain Language

The Presidential memorandum entitled ''Plain Language in Government Writing'' (63 FR 31883; June 10, 1998), directed that the Government's writing be in plain language. NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent using one of the methods detailed under the **ADDRESSES** heading of the preamble to this proposed rule.

VIII. Environmental Impact: Categorical Exclusion

NRC has determined that this proposed rule is the type of action described in 10 CFR 51.22(c)(3)(ii) as a categorical exclusion. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation because it relieves restrictions and does not impose any additional burdens on licensees.

XI. Regulatory Flexibility Certification

A regulatory flexibility Act analysis is not required because the proposed amendment does not impose any additional burdens on licensees.

XII. Backfit Analysis

NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; NRC is proposing to adopt the following amendment to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. A new § 73.28 is added to read as follows:

§ 73.28 Security background checks for secure transfer of nuclear materials.

Licensees are excepted from the security background check provisions in Section 170I of the AEA if they have not received Orders from the Nuclear Regulatory Commission containing requirements for background checks for trustworthiness and reliability that include fingerprinting and criminal history record checks as a prerequisite for unescorted access to radioactive materials.

Dated at Rockville, Maryland, this 24th day of August, 2006.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–14397 Filed 8–29–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–148576–05]

RIN 1545–BF69

User Fees for Processing Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to user fees for installment agreements. The proposed amendments affect taxpayers who wish to pay their liabilities through installment agreements. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by *September 29, 2006*. Outlines of topics to be discussed at the public hearing scheduled for October 17, 2006, must be received by September 25, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148576–05), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may send submissions electronically directly to the IRS Internet site at *www.irs.gov/regs*, or via the Federal e-Rulemaking Portal at *www.regulations.gov* (IRS REG–148576–05). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD.

FOR FURTHER INFORMATION CONTACT: Concerning submissions and/or to be placed on the building access list to attend the hearing, Kelly Banks, 202–622–7180; concerning cost methodology, Eva Williams, 202–435–

5514; concerning the proposed regulations, William Beard, 202–622–3620 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President. Those policies are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the service, unless the Office of Management and Budget (OMB) grants an exception.

Section 6159 authorizes the IRS to enter into an agreement with any taxpayer for the payment of tax in installments. Section 6331(k) generally prohibits the IRS from levying to collect taxes while an installment agreement in effect. A taxpayer that enters into an installment agreement therefore receives a special benefit of being allowed to pay an outstanding tax obligation over time. Before entering into an installment agreement, the IRS must examine the taxpayer's financial position to determine whether such an agreement is appropriate. Once the agreement is in effect, the IRS must process the payments and monitor compliance.

Under sections 300.1 and 300.2, the IRS currently charges $43 for entering into an installment agreement and $24 for restructuring an installment agreement or reinstating an installment agreement that is in default. The amount of the fees has not changed since the fees were first implemented in 1995. As required by the OMB Circular, the IRS recently completed a review of the installment agreement program and determined that the full cost of an installment agreement is $105. The IRS also determined that the full cost of restructuring or reinstating an installment agreement is $45. The higher costs associated with installment agreements result from increases in labor and other costs since 1995 and refinements in the costing model to better account for the full cost of an installment agreement. In accordance with the OMB Circular, these proposed regulations increase the fees to bring them in line with actual costs.

These proposed regulations propose to charge less than full cost for entering into an installment agreement in cases where the taxpayer chooses to pay by way of a direct debit from the taxpayer's bank account. The proposed fee for such an installment agreement is $52. The reduced fee would only apply to new installment agreements; the charge would still be $45 for restructuring or reinstating an installment agreement, regardless of the method of payment. While the OMB Circular requires agencies to charge full cost, OMB has granted an exception to the full cost requirement of the OMB Circular for direct debit installment agreements. In addition, the IRS believes that charging less than full cost will encourage taxpayers to choose to pay by direct debit. The IRS has determined that the default rate on direct debit installment agreements is much lower than that for other agreements. These agreements are therefore beneficial both to taxpayers and to tax collection.

Proposed Effective Date

These regulations are proposed to be effective thirty days after the date of publication in the **Federal Register** of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 17, 2006, at 10 a.m. in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, MD. Due to building security procedures, visitors must enter at the main entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Monday, September 25, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

Lists of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.1(b) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 300.1 Installment agreement fee.

* * * * *

(b) * * * Effective January 1, 2007, the fee for entering into an installment agreement is $105, except that the fee is $52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account.

* * * * *

Par. 3. Section 300.2(b) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) * * * Effective January 1, 2007, the fee for restructuring or reinstating an installment agreement is $45.

* * * * *

Mark. E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–14421 Filed 8–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–130]

RIN 1625–AA09

Drawbridge Operation Regulations; Southern Boulevard (SR 700/80) Bridge, Atlantic Intracoastal Waterway, mile 1024.7, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the Southern Boulevard (SR 700/80) Bridge across the Atlantic Intracoastal Waterway, mile 1024.7, Palm Beach, Florida. The proposed rule would require the drawbridge to open twice an hour. The proposed schedule is based on requests from vessel operators along the Atlantic Intracoastal Waterway. The proposed schedule would require the bridge to open on the quarter and three quarter-hour and would meet the reasonable needs of navigation while not impacting vehicular traffic.

DATES: Comments and related material must reach the Coast Guard on or before October 16, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050. Commander (dpb) 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 docket number [CGD07–06–130] and will be available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6743.

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 [CGD07–06–130], 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 Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 2005, the Coast Guard changed the regulations on most of the bridges in Palm Beach County to facilitate increased vehicular traffic while meeting the reasonable needs of navigation. Recently waterway users have requested that the Southern Boulevard (SR 700/80) bridge regulation be changed from opening on the hour and half-hour to opening on the quarter and three-quarter hour in order to improve vessel transit sequencing on the Atlantic Intracoastal Waterway through Palm Beach County. This proposed schedule will improve transit times for vessels while not impairing vehicular traffic.

Discussion of Proposed Rule

The Coast Guard proposes to change the operating regulation of the Southern Boulevard (SR 700/80) Bridge that crosses the Atlantic Intracoastal Waterway, mile 1024.7, in Palm Beach, FL. The existing regulation that governs the operation of the Southern Boulevard (SR 700/80) drawbridge is published in 33 CFR 117.261(w).

The proposed rule would improve staggered bridge openings and allow vessels traveling at five knots to significantly reduce wait times to pass through the Southern Boulevard (SR 700/80) Drawbridge. The proposed schedule would have the Southern Boulevard (SR 700/80) Bridge opening on the quarter and three-quarter hour.

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.

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. Because the proposed rule would provide timed openings for vehicular traffic and continue to provide twice an hour sequenced openings for vessel traffic, the rule should have little economic impact.

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 may be small entities: the owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of the Broward County bridges. The proposed rule would not have a significant economic impact on a substantial number of small entities because proposed rule would provide timed openings for vehicular traffic and continue to provide twice an hour sequenced openings for vessel traffic.

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 person listed under **FOR FURTHER INFORMATION CONTACT**. 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 will 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 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (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. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. In Sec. 117.261 revise paragraph (w) to read as follows:

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

* * * * *

(w) Southern Boulevard (SR 700/80) bridge, mile 1024.7, at Palm Beach. The draw shall open on the quarter and three-quarter hour.

* * * * *

Dated: July 5, 2006.

D.W. Kunkel,

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

[FR Doc. E6–14432 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[EPA–HQ–OAR–2005–0474; FRL–8214–8]

RIN 2060–AN70

Amendments to Regulations for Heavy-Duty Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In a rule published January 18, 2001, EPA promulgated several new standards for heavy-duty highway diesel engines and vehicles beginning in model year 2007. In this rulemaking we are proposing to make some technical amendments to the regulations to correct typographical errors, revise references, remove old provisions, and to revise some provisions regarding deterioration factors to be identical to those for nonroad diesel engines certified under the Tier 4 rule, published June 29, 2004.

DATES: Written comments must be received by September 29, 2006. Request for a public hearing must be received by September 14, 2006. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0474, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail*: *a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency, EPA West Building, 1200 Pennsylvania Ave., NW., Room: B108 Mail Code: 6102T, Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. If your Docket requires the submission of multiple copies, please insert the following here:
- Please include a total of copies.
- If the NPRM involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''
- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: B108 Mail Code: 6102T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0474. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), Air Docket, Public Reading Room, Room B108, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Assessment and Standards Division, e-mail *guerra.zuimdie@epa.gov,* voice-mail (734) 214–4387.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

In the ''Rules and Regulations'' section of this **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, or on one or more distinct actions in the rule, we will withdraw the direct final rule, or the portions of the rule receiving adverse comment. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

B. Regulated Entities

This action will affect companies that manufacture and certify heavy-duty highway diesel engines in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
Industry	336112	Engine and Truck Manufacturers.
Industry	33612	Heavy-duty Engine and Truck Manufacturers.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT.**

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

This proposed rule would make slight revisions to the regulations to implement the following minor amendments:

- Removing several sections that describe regulatory requirements for model years before 1996, and before 2001 for Selective Enforcement Auditing. Discontinuing publication of these sections does not affect the manufacturers' responsibility to continue meeting standards for any vehicles or engines that may still be operating within the regulatory useful life.
- Referring provisions for certification fees in part 86 subpart J to part 85 subpart Y, since they have been completely replaced in part 85 starting with the 2004 model year.
- Requiring engine manufacturers to name an agent for service in the United States in § 86.007–21, § 86.416–80, § 86.437–78, and § 86.1844–01.
- Revising deterioration factor provisions in § 86.004–28(c)(4)(iii)(B).
- Correcting a typographical error in the equation in § 86.007–11(a)(2)(v).
- Adding paragraph (j) to § 86.007–35 to ensure that the recently added provision that allows labeling flexibility to heavy-duty engines extends to 2007 and later model years.
- Revising § 86.1213–94 to reference the fuel specifications in part 86, subpart N.
- Republishing § 86.1360(c), which was removed in the migration of test procedures to 40 CFR part 1065, because there is a reference to it in § 86.1370–2007 and in § 86.1380–2004.
- Citing the incorporation by reference of several technical standards related to on-board diagnostics in § 86.1806–01.
- Correcting reference to LDVs, LDTs and heavy-duty vehicles in CFR § 86.1806–04(j) and § 86.1806–05(j).
- Correcting a mistake made in the 2004 Heavy-Duty rule that accidentally omitted paragraphs (c) and (d) from § 86.1840–01.

EPA does not expect that the technical amendments will have any adverse cost impact to the manufacturers. There are no testing costs associated with the technical amendments proposed. There is no environmental impact associated with this regulatory action because this proposed rule does not propose to change the heavy-duty highway diesel engine emission standards that manufactures have to meet; it simply make some technical amendments to the rule.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

III. Statutory and Executive Order 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 review under the EO. This proposed rule is not a significant regulatory action as it merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. There are no new costs associated with this rule. A Final Regulatory Support Document was prepared in connection with the original regulations for heavy-duty diesel engines and vehicles beginning in model year 2007 (HD 2007 rule), which was signed December 21, 2000 and published January 18, 2001

(66 FR 5002) and we have no reason to believe that our analysis in the original rulemaking is inadequate. The relevant analysis is available in the docket for the December 21, 2000 rulemaking (66 FR 5002) and at the following Internet address: *http://www.epa.gov/otaq/diesel.htm.* The original action (66 FR 5002) was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This proposed rule does not include any new collection requirements, as it merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. There are no new paperwork requirements associated with this rule. The information collection requirements (ICR) for the original heavy-duty diesel engines and vehicles rulemaking were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0104, EPA ICR number 0783.47. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

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

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

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

This proposed rule merely makes a slight revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

This proposed rule merely makes a revision to the regulations to provide an additional option for selecting the deterioration factor for highway heavy duty diesel engines. The requirements of UMRA therefore do not apply to this action. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of UMRA policy.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule merely makes a revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13132. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances

specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This proposed rule merely makes a revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. Thus, Executive Order 13175 does not apply to this rule. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

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

This proposed rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

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

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

This proposed rule does not involve technical standards. It merely makes a revision to the regulations to correct typographical errors, revise references, restore sections, conciliate provisions with our nonroad engine regulations and remove old provisions for highway heavy-duty diesel engines. Thus, we have determined that the requirements of the NTTAA do not apply. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of NTTAA policy.

J. Statutory Authority

The statutory authority for this action comes from section 202 of the Clean Air Act as amended (42 U.S.C. 7521). This action is a notice of proposed rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 24, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–14428 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket Number EPA–R08–OAR–2006–0098; FRL–8215–2]

RIN 2008–AA00

Federal Implementation Plan for the Billings/Laurel, MT, Sulfur Dioxide Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published July 12, 2006 (71 FR 39259). In the July 12, 2006 document, EPA proposed to promulgate a Federal Implementation Plan (FIP) containing emission limits and compliance determining methods for several sources located in Billings and Laurel, Montana. At the request of several commenters, EPA is extending the comment period through November 3, 2006.

DATES: Comments on the proposal must be received on or before November 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0098, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: long.richard@epa.gov and ostrand.laurie@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the section titled, **FOR FURTHER INFORMATION CONTACT**, if you are faxing comments).
- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0098. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of the July 12, 2006 document (71 FR 39259).

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite

200, Denver, Colorado 80202–2466, (303) 312–6437, *ostrand.laurie@epa.gov*.

Dated: August 21, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E6–14452 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R05–OAR–2006–0399; FRL–8214–4]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Allen County 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 30, 2006, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted, in final: A request to redesignate the 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Allen County, Indiana, to attainment for the 8-hour ozone NAAQS; and a request for EPA approval of an Indiana State Implementation Plan (SIP) revision containing a 14-year maintenance plan for Allen County. Today, EPA is proposing to determine that the Allen County, Indiana ozone nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is also proposing to approve Indiana's request to redesignate the area to attainment for the 8-hour ozone standard and the State's maintenance plan SIP revision. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that Allen County, Indiana has met the criteria for redesignation to attainment specified in the Clean Air Act. EPA is also proposing to approve, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2020 that are contained in the 14-year 8-hour ozone maintenance plan for Allen County.

DATES: Comments must be received on or before September 29, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0399, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov*.
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 16, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–14425 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

COMMISSION ON CIVIL RIGHTS

45 CFR Part 706

RIN 3035–AA02

Employee Responsibilities and Conduct Residual Cross-References Regulation of the United States Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Proposed rule.

SUMMARY: The United States Commission on Civil Rights (Commission) is proposing to repeal its old employee conduct regulations, which have been superseded by the executive branch Standards of Ethical Conduct, financial disclosure and financial interests regulations issued by the Office of Government Ethics (OGE) In place of its old regulations, the Commission is proposing to add a section of residual cross-references to those branchwide regulations as well as its proposed new supplemental standards regulations and certain executive branchwide conduct rules promulgated by the Office of Personnel Management (OPM).

DATES: Comments should be submitted on or before September 29, 2006 to be considered in the formulation of final rules.

ADDRESSES: Interested parties should submit written comments to: United States Commission on Civil Rights, Office of the Staff Director, Attn: Emma Monroig, Solicitor and Designated Agency Ethics Official, Esq., 624 Ninth Street, NW., Suite 621, Washington, DC 20425. E-mail comments should be addressed to *emonroig@usccr.gov*. Please cite 45 CFR part 706 in all correspondence related to these proposed revisions.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, Office of the Staff Director, United States Commission on Civil Rights, 624 Ninth Street, NW., Suite 621, Washington, DC 20425, (202) 376–7796; Facsimile: (202) 376–1163.

SUPPLEMENTARY INFORMATION: In 1992, OGE issued a final rule setting forth uniform executive branch Standards of Ethical Conduct (generally effective on February 3, 1993) and an interim final rule on financial disclosure, and in 1996 issued a final rule on financial interests for executive branch departments and agencies of the Federal Government and their employees. Those three executive branchwide regulations, as corrected and amended, are codified in 5 CFR parts 2634, 2635 and 2640. Together those regulations have superseded the old Commission regulations, based on prior OPM standards, on employee responsibilities and conduct at 45 CFR part 706 which the Commission is proposing to remove its superseded regulations, and add in place thereof, a new section containing residual cross-references to the provisions at 5 CFR parts 2634, 2635 and 2640, as well as to the proposed new Commission regulation supplementing the executive branchwide standards that is being separately published today elsewhere in this issue of the **Federal Register** for codification in a new chapter LXVIII of 5 CFR, to consist of part 7801. In addition, the Commission is proposing to include in its residual section a reference to the separate, specific executive branchwide provisions regarding gambling, safeguarding the examination process and conduct prejudicial to the Government which are set forth in 5 CFR part 735, as amended and reissued by OPM in 1992 and 2006. Those specific branchwide restrictions are not covered by in OGE's Standards of Ethical Conduct regulation; furthermore, they are self-executing and do not require any department or agency republication.

Matters of Regulatory Procedure

Executive Orders 12866 and 12988

Because this proposed rule relates to Commission personnel it is exempt from the provisions of Executive Orders 12866 and 12988.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule as proposed would not have a significant economic impact on a substantial number of small entities because it would primarily affect Commission employees.

Paperwork Reduction Act

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rulemaking document, because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

List of Subjects in 45 CFR Part 706

Conflict of interests, Government employees.

Dated: August 24, 2006.

Kenneth L. Marcus,

Staff Director, United States Commission on Civil Rights.

Dated: August 24, 2006.

Emma Monroig,

Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights.

For the reasons set forth in this preamble, the Commission is proposing to revise 45 CFR part 706 to read as follows:

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301, 42 U.S.C. 1975b(d).

§ 766.1 Cross-references to employee ethical conduct standards, financial disclosure and financial interest regulations and other conduct rules.

Employees of the United States Commission on Civil Rights are subject to the executive branch standards of ethical conduct contained in 5 CFR part 2635, the Commission regulations at 5 CFR part 7801 (as proposed in a separate proposed rule document published elsewhere in this issue of the **Federal Register**) which supplement the executive branchwide standards, the executive branch financial disclosure regulations contained in 5 CFR part 2634, and the executive branch financial interests regulations contained in 5 CFR part 2640, as well as the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735.

[FR Doc. 06–7233 Filed 8–29–06; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 392

[Docket No. FMCSA–2006–25660]

RIN 2126–AB04

Railroad-Highway Grade Crossing; Safe Clearance; Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FMCSA announces that a public meeting will be held to discuss the problem of railroad-highway grade crossing crashes in which a commercial motor vehicle (CMV) is struck by a train because the driver of the CMV, for whatever reason, stops the vehicle prior to clearing the railroad track. The meeting is intended to promote the sharing of information between interested parties and FMCSA, the Federal Highway Administration (FHWA), and the Federal Railroad Administration (FRA) to ensure motor carriers and drivers are prepared to achieve full compliance with a forthcoming, statutorily mandated Federal rule to prohibit drivers from entering a railroad grade crossing unless there is sufficient room to clear the tracks completely without stopping. The meeting will provide all interested parties with an opportunity to voice their concerns about the potential costs and safety benefits of such a rule.

DATES: The meeting will be held on Wednesday, September 20, 2006, from 9:30 a.m. to 4:30 p.m. Individuals who wish to make a formal presentation must contact Ms. Ryan Thompson at (703) 934–3432 or e-mail her at *rthompson@icfi.com* no later than 5 p.m., e.t., September 15, 2006. Comments to the docket should be submitted no later than October 20, 2006.

ADDRESSES: The meeting will be held in Room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, DC 20590. You may also submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2006–25660, using any of the following methods:

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL–401, Washington, DC 20590–0001.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Instructions: All submissions must include the Agency name and docket numbers for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Driver and Carrier Operations, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration (MC–PSD), 400 Seventh Street, SW., Washington, DC 20590; or *MCPSD@dot.gov.* Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Tom Yager at 202–366–4009.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1998, the FHWA published a notice of proposed rulemaking (NPRM) (63 FR 40691) to prohibit CMV operators from driving onto a railroad grade crossing without having sufficient space to drive completely through without stopping, thus leaving a portion of the CMV across the tracks. The rulemaking was required by section 112 of the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) (Pub. L. 103–311, 108 Stat. 1673, at 1676, August 26, 1994).

As stated in the report by the Senate Committee on Commerce, Science, and Transportation (December 9, 1993), the goal of the provision in Senate Bill 1640, which later became section 112, was to: ''* * * improve safety at highway-railroad crossings in response to fatalities that have occurred from accidents involving commercial motor vehicle operators who failed to use proper caution while crossing * * * [T]he Committee believes that imposing a Federal statutory obligation on drivers of all commercial motor vehicles to consider whether they can cross safely and completely * * * will help to reduce the number of tragedies associated with grade-crossing accidents'' [S. Rep. No. 103–217, at 11 (1994), reprinted in 1994 U.S.C.C.A.N. 1763, 1773].

The FHWA asked the States for information on the number and location of highway-railroad grade crossings with inadequate storage space [1]—and on alternative crossings—as the first step in estimating the costs and benefits of the rule required by section 112. Many State agencies, however, assumed that they were required to provide the information. State agencies were concerned that a potential rule would require them to reconstruct, rewire, reroute, or otherwise correct every inadequate crossing and that FHWA was indifferent to the costs of such an undertaking. In fact, the time, difficulty, and cost involved in collecting reliable data on highway-railroad grade crossings became a primary focus of the comments in that rulemaking proceeding.

Therefore, on April 28, 2006 (71 FR 25128), FMCSA withdrew the 1998 NPRM, and will soon initiate a new rulemaking, less burdened by previous misunderstandings, to implement section 112 of HMTAA. An NPRM to address the requirements of section 112 will be published when a current, on-going study of grade crossing crashes associated with the CMV stopping prior to clearing the tracks completely has been completed.

The FMCSA believes that holding a public meeting before publishing the NPRM will be helpful for the Agency and stakeholders. The public meeting will establish dialogue among Federal and State agencies, motor and rail carriers, safety advocacy groups, and other interested parties concerning practical approaches for reducing the incidence of CMV crashes with trains because the driver of the CMV, for whatever reason, stops the vehicle before clearing the railroad track.

Meeting Information

The meeting will be held from 9:30 a.m. to 4:30 p.m., e.t., on Wednesday, September 20, 2006, in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC. Because access to the DOT building is controlled, all visitors must sign in with the security office located at the southwest entrance of the building, present identification with a picture on it, be escorted, and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation must contact Ms. Ryan Thompson at (703) 934–3432 or e-mail her at *rthompson@icfi.com* no later than 5 p.m., e.t., September 15, 2006, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

Individuals who are unable to attend the meeting may submit written comments to the docket identified at the beginning of this notice.

Issued on: August 25, 2006.

David H. Hugel,

Deputy Administrator.

[FR Doc. E6–14462 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–EX–P

[1] Inadequate storage space means the roadway is too short in length on the opposite side of the railroad tracks to allow the vehicle to stand or wait to proceed at the traffic control device (e.g., traffic signal or stop sign) on that side. For example, the storage space of a particular highway-railroad grade crossing near a highway intersection measures 50 feet in length between the stopping line marker on the pavement at the traffic signal of the highway intersection and the railroad's grade crossing gate. A CMV driver is operating a tractor-trailer combination measuring 65 feet in overall length. Thus, the storage space of 50 feet is inadequate to accommodate a tractor-trailer combination measuring more than 50 feet in length.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Petition to List the Sonoran Desert Population of the Bald Eagle as a Distinct Population Segment, List that Distinct Population Segment as Endangered, and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the Sonoran Desert population of the bald eagle (*Haliaeetus leucocephalus*) in central Arizona and northwestern Mexico as a distinct population segment, list that distinct population segment as endangered, and designate critical habitat for that distinct population segment under the Endangered Species Act of 1973, as amended (Act). On the basis of a review of the information contained within the petition, we find that the petition does not provide substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of this population of the bald eagle or threats to it.

DATES: The finding announced in this document was made on August 29, 2006.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle (see **ADDRESSES**); telephone, 602–242–0210; facsimile, 602–242–2513.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On October 6, 2004, we received a formal petition, dated October 6, 2004, from the Center for Biological Diversity (Center), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the bald eagle population found in the Sonoran Desert (as defined by Brown 1994) or, alternately, in the upper and lower Sonoran Desert (as defined by Merriam) be classified as a distinct population segment (DPS) and this DPS be reclassified as an endangered species, in accordance with the Act. The petition also requested that critical habitat be designated concurrently for the DPS.

Because the Sonoran Desert described by Brown (1994) encompasses a different geographic area than that defined as upper and lower Sonoran Desert by Merriam, the Service requested clarification on the intended geographic boundaries for the Sonoran population on February 11, 2005. The petitioners responded with clarification on March 5, 2005, requesting that we consider in the DPS analysis those bald eagles nesting along riparian areas in the Sonoran Desert in Arizona and northwestern Mexico. At that time, further action on this petition was precluded by higher listing priorities. On January 19, 2006, we received from the Center a 60-day Notice of Intent (NOI) to sue the Service for failure to respond to the petition within the statutory timeframe. On March 27, 2006, the Center and the Maricopa Audubon Society filed a lawsuit against the U.S. Department of the Interior (DOI) and the Service for failure to make a finding on the petition within 90 days.

Species Information

The bald eagle (*Haliaeetus leucocephalus*) is the only species of sea eagle native to North America. Literally translated, *H. leucocephalus* means white-headed sea eagle (USFWS 1995, p. 36000). Bald eagles are birds of prey of the Order Falconiformes and Family Accipitridae. Bald eagles vary in length from 28 to 38 inches (71 to 97 centimeters), weigh between 6.5 to 14 pounds (2.9 to 6.4 kilograms), and have a 66 to 96 inch (1.8 to 2.6 meter) wingspan (Arizona Game and Fish Department (AGFD) 1999, p. 3). Distinguishing features include a yellow hooked bill and yellow unfeathered legs and feet. Adults of the species have a dark brownish-black body color, black talons, and a white head, neck, and tail. Immature bald eagles are mostly dark brown and lack a white head and tail until they reach approximately 5 years of age (AGFD 2006, pg. 3).

Gerrard and Bartolotti (1988, p. 2) note that bald eagles are believed to have nested on both coasts, along all major rivers and large lakes in the interior from Florida to Baja California in the south, and north to Labrador and Alaska. The species is known to have bred in every State and province in the United States and Canada except Hawaii (Hunt *et al.* 1992, p. A–9).

Hunt *et al.* (1992, pp. A–11 and A–12) summarized the earliest records from the literature for bald eagles in Arizona. Coues noted bald eagles in the vicinity of Fort Whipple in 1866 (now Prescott), and Henshaw reported bald eagles south of Fort Apache in 1875. Bent reported breeding eagles at Fort Whipple in 1866 and on the Salt River Bird Reservation (since inundated by Roosevelt Lake) in 1911. Breeding eagle information was also recorded in 1890, near Stoneman Lake by S.A. Mearns. Additionally, there are reports of bald eagles along rivers in the White Mountains from 1937, and reports of nesting bald eagles along the Salt and Verde Rivers as early as 1930.

The bald eagle population of the Southwest Recovery Region, as identified in the final recovery plan for the species, reaches throughout Oklahoma and Texas west of the 100th meridian, all of New Mexico and Arizona, and the area of California bordering the Lower Colorado River (USFWS 1982, p. 1). The vast majority

of these breeding bald eagles are found within the State of Arizona. The occurrence of breeding bald eagles in the State of New Mexico is very limited (USFS 2004, p. 153). In 2001, the New Mexico Department of Game and Fish (NMDGF) reported the occurrence of four bald eagle nest sites, all on private lands, in New Mexico.

Nationwide, bald eagles are known to nest primarily along seacoasts and lakeshores, as well as along banks of rivers and streams (Stalmaster 1987, p. 120). In the Southwest, bald eagle breeding areas (BA) (eagle nesting sites and the area where eagles forage) are located in close proximity to a variety of aquatic sites, including reservoirs, regulated river systems, and free-flowing rivers and creeks. The term ''BA'' is used to define eagle nesting sites and the area where they forage. In the Southwest, nests are placed mostly on cliff edges, rock pinnacles, and in cottonwood trees. However, artificial structures, junipers, pinyon pines, sycamores, willows, ponderosa pines, and snags of these trees also have supported eagle nests (AGFD 2006, p. 4).

In Arizona, the majority of nests are located in the Upper and Lower Sonoran Life Zones (zones of plant and animal life associated with a given elevation), including the riparian habitats and transition areas of both zones (Hunt *et al.* 1992, p. A–17). Representative vegetation of these life zones includes Arizona sycamore (*Platanus wrightii*), blue paloverde (*Parkinsonia florida*), cholla (*Opuntia spp.*), Fremont cottonwood (*Populus fremontii*), Gooding willow (*Salix gooddingii*), mesquite (*Prosopis spp.*), saguaro (*Carnegiea gigantea*), and tamarisk or salt cedar (*Tamarix pentandra*; an exotic species) (Brown 1994, p. 200).

Historical evidence to document bald eagles nesting in New Mexico is lacking, although unverified reports suggest one or two pairs may have nested in southwestern New Mexico prior to 1928. In the mid-1980s, a pair established a territory in Colfax County in an area where bald eagles concentrated in winter, and in 1987, an active nest was discovered nearby which produced two fledglings that year. In 1988, an active nest was discovered in Sierra County, also in an area of wintering eagle concentration; the nest fledged one young that year. Through 1999, those two nests together fledged a minimum of 31 young, with Colfax County being one of the more productive nests in North America. Additional nesting activity was recorded elsewhere after the mid-1980s, always in areas of wintering concentrations, including in San Juan, Rio Arriba, Quay, and Sierra counties. However, in each instance, eagles built nests only to abandon the effort prior to egg laying; such ''practice'' nests are not uncommon among inexperienced adults. In 1998, two additional nests were discovered in Colfax County, and each fledged young in both 1998 and 1999 (five young total) (Williams 2000, abstract).

Bald eagles are long-lived bird species. Southwestern bald eagles are known to exceed 12 years of age (USFWS 1999, p. 36454; Hunt *et al.* 1992, p. A–v). Bald eagles primarily eat fish, but they will also eat amphibians, reptiles, birds, small mammals, carrion (dead animals), and carcasses of large mammals (cows, elk, deer, etc.). Their food habits can change daily or seasonally, but when a choice is available, bald eagles invariably select fish over other prey. Bald eagles will scavenge, steal, or actively hunt to acquire food. Carrion constitutes a higher proportion of the diet for juveniles and subadults than it does for adult eagles. Bald eagles are primarily sit-and-wait hunters, perching in trees in order to detect available prey (Stalmaster 1987, p. 104).

Eagles in the Southwest frequently construct nests on cliffs. By 1992, of the 111 nest sites known, 46 were in trees, 36 on cliffs, 17 on pinnacles, 11 in snags, and 1 on an artificial platform (Hunt *et al.* 1992, p. A–17). However, for breeding areas where both cliff and tree nests were available, one study found that cliff nests were selected 73 percent of the time, while tree nests were selected 27 percent of the time (Hunt *et al.* 1992, p. A–17). Additionally, eagles nesting on cliffs were found to be slightly more successful in raising young to fledgling, though the difference was not statistically significant. Nests may be used year after year. Hunt *et al.* (1992, p. A–20) determined the mean diameter of nests was 5 feet (156 centimeters).

Food strongly influences bald eagle productivity (Newton 1979, pp. 95–96, 101–106; Hansen 1987, p. 1389). A female's health in the months preceding egg laying can affect egg production, and the prey availability during the breeding cycle affects the survivorship of nestlings and post-fledging juveniles. Thus, any factor affecting the adults' ability to acquire food can influence productivity and adult survivorship (Newton 1979, pp. 95–96, 101–106). The most common fish eaten in the Southwest are Sonora and desert suckers; channel and flathead catfish; common carp largemouth, smallmouth, yellow, and white bass; and black crappie. Less common are roundtail chub, green sunfish, bluegill, tilapia, and rainbow trout (USFWS 1982, p. 11; AGFD 1999, p. 6). Prey availability has decreased on the upper Salt River in Arizona. The introduction of predatory flathead catfish in the late 1970s nearly extirpated native fish populations. Flathead catfish, while available as bald eagle prey when smaller, grow to large sizes (up to 50 pounds, or 22.6 kilograms) making them too large for a prey item. Flathead catfish populations have increased while other fish species have decreased (AGFD 2006, p. 19). Productivity for the four bald eagle BAs on the upper Salt River decreased from 1.12 young per year per occupied BA in the 1980s to 0.29 young per occupied BA in the 1990s.

Bald eagles in the Southwest establish their breeding territories in December or January and lay eggs in January or February, which is early compared to bald eagles in more northerly areas (Stalmaster 1987, p. 63). Hunt *et al.* (1992, p. C–16) indicate that this may be a behavioral adaptation so that chicks can avoid the extreme desert heat of midsummer and adults can take advantage of food resources for the rearing of eaglets. Young fledgling eagles can remain in their nest area though June, learning how to fly and land, while still being primarily fed by adult eagles (Hunt *et al.* 1992, pp. C–6 and C–7).

About 45 days after leaving the nest, young southwestern bald eagles migrate to Canada, northern California, Idaho, Montana, North and South Dakota, Oregon, Washington, and Wyoming (Hunt *et al.* 1992, pp. A–104 through A–114), returning to Arizona in the fall of the same year. They are known to repeat this behavior for a minimum of 2 years (Hunt *et al.* 1992a–112; p. A–122–A–123). Resident adult bald eagles often stay in their BAs year-round, although local, short-term migrations are common (AGFD 1999, p. 6).

The first major decline in bald eagle populations began in the mid- to late-1800s, when widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Carrion treated with strychnine, thallium sulfate, and other poisons were used as bait to kill livestock predators and ultimately killed many eagles as well. These and other factors contributed to a reduction in bald eagle numbers through the 1940s (USFWS 1999, p. 36455). In the late 1940s, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine compounds became widespread. While DDT was initially sprayed along coastal and other wetland

areas for mosquito control, it later was used as a general crop insecticide. DDT accumulated in individual bald eagles that had ingested contaminated prey, and reproductive success plummeted (USFWS 1999, p. 36455). In the late 1960s and early 1970s, it was determined that dichlorophenyl-dichloroethylene (DDE), a breakdown product of DDT, accumulated in fatty tissues of adult female eagles and impaired the calcium release needed for normal egg shell formation.

On March 11, 1967 (32 FR 4001), the Secretary of the Interior listed bald eagles south of the 40th parallel (latitudinal line running roughly from northern California to New Jersey) as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa–668cc). On December 31, 1972, DDT was banned from use in the United States by the Environmental Protection Agency.

Nationwide bald eagle surveys conducted in 1973 and 1974 revealed the declining trend of bald eagle population numbers throughout the lower 48 States. We responded by listing the bald eagle throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where the bald eagle was designated as threatened (43 FR 6233, February 14, 1978). Nesting populations of bald eagles have more recently been increasing throughout the United States. Data from surveys conducted between 1963 and 1998 show that known active nest sites in the lower 48 States have grown from 417 to over 5,748 occupied BAs (USFWS 1995, p. 36001; USFWS 1999, p. 36457). Today, the Service estimates the population in the lower 48 states to be at approximately 7,066 breeding pairs (USFWS 2006, p. 8239).

The 1982 recovery plan for the Southwestern Recovery Region states that when the total reproduction for the eagle population within the Southwestern Recovery Region as a whole has effectively doubled to 10–12 young per year over a 5-year period, and the population range has expanded to include one or more river drainages in addition to the Salt and Verde River Systems, the southwestern bald eagle should be reclassified to threatened. The 1982 recovery plan indicated that Arizona was the only State in the recovery region containing nesting bald eagles, with 42 unverified historical nesting territories in the Salt and Verde River systems, and one occupied territory along the Colorado River. As discussed in the February 16, 2006, **Federal Register** notice reopening the comment period on the proposed rule to delist the bald eagle through its range (71 FR 8238), the downlisting goal established in the recovery plan for the southwestern bald eagle has been exceeded. Further, on July 12, 1995, we reclassified the bald eagle from endangered to threatened in the lower 48 States (60 FR 36000).

The number of known BAs has increased from a low of 3 in 1971, to a high of 50 in 2006, while the number of occupied BAs increased from a low of 3 in 1971, to a high of 43 in 2006. The number of young hatched increased from a low of 0 in 1972, to a high of 55 in 2006 (AGFD 2006, pp. 48–49; AGFD unpubl. data 2006). Productivity has also changed. Between 1975 and 1984, average productivity was 0.95 young per occupied BA. Between 1987 and 2005, average productivity was 0.78 young per occupied BA. These data take into account productivity for BAs throughout the Southwest, and they are not restricted to the Sonoran Desert population of bald eagles evaluated under the petition.

While the number of BAs has increased, there was no expectation that these BAs would demonstrate a corresponding increase in reproductive performance. In part, this is because early monitoring detected BAs with the highest quality habitat that were easily discovered. Following an intensive survey effort, we now know of more BAs, but habitat conditions within them ranges from poor to excellent. As a result, we are now tracking productivity in BAs with a variety of habitat conditions, rather than tracking productivity in only those BAs that were easily detected and were in prime habitat. The result of having more thorough, representative data from more BAs in a variety of habitat types is that we show fewer ''boom and bust'' years. Productivity data between 1987 and 2005 indicates a more stabilized performance. For example, in 1971, with only three known BAs, productivity was 1.33. In 1972, with the same number of known BAs, productivity was 0.0. In 1973, productivity was at 1.5. By comparison, with more BAs known, productivity fluctations now typically vary by only 0.20 to 0.30 (AGFD 2006, pp. 48–49; AGFD unpubl. data 2006).

AGFD (2006c, p. 5) additionally notes that the change in productivity could be due to a difference in monitoring protocols. More importantly, they note that an average productivity rate of 0.78 young/occupied breeding area is consistent with the range of many other areas in the species range with larger bald eagle populations, including Minnesota, British Columbia, Interior Alaska, and Washington.

For the Sonoran Desert population of bald eagles (*i.e.*, excluding those BAs not considered within the area of analysis under this action), the number of occupied BAs increased from a low of 3 in 1971 to a high of 36 in 2004. Productivity for only those BAs within the Sonoran Desert population is that same as that for the southwestern population up until 1994, when BAs outside of the Sonoran Desert population were discovered. From 1994 forward, productivity within the Sonoran Desert population has ranged between 0.62 and 1.06, reaching a high in 2004. Productivity remained high at 1.01 young per occupied BA for 2005 (AGFD 2004a, p. 15; AGFD 2004, p. 6; AGFD 2005, p. 7; AGFD 2006, Table 7, pp. 48–50). The average annual productivity for this time period is at 0.78, which corresponds to that for the overall southwestern population.

Previous Federal Actions

On March 11, 1967 (32 FR 4001), bald eagles south of 40 degrees north latitude were federally listed as an endangered species. Bald eagles north of this line were not listed at that time because those populations had not experienced the same threats and population declines as of 1967. On February 14, 1978, we listed the bald eagle as endangered in 43 States, and threatened in 5 others (43 FR 6233). Bald eagles were not listed in Alaska, and are not found in Hawaii. On July 12, 1995, we reclassified the bald eagle from endangered to threatened in the lower 48 States (60 FR 36000). The bald eagle remained classified as threatened in Michigan, Minnesota, Wisconsin, Oregon, and Washington, as originally listed.

On July 6, 1999, we proposed to remove the bald eagle from the List of Endangered and Threatened Wildlife in the lower 48 States, including the Southwest Recovery Region (64 FR 36454). The original comment period was open for 90 days, until October 5, 1999. We reopened the comment period on that proposal on February 16, 2006 (71 FR 8238), for an additional 90 days, until May 17, 2006, and we extended the comment period on May 16, 2006 (71 FR 28369), for another 30 days, until June 19, 2006.

Distinct Vertebrate Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. ''Species'' is defined by the Act as including any species or subspecies of fish and wildlife or plants,

and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) (61 FR 4722, February 7, 1996), to help us in determining what constitutes a DPS. The policy identifies three elements that are to be considered in a decision regarding the status of a possible distinct population segment (DPS). These elements include (1) the discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. Our policy further recognizes it may be appropriate to assign different classifications (i.e., threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4721; February 7, 1996).

In the Service's final rule reclassifying the bald eagle from endangered to threatened (July 12, 1995, 60 FR 36000), we determined that eagles in the Southwestern Recovery Region were part of the same bald eagle population as that of the remaining lower 48 States, and we determined it was appropriate to include it in the reclassification. However, the petition requests action with respect to an area (i.e., Sonoran Desert) that differs from the area that was analyzed in the reclassification rule (i.e., Southwestern Recovery Region),and provides new information not considered in 1995.

Discreteness

The DPS policy states that a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: It must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, or it must be delimited by international boundaries within which significant differences in control of exploitation, management or habitat conservation status or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Our evaluation of discreteness under the DPS policy, based on information provided in the petition and available in our files, is presented below.

Discreteness Criteria 1. The Population Segment is Markedly Separated From Other Populations of the Same Taxon as a Consequence of Physical, Physiological, Ecological, or Behavioral Factors. Quantitative Measures of Genetic or Morphological Discontinuity May Provide Evidence of This Separation

Ecological Factors

The petition notes the geographic region occupied by Sonoran Desert bald eagles is much drier and hotter than that of any other bald eagle population, and represents a significant departure from the habitat selected by bald eagles in the rest of North America. The petition concludes that, in order to adapt to high summer temperatures and to time breeding cycles to the accessibility and spawn of native fish (primarily suckers), Sonoran Desert bald eagles breed earlier, nest earlier, and fledge their young sooner than bald eagles elsewhere (AGFD 1999a, 2000; Gerrard and Bortolotti 1988; Hunt *et al.* 1992; Stalmaster 1987; USFWS 2003b). In addition, the petition notes that, unlike bald eagles elsewhere in North America, Sonoran Desert bald eagles use cliff nest sites and that 53 of 111 known nests, or 48 percent, are on cliffs or pinnacles. They further note the only other place this occurs is in the Aleutian Islands (Hunt *et al.* 1992).

Response to the Petition

The information provided in the petition on behavioral adaptations to the Sonoran Desert is, in part, accurate. While it is true that Sonoran Desert bald eagles initiate nesting earlier than eagles in some parts of the country, Stalmaster (1987, p. 63) notes bald eagles in Florida initiate breeding activities in October, even earlier than Arizona bald eagles. Florida bald eagles also lay eggs earlier (Stalmaster 1987, p. 63; Gerrard and Bortolotti 1988 p. 76). Accordingly, Florida bald eagles hatch and fledge earlier than those in Arizona. Stalmaster (1987, p.63) concludes timing of various breeding events is tied to latitude of the nesting area, with eagles at more northern latitudes breeding at later dates.

With respect to cliff nesting, the information presented on the use of cliff nests is accurate. However, this is not necessarily a unique trait of Sonoran Desert bald eagles. Gerrard and Bortolotti (1988, p. 41) note bald eagles in other areas may nest on cliffs if suitable trees are not available. Stalmaster (1987) noted exceptions to tree nests as well, but indicated that, while eagles in other areas may rarely use cliffs or other surfaces, this is an exception, whereas in Arizona, cliff nesting is common. In addition, bald eagles are known to nest on cliffs on the Channel Islands off California (Montrose Settlements Restoration Program 2005).

Behavioral Factors

The petition provides information alleging that the Sonoran Desert bald eagles are reproductively isolated. Specifically, the petition contends that 352 out of 353 individuals (99.997 percent) objectively identified while participating in breeding activity in this population came from within the Sonoran Desert bald eagle population. Additionally, the petition notes that, since 1977, biologists in Arizona have banded 256 nestlings with only one individual identified as having emigrated. According to the petition, this indicates that 99.6 percent of individuals born into the Sonoran Desert remain in the desert (AGFD 1999a, 2000). The petition states that, to date, evidence from the banding and identification of breeding adults supports the hypothesis that the Sonoran Desert bald eagle breeding population is not supported or maintained by immigration from other states or regions. They quote AGFD (1999a, 2000):

> ''[B]ecause adults return to the vicinity of their natal area to breed, the large distance between small breeding populations in the Southwest decreases the chance for movement between neighboring populations. Probably most convincing are the results from banding 256 nestlings over 20 years and identifying 372 breeding adults over 8 years. Only one individual from out-of-state entered the breeding population and only one left. Additionally, the proportion of breeding adults with color bands had steadily increased, while the presence of unmarked Bald Eagles has decreased. Thus, continued attention to the survivorship of all Arizona Bald Eagles is vital to the maintenance of our breeding population. We can not depend on immigration to Arizona from nearby states to make up for poor management in Arizona * * *''

The petition claims the AGFD (1994b) warned that repopulation of the Sonoran Desert bald eagle population following a population crash would be highly unlikely, and quote the AGFD (1994b) as follows:

> ''Because Arizona continues to possess nearly the entire breeding population within the Southwestern Region, concerns remain over retaining the genetic integrity of this population * * * Should a population crash occur in Arizona, the pool of eagles to repopulate the Southwest could be left to the few pairs in the neighboring states or Mexico. However, at this time, there is no documentation of eagles from these neighboring Southwestern states breeding in Arizona or vice versa.''

The petition further states that natal site fidelity is common for bald eagles, noting that, in a study of nine bald eagle populations including thousands of banded birds, only two nestlings were found to have bred in other areas. One of these birds moved 331 kilometers (205 miles) north from its natal site in the Greater Yellowstone Ecosystem (Harmata in litt.) while the other traveled 418 kilometers (260 miles) south from its natal site near Charleston, South Carolina (T. Murphy, pers. comm., Wood in litt.). They conclude that the tendency for banded nestlings to breed within their natal populations is well known (Hunt *et al.* 1992).

Response to the Petition

The information in the petition appears to be accurate and reliable; however, it should be noted the only individual cited as entering the breeding population from out-of-state refers to a bald eagle from Texas (AGFD 2006, p. 27) that currently occupies the Luna BA, which is not part of the Sonoran Desert bald eagle population. As a result, the appropriate conclusion is all birds objectively identified while participating in breeding activity in the Sonoran Desert bald eagle population came from within the population. It should also be noted that sub-adult bald eagles do migrate and return annually. As noted above, about 45 days after leaving the nest, young southwestern bald eagles migrate to Canada, northern California, Idaho, Montana, North and South Dakota, Oregon, Washington, and Wyoming (Hunt *et al.* 1992, p. A–104—A–114), returning to Arizona in the fall of the same year. They are known to repeat this behavior for a minimum of 2 years (Hunt *et al.* 1992a–112; p. A–122—A–123). Resident adult bald eagles often stay in their BAs year-round, although local short-term migrations are common (AGFD 1999, p. 6).

We agree with the petitioners that, should the Sonoran Desert bald eagle population experience a rapid decline, there are few eagles in neighboring southwestern states or Mexico which could serve as a source population for the Sonoran Desert bald eagle population. Finally, we find the information from Harmata *et al.* (1999, p. 788) and Hunt *et al.* (1992, p. A–144) supports the discussion on the natal origins of breeding adults, and the probability that adult bald eagle will not immigrate to the Sonoran Desert bald eagle population from surrounding southwestern states or farther.

Evidence of Genetic Discontinuity

With respect to genetic isolation, the petition found that the current understanding of genetics does not refute the discrete and isolated nature of the desert nesting bald eagle. The petition notes a review of all information regarding genetic analysis of the southwestern desert nesting bald eagle reveals consistent uncertainty, and concludes current genetic data support no definitive conclusions concerning isolation or lack of isolation (CBD 2004e; Hunt *et al.* 1992; SWCBD 1999). The petition states that, while no definitive conclusions are supported by the limited genetic data, this is not required under the current DPS policy. Specifically, the petition quotes from the policy:

> ''Thus, evidence of genetic distinctness or of the presence of genetically determined traits may be important in recognizing some DPS's, but the draft policy was not intended to always specifically require this kind of evidence in order for a DPS to be recognized * * *''

Similarly, the petition notes absolute reproductive isolation is not required under the policy, which states:

> ''The Services do not consider it appropriate to require absolute reproductive isolation as a prerequisite to recognizing a distinct population segment. This would be an impracticably stringent standard, and one that would not be satisfied even by some recognized species that are known to sustain a low frequency of interbreeding with related species * * *''

Response to the Petition

The information presented within the petition on completed genetic studies for bald eagles appears accurate and reliable. Hunt *et al.* (1992, pp. E–96 to E–110) contains the genetic work completed to date on the southwestern bald eagle population. Vyse (1992, p. E–100, E–101) notes the data are inconclusive, as evidenced by such statements as ''These findings must be assumed to be preliminary (and treated with due caution), because of a lack of information concerning sampling procedures. The results we have obtained could easily be explained by sampling procedures''; and ''At present these data (HinfI/M–13) are too incomplete to be considered further.'' In addition, Zegers *et al.* (1992, p. E–106 to E–109) notes that ''Question 4 * * * is difficult to answer with precision because of the different sample sizes between 1985 and 1990. * * * [T]his difference is possibly an artifact of the many fewer samples in 1985''; ''six loci may not be enough to give a reliable estimate of the true genetic distance'; and ''We feel caution should be exercised when interpreting these results due to the low numbers of individuals sampled from most states but especially because of the few loci examined.''

Evidence of Morphological Discontinuity

The term ''morphological discontinuity'' refers to some difference in physical characteristics that may exist between two groups. The petition contends that quantitative measures of the physical differences between Sonoran Desert bald eagles and bald eagles elsewhere offers evidence of morphological discontinuity. The petition cites quantitative measures of physical difference, stating that average weights of male bald eagles are 3.3 kilograms (kg) (7.3 pounds (lbs.)) in Arizona, 4.1 kg (9.0 lbs.) in California, and 4.7 kg (10.4 lbs.) in Alaska. Similarly, average weight for females is 4.5 kg (9.9 lbs.) in Arizona, 5.1 kg (11.2 lbs.) in California, and 5.8 kg (12.8 lbs.) in Alaska (Hunt *et al.* 1992).

Response to the Petition

The information provided on size differences appears to be accurate and reliable, as found in Hunt *et al.* (1992, p. A–159). Stalmaster (1987, pp. 16–17) notes southern eagles are much smaller and lighter than their northern counterparts. This is consistent with Bergmann's Rule, which holds that animal size increases with increasing latitude. Gerrard and Bortolotti (1988, p. 14) note Florida birds are the smallest, with a gradation of small to large from south to north. The importance of this morphological difference and its potential isolating effects are discussed by Hunt *et al.* (1992, p. A–165), who notes morphological differences such as small size may be an adaptation related to desert conditions, noting a decision to release birds into Arizona from elsewhere should be considered only as a last resort, as the introduction of foreign genes into the Sonoran Desert population might disrupt coadapted gene complexes specific to the desert population.

Discreteness Criteria 2. It is Delimited by International Government Boundaries Within Which Differences in Control of Exploitation, Management of Habitat, Conservation Status, or Regulatory Mechanisms Exist That are Significant in Light of Section 4(a)(1)(D) of the Act

No specific information was identified in the petition for this category. Therefore we will not address this category in our analysis of discreteness.

Conclusion

We have reviewed the information presented in the petition, and have

evaluated the information in accordance with 50 CFR 424.14(b). On the basis of our review, we find available genetic studies on bald eagles are dated, the sample size was small, and researchers conducting the studies found the results to be inconclusive. We therefore believe that the best available genetic information is inconclusive with regard to the discreteness of the Sonoran Desert bald eagle population. However, we believe the petition presents substantial information on the Sonoran Desert bald eagles with respect to size. However, size in birds is known to be a clinal function of latitude and does not necessarily indicate discreteness. We believe the petition provides substantial information on natal site fidelity in breeding birds and the limited number of other eagles in neighboring southwestern states or Mexico. Finally, we believe the data indicating that 20 years of monitoring have resulted in the determination that no eagles have immigrated to and only one eagle has emigrated from the Sonoran Desert bald eagle population is substantial. We, therefore, conclude that the petition contains substantial information with respect to the discreteness requirements of the DPS policy to warrant considering the Sonoran Desert bald eagle population as discrete from other bald eagle populations.

Significance

If we determine that a population segment is discrete under one of the above conditions, we must then consider its biological and ecological significance to the taxon to which it belongs, within the context that the Service's authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). This consideration may include, but is not limited to the following: (1) Evidence of the persistence of the population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Significance Criteria 1. Persistence of the Population Segment in an Ecological Setting That Is Unusual or Unique for the Taxon

Information Provided in the Petition

The petition contends that the Sonoran Desert bald eagle persists in the unique ecological setting of the Sonoran life zones of the desert Southwest (AGFD 1999a, 2000; Hunt *et al.* 1992; USFWS 2002a, 2003b). With the exception of a single 8,000 foot (2,438 meter) elevation nest (Luna BA), the petition states that all known Arizona BAs are located in the Sonoran Desert in the central part of the State in Upper and Lower Sonoran Desert habitats from elevations of 1,080 feet (330 meters) to 5,640 feet (1,720 meters), and are closely associated with the Salt, Verde, and Gila river drainage waters (Beatty and Driscoll 1994, 1996a; Beatty *et al.* 1995a, 1995b, 1998; Driscoll and Beatty 1994; Driscoll *et al.* 1992; Hunt *et al.* 1992). The petition further identifies several Arizona tree species native to the desert Southwest as representative vegetation for these areas (Brown 1994).

Response to the Petition

The breeding range of the bald eagle is associated with aquatic habitats (coastal areas, river, lakes, and reservoirs) with forested shorelines or cliffs in North America (Buehler 2000). The ecological setting in which the bald eagle persists in the Sonoran Desert may at first seem unusual for the species. However, despite the desert setting, bald eagles of the Sonoran Desert are consistently associated with preferred bald eagle habitat, the riparian ecosystem. The petition clearly states that the Sonoran Desert nests are closely associated with the Salt, Verde, and Gila river drainage waters and cites Brown (1994) when describing the riparian vegetation of these areas. As with all populations of bald eagles throughout the lower 48 States, suitable riparian habitat, or other comparable aquatic habitat, is an essential prerequisite to successful eagle reproduction in the desert Southwest (USFWS 1982). Riparian ecosystems occupied by nesting bald eagles in the Sonoran life zones of the desert Southwest, therefore, do not constitute a unique setting for the species. The persistence of the bald eagle in this setting likely represents an example of a species occupying the edge of its range of suitable habitats. Therefore, we conclude that the petition does not present substantial evidence that the population is persisting in an ecological setting that is unique for the taxon.

Significance Criteria 2. Loss of the Population Segment Would Result in a Significant Gap in the Range of the Taxon

Information Provided in the Petition

The petition contends that for more than twenty years, the Service has recognized the fact that the Southwest represents a ''significant portion of the bald eagle range'' and further states that it follows logically then that the loss of the [Sonoran] Desert nesting population would result in a significant gap in the range of the bald eagle (Hunt *et al.* 1992; USFWS 1982, 1994a, 1995, 2001a). The petition claims that bald eagles in the Southwestern United States have been considered as a distinct population for the purposes of consultation and recovery efforts under the Act (USFWS 2003b).

The petition further contends that several authors have speculated about the consequences of this population's loss (AGFD 1994b; Hunt *et al.* 1992), and the petitioners can find no credible evidence that bald eagles elsewhere possess the ability to adapt to the unique and hostile environmental habitat in which the [Sonoran] Desert nesting population has evolved. Specifically the petition quotes Hunt *et al.* (1992):

> ''[W]ere the [Southwestern Desert Nesting Bald Eagle] population extirpated, there is no firm reason to believe that bald eagles released into Arizona from elsewhere would posses [sic] the adaptations required to increase their numbers.''

The petition further quotes correspondence from the Arizona Game and Fish Department to the Service (1994b):

> ''Because Arizona continues to possess nearly the entire breeding population within the Southwestern Region, concerns remain over retaining the genetic integrity of this population. * * * Should a population crash occur in Arizona, the pool of eagles to repopulate the Southwest could be left to the few pairs in the neighboring states or Mexico. However, at this time, there is no documentation of eagles from these neighboring Southwestern States breeding in Arizona or vice versa.''

Response to the Petition

The petition cites several Service publications (1982, 1994a, 1995, 2001a) in addition to a report prepared by Hunt *et al.* (1992) when making this claim, but does not make specific reference to instances in which the Service has ''recognized the fact that the Southwest represents a significant portion of the Bald Eagle range.'' Therefore, for this analysis we will assume that the petition is referring to the fact that the

Service has continued to identify the Southwest population of the bald eagle as one of five recovery populations in the lower 48 States for more than twenty years (Hunt *et al.* 1992; USFWS 1982, 1994a, 1995, 2001a).

In establishing a recovery program for the species in the mid-1970's, the Service divided the bald eagles of the lower 48 States into five recovery populations, based on geographic location, termed Recovery Regions. This was as a result of the wide distribution of the bald eagle in the lower 48 States. Recovery plans were prepared for the five Recovery Regions, including the Southwest Recovery Region (USFWS 1982), by separate recovery teams composed of species experts in each geographic area. The Service views the establishment of recovery regions as a management tool allowing for effective regional coordination and planning among State and Federal conservation agencies and species experts. The existence of a recovery region does not, in itself, imply significance under the DPS policy (USFWS and NMFS 1996), as the petitioner claims, and therefore the Southwestern Recovery Region is not a DPS for the purposes of recovery.

In the 1994 proposed rule to reclassify the bald eagle from endangered to threatened (59 FR 35584; July 12, 1994), the Service determined that current information indicates the Southwestern population is at risk and remains in danger of extinction due to excessively low survival rates and the need for intensive management, particularly at nest sites. This decision was based on the understanding that the population was isolated and thus subject to the genetic, demographic, and environmental threats known to be associated with small populations. Data provided in the Hunt *et al.* (1992) publication indicated there had been no immigration to the Southwestern population of bald eagles. At that time the Service recognized the Southwestern Recovery Region as a DPS based on evidence that it appeared to be reproductively isolated (59 FR 35584; July 12, 1994). However, in the 1995 final rule to reclassify bald eagles from endangered to threatened, the Service affirmed that the Southwestern Recovery Region of the bald eagle is not a DPS but instead part of the same bald eagle population as that of the remaining lower 48 States (USFWS 1995). This determination was based on evidence of immigration into the population (USFWS 1995), inter-population movements (Mabie *et al.* 1994), and the then existing genetic data, which did not support the Service's previous assertion that the bald eagles of the Southwestern Recovery Region are reproductively isolated (Hunt *et al.* 1992).

On July 6, 1996, the Service and the National Marine Fisheries Service jointly published a policy that clarifies the Agencies' interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the Act (USFWS and NMFS 1996). The policy identifies three elements that are to be considered in a decision regarding the status of a possible distinct population segment (DPS). These elements include (1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (USFWS and NMFS 1996).

Subsequent to publication of the DPS policy, the Service published a proposed rule to remove the bald eagle in the lower 48 States from the list of endangered and threatened wildlife (USFWS 1999). On February 16, 2006 the Service reopened the comment period for the proposed rule (USFWS 2006). In both of these publications the Service recognized a single listed population of bald eagles throughout the lower 48 States as had been done in the earlier 1995 final rule (USFWS 1995), although a formal analysis consistent with the 1996 DPS policy had not been completed for the Southwestern Recovery Region (USFWS 1999, 2006).

The petition is correct in that early biological opinions, as part of consultations with Federal action agencies under section 7 of the Act, finalized by the Arizona Ecological Services Office referred to the Southwestern population as a DPS. However, in the 1995 final rule to reclassify bald eagles from endangered to threatened (USFWS 1995), the Service affirmed that the Southwestern population of the bald eagle is not a DPS. Some biological opinions dated after the final rule note that the Southwestern population of the bald eagle was previously considered a DPS, but no longer is considered as such. In the February 16, 2006 reopening of the comment period for the proposed rule to delist the bald eagle, the Service further explains that when preparing biological opinions under section 7 of the Act the potential effects to the Southwestern or any of the other four recovery regions of the bald eagle are considered in terms of whether they appreciably reduce the likelihood of both survival and recovery of the bald eagle throughout the lower 48 States, not solely for the geographic area in which the impacts may occur (USFWS 2006). Therefore, the bald eagles in the Southwestern United States are not considered as a distinct population for the purposes of consultation under the Act. Further, the petition under consideration in this finding requests action with respect to a geographic area (*i.e.*, Sonoran Desert) that differs from the area that was analyzed in the Service's reclassification rule (*i.e.*, Southwestern Recovery Region) (USFWS 1995). In this context, claims regarding how the Service has referred to the Southwest Recovery Region are not relevant to the petitioned action.

Finally, the bald eagle ranges throughout much of North America, nesting on both coasts from Florida to Baja California in the south, and from Labrador to the western Aleutian Islands, Alaska in the north (Gerrard and Bartolotti 1988). While the statements of two authors who have ''speculated'' about the consequences of the Sonoran Desert population's loss are accurately quoted, these statements do not specifically address how the loss of the Sonoran Desert bald eagle population would constitute a significant gap in the range of the species. Furthermore, the petitioner provides no supporting evidence to substantiate the authors' speculations.

We conclude that the bald eagles in the Southwestern United States are not considered as a distinct population for the purposes of consultation or recovery. Furthermore, the petition does no provide substantial information to support the claim that loss of the Sonoran Desert bald eagle population would result in a significant gap in the range of the species.

Significance Criteria 3. The Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

The petition does not address this factor. The bald eagle occurs naturally throughout the contiguous 48 States, Alaska, Canada and Mexico (Buehler 2000). As such, the Sonoran Desert population does not represent the only surviving natural occurrence of the taxon.

Significance Criteria 4. The Discrete Population Segment Differs Markedly From Other Populations of the Species in its Genetic Characteristics

Information Provided in the Petition

The petition contends that review of all information regarding genetic analysis of the Southwestern desert nesting bald eagle reveals consistent uncertainty and the current understanding of genetics does not refute the discrete and isolated nature of the desert nesting bald eagle (CBD 2004e; Hunt *et al.* 1992; SWCBD 1999). The petition specifically quotes excerpts from Hunt *et al.* (1992), which discuss genetics study methods, results, and conclusions.

Response to the Petition

We have addressed the genetic evidence provided by the petitioner in the analysis of discreteness above. Consistent with that analysis we have determined that the best available genetic information is inconclusive with regard to significance. We conclude that the petition does not present substantial information that the population differs markedly from other populations of the species in its genetic characteristics. Further, the petition does not present nor are we aware of any other factors that would lead us to believe that the Sonoran Desert population of the bald eagle differs markedly from the taxon as a whole.

Conclusion

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). On the basis of our review, we find that the petition does not present substantial scientific or commercial information to indicate that the Sonoran Desert bald eagle constitutes a valid DPS. Although the population is discrete, the petition does not present substantial scientific information that the Sonoran Desert bald eagle may be significant in relation to the remainder of the taxon. Therefore, we conclude that the Sonoran Desert population is not a listable entity pursuant to section 3(15) of the Act. However, recognizing the volume of information provided in the petition, and the national importance of the bald eagle, we have also conducted a threats analysis.

Threats Analysis

Pursuant to section 4 of the Act, we may list a species, subspecies, or DPS of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats in terms of the petitioned action to reclassify the Sonoran Desert bald eagle from threatened to endangered, based on information provided in the petition and available in our files, is presented below. Throughout this finding we refer to the Sonoran Desert population of the bald eagle, because that is the petitioned entity; however, as noted above, this reference does not imply that we have determined, under to our DPS policy, that this population is a listable entity. Furthermore, although we have proposed the bald eagle in the lower 48 States for delisting (71 FR 8238, February 16, 2006), our petition finding does not address the proposed delisting or conditions that may occur if the delisting is finalized.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Development, Recreation, and Water Use

The petition notes that the Southwest has already lost more than 90 percent of its historical riparian communities (AGFD 1993; Krueper 1993; Lofgren *et al.* 1990), and that the loss of riparian communities is continuing due to increasing development, dewatering via groundwater pumping and diversions, destructive cattle grazing, and lack of vegetation-rejuvenating floods. The petition contends that the Sonoran Desert bald eagle population faces imminent and accelerating loss of increasing amounts of habitat vital to its long-term survival. Specifically, the petition notes that most of the BAs are located along the Salt and Verde rivers near the Phoenix metropolitan area and the towns of Cottonwood and Camp Verde in Yavapai County, where habitat loss is occurring due to the increasing human population in central Arizona. The petition notes that the human population in Maricopa County is expected to double to more than six million people over the next 30 years (Arizona Republic 1998). Growth in Cottonwood, on the Verde River, is projected to increase by 148 percent and in Camp Verde by 158 percent between 1994 and 2040 (Arizona Department of Economic Security 1994). The petition notes that increases in human populations of this magnitude will result in increased housing development, water demands, and recreational use.

The petitioners contend that development will affect the suitability of many BAs due to their proximity to areas with large human populations and projected population growth rates. The petition notes that increased recreational use, development, and water use will follow increasing population sizes, and cites examples of past consultations, conducted by the Service under section 7 of the Act, addressing these issues.

The petition cites recent examples of recreational impacts to Sonoran Desert bald eagle BAs, including river tubing on the Salt River, which increases the human presence near the Blue Point BA, as well as campground development at Roosevelt Lake, which could affect the Sheep and Tonto BAs. The petition cites, as development examples, a 360-home development and golf course within 1.0 mile (1.6 kilometers (km)) of the Box Bar BA; the development of lakeside resorts at Lake Pleasant near the Pleasant BA; and continued housing, road, and business developments along lower Tonto Creek near the Sheep and Tonto BAs (AGFD 1999a, 2000).

The petition notes that dewatering of the middle portion of the Verde River is accelerating so that flows have at times been reduced to 12 cubic feet per second (0.3 cubic meters per second) in summer months near the Camp Verde White Bridge gauge (Verde Natural Resources Conservation District 1999). The petition contends that this dewatering is resulting in a reduction in base flows, and increased populations in Cottonwood and Camp Verde are leading to increased groundwater pumping. The petition indicates that groundwater pumping in Arizona has repeatedly been demonstrated to result in a depletion of surface flows, degradation and loss of riparian communities, and adverse impacts and local extirpation of aquatic flora and fauna (ADWR 1994; Ewing *et al.* 1994; Glennon 1995; Glennon and Maddock 1994; Hendrickson and Minckley 1984; McGavock 1996, Miller 1961; Owen-Joyce and bell 1983, Stromberg 1993; Tellman *et al.* 1997).

The petition notes that increased water demand is expected to have adverse effects on flows within rivers and resulting impacts on riparian communities. The petition further notes that 59.5 percent of all known desert bald eagle nests in Arizona have been in

riparian trees and snags (Driscoll 1999; E. Gardner, AGFD, pers. comm. 2006). The petition notes that bald eagles at 11 BAs, including the Box Bar, Coolidge, Doka, Fort McDowell, Perkinsville, Pinto, 76, Sheep, Sycamore, Tonto, and Winkelman BAs, nest solely in riparian trees, and that the cottonwood trees used for nesting in these BAs have become overmature, are dying, and are not being replaced (AGFD 1991a, 2000). The petition contends that the loss of habitat in these BAs is particularly damaging to the future stability of the Sonoran Desert bald eagle population, as they have collectively contributed 22 percent of all recorded fledglings since 1971. The petition notes that the Fort McDowell BA has fledged 34 young, second only to the Blue Point BA, which has fledged 35 young (AGFD 1999a, 2000).

Substantial detail is provided in the petition regarding specific development activities and resulting effects to Sonoran Desert bald eagle BAs. The petition notes that pressures associated with human population growth are increasing and will continue to do so as the human population increases.

Response to the Petition

The information provided by the petitioner indicating that human population growth is expected to continue in areas in close proximity to or used by the Sonoran Desert bald eagle population appears accurate and reliable. Human population growth is an ongoing concern, and many of the bald eagle BAs in the Sonoran Desert population are within close proximity to this anticipated growth, including the Granite Reef, Orme, Rodeo, Sycamore, Doka, Fort McDowell, Box Bar, Needle Rock, and Bartlett BAs on the Verde River, and the Bull Dog, Blue Point, and Horse Mesa BAs on the Salt River, as well as the Pleasant BA at Lake Pleasant. As noted in the petition, recreation, development, and water use activities are ongoing and have increased since the bald eagle was listed. We have consulted on many of these actions through section 7 of the Act (including USFWS 1990b, 1996b, 1997b, 1998, 2001a and 2003b on water developments and USFWS 1993a for recreation, as cited in the petition). In addition, the AGFD's Projects Evaluation Program is available for Federal agencies or companies with a Federal nexus. This program can be used to evaluate the impacts of planned or future projects in areas where there may be a species of concern. The AGFD believes the program will help to ensure bald eagles and their habitat are considered and evaluated for possible effects from development projects (AGFD 2006, p. 14).

Under section 7 of the Act, we have concluded to date that these actions would not jeopardize the continued existence of the bald eagle. The AGFD (2006c, p. 13) acknowledges that the need to accommodate human populations in proximity to a major metropolitan area like Phoenix will require ongoing management. However, they conclude that the species can be managed even under this scenario through the ''awareness, collaboration, flexibility, planning, and willingness of all wildlife, land, and recreation managers (AGFD 2006, p. 13).''

We work cooperatively with the AGFD and Federal land managers to minimize the potential threats to bald eagle BAs in close proximity to the major human population growth areas in Arizona by establishing BA closures and monitoring the sites. In 2006, the Bartlett, Box Bar, Granite Reef, Orme, and Tonto BAs were monitored through the Arizona Bald Eagle Nestwatch Program. The program not only interacts with members of the public to provide education, but can intervene if individuals approach the nests too closely. Similarly, the Southwest Bald Eagle Management Committee, composed of State, Tribal, Federal, private, and military agencies, meets twice each year to address ongoing and new threats, funding for needed efforts, and general issues affecting the bald eagle.

With the exception of the Pleasant and Bull Dog BAs, all of the BAs in close proximity to Phoenix successfully fledged young in 2006. One bird from the Bull Dog BA was successfully fledged following fostering in the Granite Reef BA. Orme, Rodeo, Doka, Fort McDowell, Box Bar, Blue Point, and Horse Mesa fledged one young each, while Sycamore, Needle Rock, and Bartlett produced two young each. Additionally, many of these BAs have successfully produced young for many years and, while nest failures do occur, their overall productivity remains high. For example, the Bartlett BA has fledged 28 young in 20 separate years between 1971 and 2002; the Blue Point BA has fledged 38 young in 18 separate years between 1971 and 2002; and the Fort McDowell BA has fledged 41 young in 23 years between 1971 and 2002 (AGFD 2006, Table 7, pp. 48–50).

The petitioners presented reliable and accurate data on the use of riparian areas for bald eagles, and on the potential loss of nest trees. In the 11 BAs referenced by the petitioners, existing trees have become over-mature, are dying, and are not being replaced (AGFD 2006, p. 12). The eagles in the Doka, Fort McDowell, Granite Reef, Rodeo, 76, and Sheep BAs currently nest in overmature live trees or snags with few available replacements. Trees may be lost to floodwaters, as at Fort McDowell in 1995 and 2005, or inundated due to reservoir level increases, as at the Pinto and Tonto BAs at Roosevelt Lake. In some cases, alternate trees are not available, as is the case at the Pinto BA. Housing communities and water-table reductions limit the available trees at the Tonto BA (AGFD 2006, p. 13).

The AGFD (2006, p. 13) notes that the Fort McDowell Yavapai Nation (FMYN) and Salt River Pima Maricopa Indian Community (SRPMIC) have submitted proposals to the Arizona Water Protection Fund and Wetlands Protection Fund to plant riparian trees. The U.S. Bureau of Reclamation is analyzing ground-water levels in the Pinto BA for possible cottonwood pole plantings, and has helped to implement riparian restoration strategies within the Tonto Creek Riparian Unit. Salt River Project has purchased property for riparian enhancements on Roosevelt Lake. The exact impacts of increased human population growth and riparian losses, as well as the success of planting efforts in riparian areas, are speculative at this point. Through these management efforts, however, managing agencies can begin to minimize the factors impairing riparian regeneration.

We agree with the petitioner that human population growth, particularly in Maricopa and Yavapai counties, will continue. While we can anticipate the types of impacts that might occur, the exact results of those impacts on occupancy and productivity are speculative at this point. We remain concerned for BAs such as Bartlett, Blue Point, and Fort McDowell, which have contributed much to the productivity of bald eagles in the Southwest. However, we find that productivity remains high despite the ongoing nature of this threat. While this is an ongoing threat, bald eagles have continued to survive and reproduce, as evidenced by the increased number of BAs throughout Arizona, and as evidenced by the productivity of the BAs outlined above. We therefore find that the petitioners did not provide substantial information to lead us to conclude that this threat has increased the likelihood of extinction for the Sonoran Desert bald eagle population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No specific threats were identified in the petition for this category.

C. Disease or Predation

No specific threats were identified in the petition for this category.

D. Inadequacy of Existing Regulatory Mechanisms

Management

The petition states that the Sonoran Desert population's survival is dependent, in good part, on heroic human support and management by the Arizona Bald Eagle Nestwatch Program (ABENWP). The petition notes that, over a 2-year period in 1996 and 1997, 13,999 human activities and 4,000 gunshots were recorded within 0.5 mile (0.8 km) of 13 nests. The petition contends that signs, education, and the threat of fines are insufficient deterrents to people, and that monitoring by nestwatchers has been, and continues to be, a crucial component of Sonoran Desert bald eagle management (AGFD 1999a, 2000).

The petition additionally notes that, since 1983, 16 percent of all Sonoran Desert bald eagle fledglings have been saved by direct intervention of the ABENWP, with that intervention directly responsible for saving up to 60 percent of a single year's nestlings in some cases (USFWS 1992b). The petition notes that BAs such as Bartlett, Cliff, and 76 would rarely produce young without the aid of nestwatchers (Hunt *et al.* 1992).

The petition further notes that the ABENWP could become inadequate in the future as its funding is not secure. The funding comes from State grants such as AGFD's Heritage Fund, Federal agency contributions as mitigation for takings of the bald eagle under the Act, and volunteer funding. The petition finds that Heritage funding is insecure because it is derived from the State lottery, and income from the lottery has been decreasing. Additionally, the petition notes that there have been legislative attempts to divert lottery funds from protective wildlife activities. The petition contends that the proposed removal of the bald eagle from the Federal List of Endangered and Threatened Wildlife list will terminate mandatory Federal agency funding as well; the petition provides an example where the Bureau of Reclamation has asked us for clarification on terminating funding for one of its projects (USFWS 1996c). The petition provides additional examples of the tenuous nature of funding for the ABENWP (AGFD 1994a; Arizona Republic 2003a, 2004c, 2004f) and states that there are few binding consultations for any agency to commit funding to existing bald eagle programs; funding assistance by agencies is primarily based upon available funds and where the agencies choose to allocate them. The petition notes that approximately 63 percent of all funds spent on bald eagles comes from agencies other than AGFD.

Response to Petition

Information in our files indicates that funding for the ABENWP comes from a variety of sources, including State Wildlife Grants, donations, AGFD Heritage Funds (State lottery), and matching funds for Federal grants. The petitioner's contention that funding for the program will be significantly reduced or discontinued in the future is speculative.

With regard to management and existing regulatory mechanisms, we evaluated whether a difference exists between the regulatory mechanisms currently protecting the bald eagle in the lower 48 States of the United States (inclusive of Sonoran Desert bald eagles) as a threatened species and the regulatory mechanisms protecting an endangered species (i.e., the petitioned action). As a threatened species with no special rule under section 4(d) of the Act, the bald eagle in the lower 48 States of the United States (inclusive of Sonoran Desert bald eagles) is provided protection equal to that of an endangered species under the Act, except for penalties for illegal take. The prohibitions of the Act make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

Further, the Service proposed to remove the bald eagle in the lower 48 States from the List of Endangered and Threatened Wildlife on July 6, 1999 (64 FR 36454) and reopened the comment period on that proposal on February 16, 2006 (71 FR 8238). The comment period was extended on May 16, 2006 (71 FR 28293). If this delisting action were to be finalized, we believe other existing regulatory protections afforded the Sonoran Desert bald eagle will provide adequate regulatory protection to this population. Our determination is based on the analysis with our delisting proposal and the fact that the existing regulatory protections are national in scope and not specific to the population level of a species. With regard to these existing regulatory protections, please reference the February 16, 2006 notice (71 FR 8238), reopening the comment period on the proposed rule to delist the bald eagle in the lower 48 States. In this notice, we provide an in-depth discussion of the protections afforded the bald eagle (including the Sonoran Desert bald eagle) by other Federal wildlife laws, including the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688–668d) and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). In summary, the BGEPA prohibits taking, or possession of and commerce in, bald and golden eagles, with limited exceptions. Take under the BGEPA is defined as ''to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb'' (16 U.S.C. 668c). The MBTA implements various treaties and conventions between the United States and other countries and, unless permitted by regulations, it provides that it is unlawful to pursue; hunt; take; capture; kill; possess; offer to sell, barter, purchase, deliver; or cause to be shipped, exported, imported, transported, carried, or received any migratory bird, part, nest, egg or product, manufactured or not.

Based on information provided by the petitioner and noted above, we find that no measurable difference exists between the regulatory protections provided the Sonoran Desert bald eagle in its current status as threatened than if it were assigned an endangered status (*i.e.*, the petitioned action). Furthermore, we believe that other existing Federal wildlife laws will continue to provide adequate regulatory protections to the Sonoran Desert bald eagle if the bald eagle is delisted. Thus, we find the petitioner did not provide substantial information to lead us to believe that existing regulatory mechanisms may be inadequate to protect the Sonoran Desert bald eagle.

Habitual Violation of Law and Lack of Agency Resolve

The petition states that the Service has been engaged in efforts to downlist the bald eagle since at least 1989. The petition notes an attitudinal change accompanying downlisting efforts, and that this change contributes to increasing threats to the continued existence of the Sonoran Desert bald eagle. Specifically, the petition contends that the attitudinal shift perpetuates: (a) Cattle grazing within riparian habitat critical to Sonoran Desert bald eagles;

(b) dam operations with water releases that are improperly timed for replenishment of riparian nest trees; (c) dewatering of remnant, free-flowing rivers; (d) introduction of exotic fishes in native fish habitat; (e) continuing and increasing low-flying aircraft; and (f) approval of excessive amounts of take of Sonoran Desert bald eagles. The petition provides detailed information for each of these categories, which is summarized below.

(a) Cattle Grazing Within Riparian Communities—The petition notes that cattle grazing in riparian areas is known to impede growth of replacement cottonwood nest trees (AGFD 1999a, 2000). The petition cites numerous biological opinions by the Service as stating that riparian community loss is due, in part, to livestock grazing; that overgrazing continues as a threat and disturbance to bald eagles; and that overgrazing exacerbates adverse effects to riparian growth, as well as to existing eagle nesting, perching, and foraging habitat (USFWS 2001a, 2002a, 2002b, 2003b).

(b) Dam Operations Result in Improperly Timed Water Releases—The petition notes that poorly timed water releases are a threat to riparian communities (Stromberg *et al.* 1991). The petition further notes that loss of riparian communities continues on the lower Verde and Salt Rivers as a result of dam operations, and that maintenance of existing water development features, such as dams or diversion structures, is a continuing threat and disturbance to bald eagles (USFWS 2001a, 2003b). The petition contends that dam operations degrade existing eagle tree nesting and perching habitat and retard riparian regeneration; alter the hydrological regime of the lower Verde River by reducing the magnitude, frequency, and duration of high flow events; and restrict the flow of sediment, decreasing recruitment of early successional riparian species. The petition indicates that the effects of dams and their operation are the most important limiting factors in shaping the riparian plant community (Beauchamp 2002).

(c) Dewatering of Remnant, Free-flowing Rivers—The petition notes that flows in the Verde River have decreased to as low as 12 cubic feet per second (cfs) (3 cubic meters/second) during the month of June in some years (Verde Natural Resources Conservation District 1999). The petition also notes that increasing groundwater pumping by the growing human population of Cottonwood and Camp Verde, which threatens to render sections of the Verde River intermittent (USFWS 1998). The petition further notes that the Arizona Department of Water Resources (ADWR) found that the Verde River baseflow is provided by groundwater discharge from the alluvium and Verde Formation, so any withdrawal from this aquifer is expected to eventually deplete Verde River flows (ADWR 1994). The petition again notes that the human population in Cottonwood and Camp Verde is expected to grow by 148 and 158 percent, respectively, between 1994 and 2040 (ADES 1994). The petition also notes that Prescott and Prescott Valley are developing a plan to use water from the Big Chino Basin, which may affect groundwater discharge into the upper Verde River (Arizona Republic 2000, 2001).

(d) Exotic Fish Introductions—The petition notes one study that found native fish populations to be a crucial component to suitable breeding habitat (Hunt *et al.* 1992). The petition indicates that at least 50 species of nonnative fish have been introduced into the Gila River basin (USFWS 2001a), with potentially another 10 to 15 incidental occurrences of other nonnative species. They note that nonnative species are considered to be extremely difficult, if not impossible, to remove once established (Aquatic Nuisance Species Task Force 1994). They also note that, in order to manage for native species, fish barriers are planned in areas like the upper Verde River, and that construction and maintenance of those barriers may result in take of bald eagles through harassment or harm due to the use of mechanized equipment, dredging of river channels to remove excess sediment, completion of required repairs, and added human activity to the area. A discussion under Factor E below indicates the petition's concern on the decline of native species, especially Sonora sucker and desert sucker and their use by bald eagles as prey.

(e) Continued and Increasing Low Flying Aircraft—The petition notes that there have been increases in low-flying aircraft, including private, military, and emergency aircraft, and that these aircraft are a concern for BAs on the lower Salt and Verde Rivers and for those BAs under military training routes (AGFD 1999a, 2000). The petition cites examples of aircraft recorded less than 150 feet (45.7 meters) over active nests. The noise disturbance and sonic booms produced by military aircraft can flush incubating adults from the nest. The petition notes that the AGFD has worked with the Federal Aviation Administration and the Arizona Department of Transportation to establish a 2,000-feet (610-meters) above ground-level advisory along the Salt and Verde Rivers, but although marked on Arizona aeronautical maps, this advisory is generally disregarded.

The petition notes that a biological opinion evaluated the Department of the Air Force proposal to widen and/or realign segments of military training routes in Arizona in 1994 (USFWS 1994c). According to the petition, the Service acknowledged the loss of 9 eagles or eggs and 18 disturbances per breeding season each year over the 50-year life of the project. Disturbances in the biological opinion are defined as aircraft use that results in the interruption of breeding or foraging activities, including the flushing or displacing of eagles engaged in breeding or foraging activities (USFWS 1994c).

(f) Excessive Service Approval of Sonoran Desert Bald Eagle Deaths—The petition contends that the Service has approved Federal activities responsible for the deaths of at least 29 Sonoran Desert bald eagles in the last decade and claims that Federal activities reviewed by the Service through section 7 of the Act will result in a cumulative 491 taking deaths over the next 50 years (USFWS 1992d, 1993a, 1994c, 1996b, 1997b).

Response to the Petition

As required by section 7 of the Act, we have consulted on the potential impacts of cattle grazing, dam operations, dewatering of rivers, introduction of exotic fishes in native fish habitat, and low-flying aircraft to eagles and their habitat. Such analyses within biological opinions do not indicate a lack of agency resolve. It is our responsibility, under the Act, to enter into consultation with Federal action agencies when activities they authorize, fund, or carry out may affect a listed species or its critical habitat. During this process, we evaluate the impacts of the proposed project on listed species and determine how such impacts may be minimized and whether or not the project will jeopardize the continued existence of the species. If the project does not result in a jeopardy determination, we are responsible for working with action agencies to develop reasonable and prudent measures that will minimize the adverse impacts of the action on the species under consultation. Reasonable and prudent measures are restricted to actions that result in only minor changes to the proposed project and are within the legal authority and jurisdiction of the agency or applicant to carry out.

The biological opinions cited within the petition analyze the impacts of various activities on the bald eagle and

its habitat, assess whether incidental take will occur, make a jeopardy/no jeopardy determination, and provide reasonable and prudent measures to minimize incidental take, when appropriate. In addition, each consultation includes sections on environmental baseline and cumulative effects, which are used to evaluate the effects of the current action against the background of previous impacts and total expected take for the species. For each of these opinions, we provided a take statement and determined that the level of take authorized would not jeopardize the continued existence of the species. These indicate that, although there may be some level of adverse effect resulting from the agency's action, we do not believe the threats imposed by the various actions, when considered cumulatively with previous actions, were likely to jeopardize the continued existence of the species.

We do not believe, based on the above discussion, we have authorized excessive levels of take for bald eagles in the Southwest. It is important to note that we believe the high level of take described in the petition with respect to the items E and F above is a misinterpretation on the part of the petitioners. The petition indicates that, for one consultation regarding expansion of military training routes, we allowed for the loss of 9 eagles or eggs and 18 nest disturbances annually over the 50-year life of the project. We provided a take statement for overhead flights that allows for take in the form of direct mortality of one adult or immature bald eagle, bald eagle nestling, or bald eagle egg, or two instances of disturbance per active nest per nest season. Incidental take in the form of mortality of more than one eagle, nestling, or egg would require the Air Force to reconsult immediately. Further, the reasonable and prudent measures require the Air Force to avoid active bald eagle BAs during the breeding season. The total take for this opinion was therefore 1 bald eagle mortality over the life of the project and 18 disturbance events per year (2 at each of 9 BAs) outside of the breeding season each year for the life of the project. The total mortality associated with this particular project is therefore 1 bald eagle, rather than the 450 attributed to it in the petition (USFWS 1994, p. 13).

With regard to existing protections afforded the bald eagle, we briefly discuss above the protections afforded the bald eagle under the Act (through listing as a threatened species and other Federal wildlife laws including the Bald and Golden Eagle Protection Act (BGEA) (16 U.S.C. 668–668d) and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). We also explain why we believe these protections are adequate to protect the bald eagle and maintain recovered population levels. For a more in-depth discussion of these protections, please reference the February 16, 2006, notice reopening the comment period on the proposed rule to delist the bald eagle (71 FR 8238).

We find that the petitioner did not provide substantial information to lead us to believe that existing regulatory mechanisms are inadequate to protect the Sonoran Desert bald eagle. We find that much of the information provided by the petitioner is speculative (*e.g.*, reduced funding as a result of delisting) and not reliable (*e.g.*, approval of excessive take). Additional information provided by the petitioner with regard to cattle grazing, dam operations, dewatering, introduction of exotic fishes, and low-flying aircraft does not establish a connection to the petitioned action, and does not indicate theses actions are occurring at a level that makes the Sonoran Desert bald eagle in danger of extinction (*i.e.*, ''endangered'' as defined under the Act). As noted above in the Species Description, the numbers of occupied BAs in the Sonoran Desert population of bald eagles has continued to increase, reaching a total of 36 occupied BAs in 2004. Productivity has remained relatively constant between 1987 and 2005, at an annual average of 0.78 young per occupied BA for the Sonoran Desert population. This rate is within the range of many other states' productivity rates (AGFD 2006, p. 5).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

The petition notes that bald eagles once nested along every major river and large lake in the continental United States, and that they are no longer found in all areas of their historical range (Gerard and Bartolotti 1988). The petition further notes that the Sonoran Desert population of the bald eagle is extremely small and without prospect for significant expansion. The petition notes that there are fewer than 60 nesting pairs of bald eagles in the population, and that the population occupying BAs may be overestimated. Their concern for overestimation of the population is based on the fact that members of breeding pairs recorded as occupying, but not breeding, in a BA may also occupy adjacent BAs. They note that two males were observed to move between BAs, and it is possible that adults recorded as occupying one BA may have come from an adjacent occupied BA.

The petition notes that BAs may have been occupied in years prior to their discovery, and that, if this is the case, the continued increase in the number of BAs represents an increase in the number of discovered BAs, rather than an increase in the actual number of breeding birds. Undercounting of the population in previous years has resulted in a greater discrepancy between past and current known numbers of breeding birds, which reflects a greater increase in the population than that which might actually have occurred.

The petition further notes that there is not enough surviving suitable habitat available to allow for the population to increase substantially or expand its distribution. They note that the AGFD has concluded that riparian community improvement and prey base modifications will be necessary before population sizes increase in Arizona (AGFD 1999, 2000). Thus, the petitioners believe that the Sonoran Desert population will likely continue to remain small into the foreseeable future.

The petition notes that the small size of the Sonoran Desert bald eagle population is, in and of itself, problematic. Using AGFD survival estimates of juveniles and nestlings, the petitioners estimate that there are approximately 166 individual eagles in the Sonoran Desert population. The petition maintains that the population dynamics of such a population are essentially similar to those of an isolated metapopulation. The petition references a study examining the effects of widespread habitat destruction on regional metapopulations of raptors, and notes that the study found most species persist regionally as metapopulations or as sets of populations linked by dispersing individuals (Thomas *et al.* 1990). This allows for recolonization of unoccupied habitat patches following local extinction events. However, the petition states that the loss of suitable habitat patches, or disturbances in the surrounding landscape, can disrupt this process and lead to the regional extinction of a species. The cited study indicates that the persistence of the raptor species is at risk in significant portions of its range due to continued destruction and concomitant fragmentation of its habitat. As this pattern continues, a previously continuous population is separated into smaller, isolated demographic units that are at higher risk of local extinction due

to demographic factors and/or environmental phenomena.

The petition contends that four ''categories of analysis'' are applicable to the question of the long-term survivability for raptors in general, including demographics, genetics, patch dynamics, and environmental change. The petition indicates that, based on population biology principles, if a typical vertebrate species such as a raptor is reduced to a genetically effective size of 50, it may suffer from inbreeding depression (Barrowclough and Coats 1985; Franklin 1980; Soule 1980). Further, demographic stochasticity and inbreeding depression may interact, with the effects of one exacerbating the other, and hasten the decline of a population (Gilpin and Soule 1980). The petition states that populations that are reduced in size tend to lose genetic variability through genetic drift, reduced average individual heterozygosity, and a reduced pool of allelic variation. The petition contends that a population size of roughly 1,000 or larger is required to maintain all of the genetic variation of that population (Soule 1986). Below that size, the population will lose genetic variation at a rate proportional to the size of the population. The petition concludes that the Sonoran Desert population has characteristics of extended adult longevity, high juvenile mortality, intense territoriality, and may be in a position to enter a geometric population decline (Lande 1987).

Mortality

The petition, which notes adult mortality is higher than recruitment for the population, contends that the level of mortality in the Sonoran Desert population is higher than can support a stable population. The petition states that, from 1987 to 1990, the rate of mortality for breeding-adults has averaged 16 percent of the breeding population per year or 5.25 breeding adult mortalities per year. From 1991 to 1998, the rate of mortality was 11.9 percent, or 5.13 breeding-adult mortalities per year (Beatty and Driscoll 1996; AGFD 1999a, 2000).

The petition further contends that the high presence of subadults in breeding pairs likely reflects high adult mortality rates. The petition notes that Hunt *et al.* (1992) indicated that the presence of subadults in breeding pairs may show that excessive adult mortality is draining the floating (*i.e.*, non-breeding) segment of adult bald eagles. As a result, subadult eagles are recruited into the breeding population, either forming a new pair bond with another non-breeding bird, or more frequently, replacing the mate of another breeding eagle. Twelve subadult-plumaged birds were observed holding territories in Arizona from 1987 to 1990, with seven subadult-plumaged birds observed holding territories in Arizona since 1991. The petition notes that the AGFD (1994b) found that, for 39 known vacancies of BAs, 15 (38.5 percent) were filled by adults and 24 (61.5 percent) by near-adults or subadults. The petition states that this pattern is not observed in other populations (Gerrard *et al.* 1992), and that in Saskatchewan, population stability was maintained in part by bald eagles deferring first breeding to age six. The petition states that a 1992 survey of 14 bald eagle biologists throughout North America determined that the known incidence of breeding subadults outside of Arizona was 0.02 percent (Hunt *et al.* 1992). The petition concludes that the persistent presence of three- and four-year-old breeding bald eagles in Arizona has created concern for the health of the breeding population.

The petition contends that mortality for fledglings is also excessive, and that most Sonoran Desert nestlings die prematurely. The petition notes that, according to AGFD data, from 1987 to 1998, 97 fledglings have been found dead (Hunt *et al.* 1992; Mesta *et al.* 1992; Beatty and Driscoll 1996b; AGFD 1991, 2000), and concludes that few Sonoran Desert bald eagles survive to adulthood.

Productivity

The petition states that the reproductive rates for the Sonoran Desert population are lower than those known for bald eagles in any other location. The petition indicates that the AGFD (1999a, 2000) determined that productivity rates are lower than those recorded throughout North America. For the Sonoran Desert population, productivity rates from 1975 to 1984 were 0.92 young per occupied BA, but since then, the average productivity rate has been 0.78 young per occupied BA. The petition notes that productivity rates over a similar time span in Alaska, Florida, Washington, and Wisconsin averaged 0.96 young per occupied BA (Sprunt *et al.* 1973; McAllister *et al.* 1986; Kozie and Anderson 1991). The petition adds that, in some areas of the Sonoran Desert population, productivity rates are even lower. For example, productivity along the Salt River declined to 0.26 young per occupied BA in the 1990s.

The petition further contends that BAs that formerly produced the majority of the fledglings are producing fewer fledglings, and that the most productive nests are in relatively close proximity to the rapidly growing Phoenix metropolitan area, so that survivability in these BAs is becoming increasingly problematic. The petition states that the Salt and Verde Rivers support the bulk of the Sonoran Desert population, and that it is in the lower parts of these drainages and nearby lakes where prey is most abundant and bald eagles are most productive. However, the proximity of these areas to Phoenix results in high recreation use. Due to predicted human population expansion (see factor A above), the petition predicts increased recreational and development pressures in close proximity to BAs along the Salt and Verde Rivers (ADWR 1999a, 2000; Arizona Republic 2000, 2001; Chino Valley Review 2004; Prescott 2001; Prescott Daily Courier 2004a, 2004b; USFWS 2001a).

The petition further notes that Sonoran Desert bald eagles on private lands are either not reproducing or are destined to fail. The petition cites the Winkelman BA as an example, noting that this BA on private property is now surrounded by housing, recreation, and industry. The petition states that the Camp Verde and Perkinsville BAs are also on private property, and are surrounded by private lands that have recently been sold or for which plans to sell are underway. The petition cites the reproductive history of these BAs, noting that the Camp Verde and Winkelman BAs have a record of reproductive failure, and that the Perkinsville BA failed in 2002 and faces further threats from potential dewatering of the upper Verde River.

The petition includes information developed by the petitioners through the use of Vortex (version 9) software, which models wildlife population dynamics and evaluates many of the threats that may cause small populations to go extinct. The petition notes that the petitioners worked with AGFD data. Some of the model assumptions are that the population is a closed population and not demographically linked to other populations, and that there is a 1:1 ratio of males to females in the adult population. Because the petitioners determined that fecundity in the lower Verde and Salt BAs were inflated artificially by AGFD's stocking of exotic rainbow trout and Salt River Project's release of native fish captured from irrigation canals, BAs were divided into two groups: (1) Those on the lower Salt and Verde Rivers, and (2) those in other areas.

Additional detail regarding parameters used in and determinations

derived from the model are in the petition. The petition notes that the model determined that juvenile and adult survival were the most critical parameters for the model. The petition indicates that the model demonstrates a high risk of extinction for the Sonoran Desert population within the next 57 to 82 years.

Response to the Petition

The majority of the data and information presented in the petition is, in part, consistent with the information in our files. Our information indicates, however, that there are no data supporting the statement that nests on private property are destined to fail simply due to their location relative to private land. While it is true that the Winkelman BA has been abandoned, the Camp Verde nest may have failed due to flooding, which is unrelated to the land's ownership. Moreover, two BAs on private land (Sheep and Beaver) are currently occupied and produced young in 2005 and 2006, respectively.

In addition, we do not believe the population is overestimated due to individuals occupying more than one BA; this behavior has been observed at only two BAs, and the survey protocols and definition of occupancy currently in use limit this type of bias from occurring (E. Gardner, pers. comm. 2006, p. 3).

With respect to mortality, AGFD (2006c, p. 24) notes that adult mortality rates of 16 percent (from 1987 to 1990) and 12 percent (from 1991 to 1998) are higher than, but within the range of, other populations, which ranged from 5 percent in Northern California to 17 percent in Chesapeake Bay. Bald eagles in Maine experienced a nine-percent mortality rate, while those in Coastal Alaska were a 12-percent mortality rate.

For nestling mortality, the petition concluded that few Sonoran Desert bald eagles survive to adulthood. Stalmaster (1987, p. 143) found that, of 433 nestlings surveyed in the southwestern region, an average of 85 percent survived to fledging, resulting in a mean nestling morality rate of 15 percent. By comparison, Hunt *et al.* (1992, p. C–108) concluded that the nestling mortality rate for the Arizona population was approximately 0.9 percent higher, or at 15.9 percent. Following Hunt's study, from 1991 to 2006, nestling mortality was approximately 24 percent. While this represents an eight percent increase from data provided by Hunt *et al.* (1992, p. C–108), this may be due to increased monitoring effort through the ABENWP compared to earlier Arizona monitoring efforts and those efforts in other states. Daily monitoring through the ABENWP, monthly helicopter flights, and periodic on-the-ground visits throughout the year may have more accurately detected surviving fledglings and fledgling mortality than efforts that involved fewer follow-up visits. While we believe this nestling mortality rate warrants continued monitoring, a 76-percent survival rate does not indicate that most Sonoran Desert nestlings die prematurely, as contended by the petition.

The information provided by AGFD (2006c) and Stalmaster (1987) indicate that mortality rates for bald eagles within the Sonoran breeding population are similar to those experienced in other populations in the United States, as are productivity rates. In addition, the population has continued to increase in terms of the number of breeding pairs and productivity, as noted above under the ''Species Information.'' Therefore, we find that the petitioner did not provide substantial information to indicate that the level of mortality and small population size may place the Sonoran Desert population of bald eagle in danger of becoming extinct.

Declining Prey Base

The petition notes that the primary prey item for bald eagles during spring is the native Arizona sucker population, consisting of desert and Sonora suckers. The petition cites recent reports indicating that Sonora sucker and desert sucker remain in approximately 73 percent and 74 percent, respectively, of the locations in which they were historically recorded. These fish populations have a low probability of local extirpation, but fragmentation of their range and isolation of individual populations could further reduce their occurrence in a watershed (Desert Fishes Team 2004). With respect to the potential effects of a decline in the native fish prey base, the petition quotes the biological opinion completed for the Central Arizona Project (CAP) (USFWS 2001a). The petition indicates that in the CAP opinion the Service concluded that take of bald eagles was anticipated to occur as harm, through alteration of the quantity and quality of the food base.

The petition cites, as a specific example, the effects of the decline of native suckers on the Salt River. The petition states that native suckers, which are a crucial prey species during the breeding season for bald eagles, became absent from the Salt River during the 1990s. The petition cites studies that note that the lack of native fish species along those portions of the Salt River occupied by bald eagles may have reduced productivity from 0.69 young per BA in the 1980s to 0.26 in the 1990s (Hunt *et al.* 1992).

Response to the Petition

The petition presents reliable and accurate information to indicate that native fishes are continuing to decline and effects to the prey base can have effects on the Sonoran Desert population of bald eagles. As outlined below, the effects of a reduced prey base seem to be affecting productivity rather than occupancy. Occupancy of these BAs remains fairly constant through 2002. Between discovery in 1978 and 2002, the Cedar Basin BA was unoccupied for only 1 year (1980). The Canyon and Pinal BAs were unoccupied for 2 years each (2001 and 2002 for the Canyon BA, 1986 and 2001 for Pinal). The Cibecue BA was unoccupied for 3 years (1974, 1976, and 1981). The Lone Pine and Redmond BAs have remained occupied since their discoveries in 1984 and 1975, respectively (AGFD 2006, Table 7, pp. 48–50). Two BAs, Ash and Mule Hoof, are no longer considered occupied. The Ash BA was occupied in 1984 and 1985, but has been unoccupied for 10 consecutive years, and is no longer included in the list of occupied BAs. Mule Hoof was sporadically occupied in the 1980s and the early 1990s, and was removed in 2002 after 10 consecutive years of unoccupancy (AGFD 2006, Table 7, pp. 48–50).

However, while the upper Salt River BAs have remained largely occupied, productivity for the six BAs has remained low, declining after 1992 although remaining somewhat constant. From 1992 to 2002, between 0 and 3 total young have been produced each year (AGFD 2006, Table 7, pp. 48–50).

Hunt *et al.* (1992, p. A–46) note that bald eagles in central Arizona forage on free-flowing and regulated rivers, reservoirs, small tributary streams, and on land, and that most, if not all pairs, use more than one of these environments during a given nesting season. Data indicate eagles commonly switch forage locations and/or prey species in response to changes in the distribution of prey and carrion. Hunt *et al.* (1992, p. A–46) cite as an example a study on a male eagle from the Blue Point BA that took a variety of prey on both reservoir and riverine habitats. While those BAs that rely primarily on riverine habitat for prey, such as those in the upper Salt River, are showing a reduction in productivity, overall productivity for bald eagles throughout Arizona and within the Sonoran Desert population has remained stable between 1987 and 2005, and is comparable to

that in other portions of the species range.

As the petitioners note, low productivity has been an issue on the upper Salt River since the 1980s. However, as noted above, the BAs in this area continue to remain occupied, and productivity, while low, remains fairly constant. Consequently, we do not perceive a new or increased threat due to a reduced prey base in this area. The situation on the upper Salt River is likely observed in other streams as well, where eagles rely primarily on rivers for foraging. This situation requires continued monitoring, and improvements need to be made in managing for native fishes, and increasing overall productivity in these BAs. However, there has been increased productivity in other BAs, including some of those that also rely on rivers for foraging. This increase is in part attributable to the increase in the total number of BAs throughout Arizona. Therefore we find that the petitioner did not provide substantial information to indicate that threats from reductions in prey base are occurring at a level that leads us to conclude that the petitioned action may be warranted.

Contaminants

The petition claims that insecticides, such as carbofuran, endosulfan, fenthion, phorate, and terbufos (American Bird Conservancy 2004a, 2004b; Center for Biological Diversity 2004c; EPA 2004c, 2004d, 2004e, 2004f; University of Arizona 2004; USDA 2001; USFWS 1995), continue to threaten the bald eagle, noting that hundreds of bald eagle deaths have been linked to carbofuran nationwide (American Bird Conservancy 2004b). The petition further states that DDT and its derivatives are still found in Arizona waterways, and states that toxic levels of DDE (a breakdown product of DDT) were found in an addled egg from the Sycamore BA in 1997 (AGFD 1999a, 2000; USGS 2004).

The petition notes that chlorfenapyr resulted in a decline in the number of eggs, viable embryos, and hatchlings of mallards, and that this chemical has been put to use within the United States (EPA 1999). The petition further states that toxic levels of mercury have been found in eggs from the Verde and Salt River BAs, and that mercury contamination has also been found in the Tonto Creek BA and Gila River at levels high enough to cause failure in eggs (AGFD 1999a, 2000). The petition notes that mercury concentrations in the Sonoran Desert population were higher than those reported for most other North American populations (Grubb *et al.* 1990). The petition states that studies have determined that concentrations of mercury above 2 parts per million (ppm) are known to impair hatching (Newton 1979), and concentrations of 1.5 to 4.5 ppm are considered toxic (Ohlendorf 1993). The petition notes tha seven eggs from the Tower, 76, Pinal, and Winkelman BAs have toxic levels of mercury ranging from 2.11 to 8.02 ppm, and that elevated levels of mercury between 1.5 and 2.0 ppm were found in three eggs from the Tower and Horseshoe BAs (AGFD 1999a, 2000). The petitioners note that the Service considered concentrations of heavy metals to be a concern in Arizona (USFWS 2001d).

The petition contends that mercury in bald eagles comes primarily from their prey, noting that contaminants studies detected elevated levels of mercury in prey items ranging from 0.06 to 0.97 micrograms per gram (μ/g) with the highest mean levels recovered from Lake Pleasant, the Salt River, and Alamo Lake (King *et al.* 1991). The petition contends that these highest means were above the National Contaminant Biomonitoring Program's recommendation for no observable effects of 0.1 μ/g (Eisler 1987).

The petition notes that methylmercury is the form of mercury that accumulates at greater rates than inorganic mercury, and that most mercury in fish or wildlife organisms is in the form of methylmercury (Bloom 1989). The petitioners further note that methylmercury is more efficiently absorbed (Scheuhammer 1987) and preferentially retained (Weiner 1995).

The effects of mercury contamination have been studied in mallards. The petition cites a study on the effects of mallards that were fed 3.0 ppm methylmercury dicyandiamide for 2 years. In these mallards lesions resulted, including necrosis and hemorrhaging in the lining of the brain (Heinz and Locke 1975). The petition contends that the risk to bald eagles is increasing, as eggs collected between 1982 and 1984 had concentrations of approximately 0.39–1.26 ppm (K. King, pers. comm.), while those collected between 1994 and 1997 had concentrations ranging from 2.11 to 8.02 ppm (Beatty *et al.* unpub. data), up to six times higher than those collected between 1982 and 1984.

Response to the Petition

The petition provides information specific to bald eagles in Arizona to indicate that contaminants (in the form of DDT and related breakdown products, and mercury) continue to present a potential threat to the Sonoran Desert bald eagle population. We find that some of the information presented by the petitioner is in error. With respect to carbofuran, it is important to that note the granular form that caused the extreme risks in grain-eating birds is not registered for use in Arizona (Extoxnet 2006, p. 1). Similarly, chlorfenapyr is not registered for use in Arizona (EPA 2006, p.1).

The discussion on mercury indicates that mercury levels were found to exceed 2 ppm for 13 eggs collected between 1994 and 1997. AGFD (2006, p. 21) notes that, from 1994 to 2004, 27 addled bald eagle eggs in Arizona showed mercury levels ranging from 0.55 to 8.02 ppm. The AGFD (2006, p. 21) classifies 10 of these eggs as toxic, exceeding 2.0 ppm; 11 eggs as having elevated levels of mercury (1.5 to 2.0 ppm), and four eggs as having lesser concentrations (1.0 to 1.5 ppm). The 10 eggs classified as toxic came from the Box Bar, Needle Rock, Pinal, 76, Tower, and Winkelman BAs. While eggs tested for mercury were addled and did not produce young, successful production of young has occurred at these BAs following the year or years in which mercury was detected (viable eggs are not collected and tested for mercury). For example, with toxic mercury levels in 2003, the Box Bar BA successfully produced young in 2004 and 2005. Following toxic mercury level detection in 2003, the Needle Rock BA successfully produced young in 2004. Following toxic mercury levels in 1995, the Pinal BA successfully produced young in 2000, 2002, 2004, and 2005. The 76 BA, which had the highest ever recorded mercury level for eggs from Arizona in 1995, successfully produced young in 1996, 1997, 1998, 1999, 2000, and 2001. Following toxic mercury level detection in 1994 and 1995, the Tower BA successfully produced young in 1996, 1997, 1998, 1999, 2000, 2002, 2003, and 2005. No information is available for the Winkelman BA, which has been unoccupied since 1999. These data indicate that mercury in eggs at a given nest site may cause nest failure for one season, but does not prevent future production of young.

DDE does continue to be detected in eggs, with the recent measurement of 4.23 ppm wet weight in one egg from the Rodeo BA in 2002. Weimeyer *et al.* (1984, p. 541) found that reductions in productivity occurred when DDE values in bald eagle eggs were between 3 and 5 ppm (wet weight). This level has been reached at the Tonto, Tower, Sycamore, and Rodeo BAs. The most complete DDE data set over time is from the Tower BA, where DDE concentrations declined from 3.2 ppm in 1994, to 0.91 ppm in 2001. The Tonto BA has

produced young since DDE levels of 4.17 ppm wet weight were found in q2001. Following DDE levels of 3.20 ppm wet weight, the Tower BA produced young in 1996 through 2003, 2005, and 2006. At the Sycamore BA, DDE levels of 7.00 ppm wet weight were detected from an egg collected in 1997, but the BA produced young in 1998, 1999, and 2001 through 2006. The Rodeo BA, with DDE levels of 4.23 ppm in 2002, produced young in 2004 and 2006 (AGFD 2006, Table 4, p. 22; 2006 unpubl. data).

The information presented on the mercury levels found in eggs from the Verde and Salt River BAs is generally accurate, as is that for the Tonto Creek and Gila River area. The information on DDT and its breakdown products is also generally accurate. Productivity at those BAs affected by high levels of mercury and DDE indicates that, while nest failure may result when those levels are detected, young are produced in subsequent years. We have been evaluating the effects of mercury, DDE, and pesticides for many years, and we conclude that these effects should be monitored but are not likely to jeopardize the continued existence of the species. We do not believe that the petitioner provided substantial information to indicate contaminant-related threats are present at a level that leads us to conclude that the petitioned action may be warranted.

Fishing Line and Tackle

The petition cites AGFD data that finds fishing line and tackle have been found in nests and have entangled bald eagles. There have been 62 separate instances involving entanglement, and 19 BAs with fishing line and/or tackle in nests or entangled individuals since 1986 (Hunt *et al.* 1992; Beatty 1992; Beatty and Driscoll 1994a; Beatty *et al.* 1998). The petition notes that mortalities have resulted from entanglement. The petition indicates that bald eagles encounter fishing line primarily by catching dead or dying fish with fishing line or tackle still attached, but that some birds have become entangled while perched on the shoreline or while feeding on dead shorebirds and waterfowl that have themselves been entangled.

The petition states that the persistent occurrence of fishing line indicates the level of recreational pressure in many of the BAs, and contends that as the human population of central Arizona increases, so will the accompanying recreational demands on riparian areas (AGFD 1999a, 2000). The petition concludes that these increased recreational pressures will lead to even greater incidences of fishing line and tackle in nests and resulting in adverse effects on Sonoran Desert bald eagles.

Response to the Petition

The petition does not mention AGFD's monofilament recovery program. Although this program is voluntary, it has helped to educate anglers and reduce the amount of improperly disposed monofilament. For probable causes of mortality in bald eagles in Arizona between 1987 and 2005, monofilament is listed as causing one adult mortality and two nesting mortalities. It is ranked as the fifteenth most common cause of mortality, and responsible for 3 out of 281 deaths, or approximately 1.1 percent (AGFD 2006, Table 6, p. 25). Monofilament is an ongoing problem for Sonoran Desert bald eagles, but represents a minor threat. In part, we attribute this to the active management of the ABENWP, which we anticipate will continue. Additionally, wildlife personnel entering nests to conduct annual banding are instrumental in removing large quantities of monofilament (AGFD 2006, p. 11). We find the petitioner did not provide substantial information to indicate that monofilament entanglement may represent a threat that puts the Sonoran Desert bald eagle population in danger of extinction.

Climate Change

The petition notes that adaptation to the Southwest's combination of high temperature and low humidity is considered one of the characteristics that demonstrate the uniqueness of the Sonoran Desert eagle population. The petition continues, however, to state that heat stress is also a leading cause of nestling mortalities. The petition notes that the Service (USFWS 1990b) determined that this situation will likely become more common, citing more days above 100 °Fahrenheit in 1990 than 1989. The petitioners indicate that older nestlings have fallen from nest cliffs while attempting to reach shade or have fledged prematurely from nests without shade, which usually results in their mortality. The petition cites studies indicating that 23 nestlings died and 7 pre-fledged due to heat stress (Hunt *et al.* 1992). The petition cites additional information regarding heat-related mortalities.

In addition to heat, the petition notes that global warming will lead to more frequent drought cycles. The petitioners note the Service (USFWS 2003b) determined that, between 1993 and 2001, eagles that depend on Roosevelt Lake for food had lower reproduction as the lake's surface area declined.

Response to the Petition

The petition presents some information to indicate that heat is a stressor for the Sonoran Desert bald eagle, and that drought and declining water levels at reservoirs may result in decreased productivity. The AGFD notes that heat stress is the fourth-leading cause of known nestling mortalities, behind predation, parasitism, and starvation (E. Gardner, AGFD, pers. comm. 2006). It is ranked as the sixth greatest threat to bald eagles in all age classes (AGFD 2006, Table 6, p. 25).

Productivity for the Sonoran Desert population of bald eagles has reached its highest level yet for 2003 (at 0.62 young per occupied BA), 2004 (at 1.06 young per occupied BA), and 2005 (at 1.01 young per occupied BA), while the Southwest experienced drought conditions. Climate variability and drought conditions may ultimately cause adverse effects to the bald eagle; however, the long-term effects of ongoing drought for desert-adapted birds like those of the Sonoran Desert bald eagle population are unknown. The bald eagle is successful in a wide range of climate conditions. We do not find that the petitioner provided substantial information to demonstrate that drought and increased heat will lead to adverse effects to the Sonoran Desert population of bald eagles that would cause them to be in danger of becoming extinct. Therefore, we find that the petitioner did not provide substantial information to indicate that climate-related threats are occurring at a level that leads us to conclude that the petitioned action may be warranted.

Eggshell Thinning

The petition notes that eggshell fragments from 32 Arizona bald eagle BAs were collected, measured, and averaged by nest from 1977 to 1997. These means were then compared with the 0.591 mm mean from Baja California, which is the closest known bald eagle population to Arizona with pre-DDT eggshell measurements. The petition cites Wiemeyer *et al.* (1984) in noting that eggshell thinning of greater than 10 percent causes problems in reproduction for other bald eagle populations. Similarly, the petition notes that studies have determined that a population would experience reproductive problems when eggshell thinning has become severe (15 to 20 percent) for a period of years (Anderson and Hickey 1972).

Mean eggshell thicknesses were compared with those from Baja California, which had a mean of 0.591

mm (0.024 in). The petition cites four studies on eggshell fragments for southwestern bald eagles (Grubb *et al.* 1990; Hunt *et al.* 1992; Mesta *et al.* 1992, Driscoll and Beatty, unpublished data). The results of these studies found eggshell thickness means of 0.539 mm (0.021 in) for 32 sets of eggshell fragments from 14 BAs between 1977 to 1985; 0.562 mm (0.022 in) for 71 sets of eggshell fragments from 23 BAs between 1987 and 1990; 0.552 mm (0.022 in) for 27 sets of eggshell fragments from 18 BAs between 1991 and 1992; and 0.534 mm (0.021 in) for 135 sets of shell fragments collected from 27 BAs between 1993 and 1997. In comparison to the Baja California mean eggshell thicknesses, these studies found a comparative 8.8 percent thinning for 1977 to 1985; 4.9 percent from 1987 to 1990; 6.6 percent in 1991 and 1992; and 9.7 percent from 1993 to 1997 (Grubb *et al.* 1990; Hunt *et al.* 1992; Mesta *et al.* 1992, Driscoll and Beatty, unpublished data). The petition notes that, since 1993, the annual percent thinning exceeded 10 percent in 1994 and 1995, and remained high at 9.9 percent in 1996 and 1997.

The petition notes that the cause of the eggshell thinning is not known at this time. While chlordane and DDE were the most frequently detected organochlorines in fish sampled near eagle nests, they were present at levels below those associated with eggshell thinning in bald eagles. The petition further notes that studies found that trace elements, especially mercury, were elevated, as were aluminum, arsenic, copper, and zinc (Hunt *et al.* 1992; King *et al.* 1991).

Response to the Petition

AGFD (2006c, p. 23) notes that eggshell thinning equaled or exceeded 10 percent on 5 separate occasions between 1993 and 2004. These occurred in 1994 at 10.7 percent, 1999 at 10.8 percent, in 2000 at 12.3 percent, in 2003 at 10.7 percent, and in 2004 at 10.0 percent. However, AGFD (2006c, p. 23) concludes that, since the ban of DDT in 1973, other factors may have a greater influence on productivity than DDT, but that egg collection and eggshell measurements will continue to ensure that the effects of DDT and other organochlorines do not affect productivity. We agree with this conclusion, and believe that eggshell thinning warrants further study and monitoring; however, at this time, we are not aware of any data to indicate thinning at the levels cited is resulting in losses of eggs. We find that the petition did not provide substantial information to indicate eggshell thinning may place the Sonoran Desert bald eagle population in danger of becoming extinct.

Finding

We have reviewed the petition, literature cited in the petition, and information in our files. In evaluating this petition, we sought to determine if sufficient information was provided to warrant continued consideration and development of a 12-month finding. We find available genetic studies on bald eagles are dated, the sample size was small, and researchers conducting the studies found the results to be inconclusive. We therefore believe that the best available genetic information is inconclusive with regard to the discreteness of the Sonoran Desert bald eagle population. However, we believe the petition presents substantial information on distinct morphological features of the Sonoran Desert bald eagles with respect to size. Additionally, we believe the petition provides substantial information on natal site fidelity in breeding birds and the limited number of other eagles in neighboring southwestern states or Mexico. Finally, we believe the strongest argument presented by the petitioners for a positive discreteness finding is provided by the data indicating that 20 years of monitoring have resulted in the determination that no eagles have immigrated to and only one eagle has emigrated from the Sonoran Desert bald eagle population. These three factors lead us to find that the petition contains substantial information that the Sonoran Desert bald eagle population may be discrete from other bald eagle populations.

However, on the basis of our review, we find that the petition does not present substantial scientific or commercial information to indicate that the Sonoran Desert bald eagle constitutes a valid DPS, pursuant to the DPS policy (FR 61 4722). Although we believe the population to be discrete, the petition does not present substantial scientific information that the Sonoran Desert bald eagle may be significant in relation to the remainder of the taxon. Therefore, we conclude that the Sonoran Desert population is not a listable entity pursuant to section 3(15) of the Act. However, recognizing the volume of information provided in the petition, and the national importance of the bald eagle, we conducted a threats analysis.

We find that the petition contains detailed information on numerous threats affecting the Sonoran Desert population of bald eagles. Largely, we are in agreement that these threats are present, and in some cases are having some level of effect on Sonoran Desert bald eagles. However, as we discuss throughout our responses, no new information on threats was presented by the petitioner. Additionally, we did not find that the petition presented substantial information indicating an increased level of any of the threats discussed. The lack of information on new or escalating threats, combined with the increased number of occupied breeding areas and increased productivity levels, causes us to conclude that the Sonoran Desert bald eagle population, while facing threats, continues to increase in numbers of adult birds and in productivity. We therefore find that the petition did not provide substantial information to lead us to conclude that the petitioned action to reclassify the Sonoran Desert bald eagle as endangered may be warranted.

We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the bald eagle, you may submit your information or materials to the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section above).

References Cited

A complete list of all references cited herein is available, upon request, from the Arizona Ecological Services Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section above).

Author

The primary authors of this notice are the staff of the Arizona Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 21, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 06–7180 Filed 8–29–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 168

Wednesday, August 30, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 24, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Procurement and Property Management

Title: Procurement: Maximum Workweek—Construction Schedule.

OMB Control Number: 0505–0011.

Summary of Collection: In order to obtain goods or services such as construction services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who solicit bids or offers for work from businesses in the private sector. When USDA contracts for construction services, both the contracting officer and the contractor needs to establish a schedule for the work. The contractor needs to ensure that his weekly work schedule will not conflict with the time during which USDA may allow him access to the work site. The contracting officer needs to know when the contractor will be working in order to schedule on-site conferences, to perform quality assurance inspections, and to perform compliance checks required to enforce the Davis Bacon Act (40 U.S.C. 276a–276a–7). Such compliance checks are specifically required by the Federal Acquisition Regulations (FAR) to conduct employee interviews, to check the type of work being performed, to verify the number and pay classification of workers at the site, and to verify that posters informing workers of their rights are displayed at the site (FAR 22.406–7(b)). Contracting officers put the Maximum Workweek—Construction Schedule clause in solicitations and contracts for construction when the contractor's access to the work site may be restricted to certain times of the day or week.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine when government inspectors or representatives will be needed at the site, and to schedule contractor access to the work site. The information is not collected unless the contracting officer anticipates problems with contractor access or scheduling government inspections. If the information were not collected, contracting offices would be unable to allocate contract administration resources efficiently.

Description of Respondents: Business or other for-profit.

Number of Respondents: 400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 100.

Office of Procurement and Property Management

Title: Procurement: Instructions for the Preparation of Technical and Business Proposals.

Omb Control Number: 0505–0013.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who use various methods to award contracts for good or services. One method, prescribed by Part 15 of the Federal Acquisition Regulation (FAR) (48 CFR) is contracting by negotiation. In contracting by negotiation, contracting officers issue solicitations to request offers for required products or services from businesses in the private sector. Together with the solicitation document, the offeror's cost proposal and its technical and business proposals constitute the offer submitted to the contracting office for evaluation and acceptance. The technical proposal, together with the offeror's pricing, is needed to select the offeror who will be awarded a contract. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) prescribes the provision titled *Instructions for the Preparation of Technical and Business Proposals* (48 CFR 452.215–71) helps an offeror preparing a proposal to address the factors on which it will be evaluated.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to evaluate and determine the feasibility of the offeror's management, technical approach, and offered cost/price to provide the services and/or supplies required, if awarded a contract. If the information were not collected, OPPM would be unable to obtain goods and services required for its daily operations.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 2,100.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 67,200.

Office of Procurement and Property Management

Title: Procurement: Brand Name or Equal Provision and Clause.
OMB Control Number: 0505–0014.
Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) and the (48 CFR 411.171), provision (48 CFR 452.211–70), and a clause (48 452.211–71) permits the use of ''brand name or equal'' purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the ''equal'' item being offered and to indicate how that item meets the salient characteristics stated in the purchase description. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.
Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine from the descriptive information furnished whether the offered ''equal'' item meet the salient characteristics of the Government's requirements. If information were not collected, OPPM would spend more time developing purchase descriptions and offerors would spend more time reading and interpreting the purchase descriptions.
Description of Respondents: Business or other for-profit.
Number of Respondents: 26,678.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 2,668.

Office of Procurement and Property Management

Title: Procurement: Key Personnel Clause.
OMB Control Number: 0505–0015.
Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who issue solicitations to request offers (proposals) for required products or services from businesses in the private sector. When USDA wishes to acquire research and development services (R&D), information technology (IT) design or support services, or advisory and assistance services, it must consider the capabilities of the personnel who the contractor assigns to the job. The contributions of certain contractor employees may be critical to the success of the work. Such employees are designated as ''Key Personnel.'' The Agriculture Acquisition Regulation (48 CFR ch.4) (48 CFR 437.110) and 48 CFR 452.237–74) prescribes the Key Personnel clause to collect information about key contractor personnel. The contracting officer uses the Key Personnel clause to require the contractor to inform USDA, if a key person will no longer be available to perform work on the contract. Contractors whose contracts include the key personnel clause are required to notify the contracting officer about proposed substitutions for key personnel identified in the contract.
Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine whether the departure of a key person from the contractor's staff could jeopardize contract performance, and to determine what accommodations or remedies may be taken. If the OPPM could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.
Description of Respondents: Business or other for-profit; Non-for-profit institutions; State, Local, or Tribal Government.
Number of Respondents: 300.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 300.

Office of Procurement and Property Management

Title: Procurement: Progress Reporting Clause.
OMB Control Number: 0505–0016.
Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who request bids or offers for work from businesses in the private sector using solicitations. In order to administer contracts for research and development services (R&D), or for advisory and assistance services (AAS), contracting officers need information about contractor progress in performing the contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) (48 CFR 437.270(a)) and (48 CFR 452.237–76) prescribe the Progress Reporting Clause to collect information about contractor progress. Contracting officers include the Progress Reporting Clause in R&D and AAS contracts to obtain information from the contractors about their performance.
Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to compare actual progress and expenditures to anticipated performance and contractor representations on which the award was based. The information alerts the agency of technical problems; the need for additional staff resources or finding; and the probability of timely completion within the contract cost or price. If the contracting officers could not obtain progress report information, they would have to physically monitor the contractor's operation on a day to day basis throughout the performance period.
Description of Respondents: Business or other for-profit; Non-for-profit institutions; State, Local, or Tribal Government.
Number of Respondents: 300.
Frequency of Responses: Reporting: Quarterly; Monthly.
Total Burden Hours: 5,400.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. E6–14367 Filed 8–29–06; 8:45 am]
BILLING CODE 3410–96–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut State Advisory Committee will convene at 12 p.m. and adjourn at 2 p.m. on Friday, September 8, 2006 in Room 203 of the Commons Building, located on The Learning Corridor campus located at 43 Vernon St. in Hartford, Connecticut. The purpose of the meeting is for the committee to have orientation for new advisory committee members and to plan for the committee's September briefing on school choice.

Persons desiring additional information should contact Barbara de La Viez of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116). Hearing impaired persons who will

attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least 5 (five) working days before the scheduled date of the planning meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 24, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–14417 Filed 8–29–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Service Annual Survey.

Form Number(s): Too numerous to list here (77 unique forms).

Agency Approval Number: 0607–0422.

Type of Request: Revision of a currently approved collection.

Burden: 208,941 hours.

Number of Respondents: 57,652.

Avg. Hours per Response: 3 hours and 37 minutes.

Needs and Uses: Today, over 50 percent of all economic activity is accounted for by services that are narrowly defined to exclude retail and wholesale trade. The U.S. Census Bureau currently measures the total output of most of these service industries annually in its Service Annual Survey (SAS). This survey covers all or some of the following nine sectors: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administration and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services.

Data from the SAS are essential to a better understanding and higher quality estimates of economic growth, real output, prices, and productivity for our nation's economy. A broad spectrum of government and private stakeholders use these data in analyzing business and economic sectors; developing statistics on services; forecasting economic growth; and compiling data on productivity, prices and gross domestic product (GDP). In addition, trade and professional organizations use these data to analyze industry trends, benchmark their own statistical programs and develop forecasts. Private businesses use these data to measure market share, analyze business potential and plan investments. Comprehensive, comparative annual data on the services sector are not available from any other source.

In addition to the general expense detail items that the SAS collects annually, the SAS will expand to collect additional detailed expense items in the 2007 survey year to replace the Business Expenses Survey (BES) for the industries that are currently covered by the SAS. In the 2008 survey year, the SAS will collect the same expense detail items as were collected in the 2006 survey year.

As is done every year before the Economic Census, the SAS will collect sales tax data in the 2006 survey year.

In order to reduce the number of the SAS forms, the SAS will combine generic forms at the sector level and will no longer have different forms for company level reporting units and Employer Identification Number (EIN) reporting units or taxable and tax-exempt firms. These changes will decrease the number of SAS forms from 272 to 77 unique forms.

The availability of these data will greatly improve the quality of the intermediate-inputs and value-added estimates in BEA's annual input-output and GDP by industry accounts.

The data produced in the SAS are critical to the accurate measurement of total economic activity.

The Bureau of Economic Analysis (BEA), the primary Federal user, uses the information to develop the national income and product accounts, compile benchmark and annual input-output tables, and compute GDP by industry. Agencies of the U.S. Department of Transportation (DOT) use the data for policy development and program management and evaluation. The Bureau of Labor Statistics (BLS) uses these data as inputs to its Producer Price Indexes and in developing productivity measurements. The Centers for Medicare and Medicaid Services (CMS) use the data for program planning and development of the National Health Expenditure Accounts. The Federal Communications Commission (FCC) uses these data to assess the impact of regulatory policies. International agencies use the data to compare total domestic output to changing international activity. Private industry also uses these data as a tool for marketing analysis.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14355 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Annual Survey of Foreign Direct Investment in the United States.

Form Numbers(s): BE–15(LF), BE–15(SF), BE–15(EZ), and BE–15 Supplement C.

Agency Approval Number: 0608–0034.

Type of Request: Revision of a currently approved collection.

Burden: 107,900 hours.

Number of Respondents: 4,950.

Average Hours per Response: 21.8 hours.

Needs and Uses: The Annual Survey of Foreign Direct Investment in the United States (Form BE–15) obtains sample data on the financial structure and operations of nonbank U.S. affiliates of foreign investors. The data are needed to provide reliable, useful, and timely measures of foreign direct

investment in the United States, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign investors, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. In addition, data covering employment and property, plant, and equipment are collected by state. The data are also used to update similar data for the universe of U.S. affiliates collected once every five years on the BE–12 benchmark survey.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108).

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or e-mail *dhynek@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to the Office of Management and Budget, O.I.R.A., Attention PRA Desk Officer for BEA, e-mail *pbugg@omb.eop.gov*, or by FAX at 202–395–7245.

Dated: August 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14356 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Company Organization Survey.

Form Number(s): NC–99001.

Agency Approval Number: 0607–0444.

Type of Request: Revision of a currently approved collection.

Burden: 26,583 hours.

Number of Respondents: 80,000.

Avg. Hours per Response: 20 minutes.

Needs and Uses: The Census Bureau requests a revision of the currently approved Company Organization Survey (COS) data collection for the 2007 survey year. The Census Bureau will conduct the 2007 COS in conjunction with the 2007 Economic Census and will coordinate these collections so as to minimize response burden. We request an extension of the current expiration date to November 2008 to complete the data collection for the 2007 COS.

The Census Bureau conducts the annual COS in order to maintain and update a centralized, multipurpose Business Register (BR). In particular, the COS supplies critical information on the organizational structure, operating characteristics, and employment and payroll of multi-location enterprises.

The 2007 COS will request company-level information from 80,000 multi-establishment enterprises with 50 or more employees or with industries out-of-scope of the 2007 Economic Census. The Census Bureau will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, ownership of foreign affiliates, research and development, and employees from a professional employer organization.

The 2007 COS will request additional information from 15,000 multi-location establishments with industry classifications that are out-of-scope of the Economic Census. For those out-of-scope establishments, we will collect the following basic operating data for each listed establishment: End-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The Economic Census will collect data for all other establishments of multi-establishment enterprises, including those items above.

The information collected by the COS is used to maintain and update the BR. The BR serves two fundamental purposes:

First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, local or Tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14357 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C1, MQ–C2.

Agency Approval Number: 0607–0175.

Type of Request: Revision of a currently approved collection.

Burden: 74,250 hours.

Number of Respondents: MQ–C1—17,000; MQ–C2—6,000.

Avg. Hours per Response: MQ–C1—2.25 hours; MQ–C2—1.5 hours.

Needs and Uses: The U.S. Census Bureau requests a revision of approval for the Survey of Plant Capacity Utilization (SPC). The current survey is conducted annually and collects fourth quarter production data. The survey provides information on use of industrial capacity in manufacturing and publishing plants as defined by the North American Industry Classification System (NAICS). It is the only source of capacity rates at the 6-digit NAICS industry levels.

Changes in capacity utilization are considered important indicators of investment demand and inflationary pressure. For these reasons, the estimates of capacity utilization are closely monitored by government and private policy makers.

The annual survey (MQ–C1) collects the value of fourth quarter production and the value of production that could have been achieved if operating under ''full production'' and ''emergency production'' levels. The ratios of the actual to the full and emergency production levels are the basis of the estimates of capacity utilization. The survey also collects information by shift, on work patterns at actual production and full production levels.

With support from the Federal Reserve Board (FRB), the Census Bureau is requesting approval to collect capacity utilization data on a quarterly basis in addition to the annual collection. Response to the quarterly survey (MQ–C2) would be voluntary. Response to the annual survey is mandatory. The quarterly survey would collect a subset of the data collected on the annual survey.

The FRB is the primary user of the current SPC data and have expressed the need for these quarterly data. The FRB publishes measures of industrial production (IP) that are either estimated from physical product data or estimated from monthly data on inputs to the production process, specifically production worker hours and an indicator of capital input. For many years, data on electric power use was used as the indicator of industry capital input. The deregulation of electricity markets led to the deterioration in the coverage and quality of the electricity data.

As a result, in November 2005, the FRB discontinued its use of the industrial electric power data in the current estimates of IP. In order to maintain the quality of the IP index, the collection of these quarterly utilization data, such as the workweek of capital, become critical indicators of capital input use and industry output.

The FRB will use these data in several ways. First, the capital workweek data will be used as an indicator of capital use in the estimation of monthly output (IP). Second, the workweek data will also be used to improve the projections of labor productivity that are used to align IP with comprehensive benchmark information in the Economic Census covering the Manufacturing sector and Annual Survey of Manufactures. Third, the utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflect production changes rather than capacity changes.

The Defense Logistics Agency uses the data to assess readiness to meet demand for goods under selected national emergency scenarios.

Affected Public: Business or other for-profit.

Frequency: MQ–C1—Annually; MQ–C2—Quarterly.

Respondent's Obligation: MQ–C1—Mandatory; MQ–C2—Voluntary.

Legal Authority: Title 13 U.S.C., Sections 182 and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14359 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Services Survey (QSS).

Form Number(s): QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E), QSS–4(A), QSS–4(E), QSS–5(A), QSS–5(E).

Agency Approval Number: 0607–0907.

Type of Request: Revision of a currently approved collection.

Burden: 11,922 hours.

Number of Respondents: 13,000.

Avg. Hours per Response: 13.75 minutes.

Needs and Uses: The U.S. Census Bureau requests an extension with revision of the current OMB approval of the Quarterly Services Survey (QSS). The QSS currently canvasses and collects data from employer businesses in select service industries. These industries include information; professional, scientific and technical services; hospitals; nursing and residential care facilities; and administrative and support and waste management and remediation services industries. The QSS provides the most current reliable measures of total operating revenue and percentage of revenue by class of customer on a quarterly basis. In addition, the QSS provides the only current quarterly measure of total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. All respondent data are received by mail, fax, telephone, or Internet reporting.

Before the QSS economic indicator existed for the service sector, which accounts for nearly 55 percent of all economic activity, the only data available were from the Service Annual Survey (SAS) and 5-year economic census. The QSS was developed to address and provide more up-to-date estimates of services output. Based on this effort, the QSS is a major source for the development of quarterly Gross Domestic Product (GDP) and an indicator of short-term economic change.

The total operating revenue estimates produced from the QSS provide current trends of economic service industry activity in the United States from service providers with paid employees.

In addition to revenue, we also collect total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. Operating expenses provide a better measure of the economic activity of these firms. Expense estimates produced by the QSS, in addition to inpatient days and discharges for the hospital industry, are used by the Centers for Medicare and Medicaid Services (CMS) to project and study hospital regulation, Medicare payment adequacy, and other related projects.

Beginning in January 2007, the Census Bureau will expand the QSS to include coverage of truck transportation; couriers and messengers; warehousing and storage; rental and leasing; ambulatory healthcare services; social assistance; arts, entertainment, and recreation; repair and maintenance; personal and laundry services; grant making, civic, professional, and similar organizations from employer businesses.

The QSS expansion will be based on data collection from four new forms: QSS–4(A); QSS–4(E); QSS–5(A); and QSS–5(E). The QSS–4(A/E) will only ask for quarterly revenue. The QSS–5(A/E) will ask for quarterly revenue and the percentage of admissions revenue.

In year 2007, for select questionnaires, we may replace select questions with industry specific variable content. This questionnaire adjustment was proposed by the Bureau of Economic Analysis (BEA). According to the BEA, an implementation of such proposed changes would assist them in making better use of the QSS data and lead to improved estimates of Personal Consumption Expenditures (PCE) services.

The BEA is the primary Federal user of data collected in the QSS. The BEA utilizes this timely data to make improvements to the national accounts for service industries. In the National Income and Product Accounts (NIPA), the quarterly data allow more accurate estimates of both PCE and private fixed investment. For example, recently published revisions to the quarterly NIPA estimates resulted from the incorporation of new source data from the QSS. Revenue data from the QSS are also used to produce estimates of gross output by industry that allow BEA to produce a much earlier version of the gross domestic product by industry estimates.

Estimates produced from the QSS are used by the BEA as a component of quarterly GDP estimates. The estimates also provide the Federal Reserve Board (FRB) and Council of Economic Advisors (CEA) with timely information on current economic performance. All estimates collected from this survey are used extensively by various government agencies and departments on economic policy decisions; private businesses; trade organizations; professional associations; academia; and other various business research and analysis organizations

The CMS uses the QSS data to develop hospital spending estimates in the National Accounts. In addition, the QSS data improve their ability to analyze hospital spending trends. They also use the data in their healthcare indicator analysis publication; ten-year health spending forecast estimates; and studies in hospital regulation and Medicare policy, procedures, and trends.

The Medicare Payment Advisory Commission (MedPac) utilizes the QSS data to assess payment adequacy in the current Medicare program.

The FRB and the CEA use the QSS information to better assess current economic performance. In addition, other government agencies, businesses, and investors use the QSS data for market research, industry growth, business planning and forecasting.

Affected Public: Business or other for-profit, non-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14369 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Census Bilingual Form Study

ACTION: Proposed collection; comment request.

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, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before October 30, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, 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 instruments and instructions should be directed to Kathleen Styles, U.S. Census Bureau, Room 3H075, Washington, DC 20233–9200, 301–763–3460 (or via the Internet at *Kathleen.M.Styles@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

In September 2005, the Census Bureau conducted the 2005 National Census Test (NCT) to evaluate a variety of short form questionnaire content and design modification, and the effect of a bilingual questionnaire on response rates and data quality. For more information on the 2005 NCT, see **Federal Register**: November 1, 2004 (Volume 69, Number 210). For the 2005 NCT, the bilingual questionnaire had a ''swim lane'' design that provided two response columns, one in English and one in Spanish, each containing the same questions and response categories. This form was mailed to a randomly selected set of 10,000 housing units across the United States.

Based on the results from the 2005 NCT concerning the effects of the bilingual census form, the Census Bureau is conducting the 2007 Census Bilingual Form Study (CBiFS). Results from the 2005 NCT show that the bilingual form significantly increased the self response rate nationally (by 2.2 percentage points for paper response,

and 1.1 percentage points for total response), and more specifically, in areas where there is a high concentration of non-White and Hispanic populations. Moreover, the response to the bilingual form resulted in a higher proportion of Hispanic persons than the English-only form. However, item nonresponse rates for the bilingual form were higher for all household level items and Hispanic origin compared to the English-only form. There are many potential reasons for these item nonresponse discrepancies, including forms design, question wording, translation, and differences in the responding population.

The purpose of the 2007 CBiFS is to determine if the item nonresponse issues can be resolved by improved form design and utilization of the questions that will be on the form in the 2008 Census Dress Rehearsal. Moreover, this study provides the opportunity to analyze the impact of the bilingual form in areas that contain a heavy concentration of Spanish-speaking people with limited English proficiency. Additionally, this study will provide the opportunity to verify the 2005 NCT finding of increased response to the bilingual census form.

II. Method of Collection

This study will include two experimental bilingual form panels, and one control panel. Each panel will have the same questionnaire content (i.e., the content selected for dress rehearsal). The control panel will be the English-only form. The two experimental panels will contain variations of the bilingual form design to try to improve on the design that was used in the 2005 NCT. The first experimental panel will be the bilingual form that will be used in the dress rehearsal. The second experimental panel will contain an experimental format alternative to the first panel. We expect to mail each form to roughly 10,000 housing units, for a total of 30,000 housing units in the study.

In early April 2007, the Census Bureau will mail an advance letter to every housing unit in this study. The advance letter will explain why we are conducting the 2007 CBiFS. The letter also will inform households that they will soon receive a request to complete a questionnaire. The advance letter for the two bilingual panels will have a dual language design.

The second mailing will be the initial questionnaire package. Housing units will receive a paper questionnaire and a first-class postage-paid return envelope. Included in the mailing package will be a letter from the Census Bureau's Director that encourages households to respond. Households selected for the bilingual panels will receive one of the bilingual questionnaires, and households selected for the control panel will receive the English form. Respondents will be asked to mail back their completed questionnaire by Census Day, May 1, 2007.

The third mailing will be a reminder mailing. The reminder mailing asks households to respond to the census test if they have not already done so. The reminder mailing will be an English-only postcard for the control panel and a letter for the bilingual panels since the Spanish translation requires more space than is available on the postcard.

Beginning May 2007, a replacement questionnaire will be sent to all housing units that have not responded by a pre-determined date. Accompanying the questionnaire will be a letter from the Census Bureau's Director urging response. The replacement questionnaire will be the English form for all panels, including the bilingual panels.

There will be no field follow-up for the 2007 CBiFS.

III. Data

OMB Number: Not available.

Form Number(s): DE–1, DE–1(E/S), DE–2(E/S).

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 5,000 hours.

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

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 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–14358 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Scope Clarification Request—Foreign-Trade Subzone 122K (Alumina Production) Sherwin Alumina Company—Gregory, TX

A request for clarification of scope has been submitted to the Foreign-Trade Zones Board (the Board) by Sherwin Alumina Company (Sherwin), operator of Foreign-Trade Subzone 122K. A grant of authority for Sherwin's subzone was issued on December 30, 1988, for the manufacture of alumina and aluminum hydrate. In its original application, Sherwin indicated that its foreign-sourced input would be bauxite, imported duty-free under subheading 2606.00 of the Harmonized Tariff Schedule of the United States (HTSUS), to be used in the production of alumina and aluminum hydrate.

Sherwin now seeks clarification as to whether its scope includes authority to further refine 24,500 metric tons of the bauxite into smaller particles of aluminum hydrate than is currently being produced. There will be no increase in imports of bauxite used in the refining process nor in total production of alumina at the Sherwin plant as a result of the new manufacturing activity.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is September 29, 2006. A copy of the request is available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: August 23, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–14476 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on September 12, 2006, 9 a.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Regulations update.
4. Update on Wassenaar Statement of Understanding on Military End-uses (China 'catch-all').
5. Country policy update: Libya, North Korea.
6. Encryption update.
7. Enforcement update.
8. Automated Export System (AES) update.
9. Working group reports.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Ms. Springer on (202) 482–4814.

Dated: August 23, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–7259 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part.

DATES: *Effective Date:* August 30, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Individually Quick Frozen (''IQF'') Red Raspberries from Chile.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2007.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/05–6/30/06
Camargo Correa Metais S.A.	
Companhia Ferroligas de Minas Gerais—Minasligas.	
Italmagnesio Nordeste S.A.	
Ligas de Aluminio S.A.	
Chile: Individually Quick Frozen Red Raspberries, A–337–806	7/1/05–6/30/06
Agricola Nova Ltda.	
Agricola San Antonio.	
Agrocomercial Las Tinajas Ltda.	
Agrofruta Chilena Ltda.	
Agrofruticola Pehuenche S.A.	
Agroindustria Framberry Ltd.	
Agroindustria Frisac Ltda.	
Agroindustria Frutos del Maipo Ltda.	
Agroindustria Merco Trading Ltda.	
Agroindustria Niquen Ltda.	
Agroindustria Sagrada Familia Ltda.	
Agroindustria San Francisco Ltda.	
Agroindustria y Frigorifico M y M Ltda.	
Agroindustrial del Maule.	
Agross S.A.	
Alimentos Naturales Vitafoods, S.A.	
Alimentos Prometeo Ltda.	
Alimentos y Frutos S.A.	

	Period to be reviewed
Andesur S.A.	
Angloeuro Comercio Exterior S.A.	
Arlavan S.A.	
Armijo Carrasco, Claudio del Carmen.	
Bajo Cero S.A.	
C y C Group S.A.	
Certified Pure Ingredients (Chile) Inc. y Cia., Ltda.	
Chile Andes Foods S.A.	
Comercializadora Agricola Berries & Fruit Ltda.	
Comercializadora de Alimentos del Sur Ltda.	
Comercio y Servicios S.A.	
Copefrut S.A.	
Exportaciones Meyer S.A.	
Exportadora Fragaria Ltda.	
Exportadora Pentagro S.A.	
Exportadora South Berries Ltda.	
Francisco Nancuvilu Punsin.	
Frigorifico Ditzler Ltda.	
Frutas de Guaico S.A.	
Fruticola Olmue S.A.	
Fruticola Viconto S.A.	
Hassler Monckeberg S.A.	
Hortifrut S.A.	
Interagro Comercio Y Ganado S.A.	
Kugar Export Ltda. (Kulenkampff & Gardeweg Ltda.).	
Maria Teresa Ubilla Alarcon.	
Multifrigo Valparaiso S.A.	
Nevada Export S.A.	
Prima Agrotrading Ltda.	
Procesadora y Exportadora de Frutas y Vegetales Ltda.	
Rio Teno S.A.	
Santiago Comercio Exterior Sociedad Anomina.	
Sociedad Agricola Valle del Laja Ltda.	
Sociedad Agroindustrial Valle Frio, Ltda.	
Sociedad Comercial C y C, S.A.	
Sociedad Exportaciones Antiquina Ltda.	
Sociedad San Ernesto Ltda.	
Surfrut.	
Terra Natur S.A.	
Terrazas Export S.A.	
Valles Andinos S.A.	
Vital Berry Marketing S.A.	
Finland: Purified Carboxymethylcellulose, A–405–803	12/27/04–6/30/06
Noviant CMC Oy.	
Noviant Oy.	
CP Kelco Oy.	
Germany: Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/05–6/30/06
ThyssenKrupp Nirosta GmbH.	
ThyssenKrupp Nirosta Prazisionsband GmbH.	
ThyssenKrupp VDM GmbH.	
India: Polyethylene Terephthalate (PET) Film, A–533–824	7/1/05–6/30/06
Jindal Poly Films Limited of India.	
MTZ Polyfilms, Ltd.	
Iran: Certain In-Shell Pistachios, A–507–502	7/1/05–6/30/06
Nima Trading Company.	
Italy: Certain Pasta, A–475–818	7/1/05–6/30/06
Atar S.r.L.	
Corticella Molini e Pastifici S.p.A./Pasta Combattenti S.p.A.	
Industria Alimentare Colavita, S.p.A.	
Rummo S.p.A. Molino e Pastificio.	
Mexico: Purified Carboxymethylcellulose, A–201–834	12/27/04–6/30/06
Quimica Amtex, S.A. de C.V.	
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/05–6/30/06
ThyssenKrupp Mexinox S.A. de C.V.	
The Netherlands: Purified Carboxymethylcellulose, A–421–811	12/27/04–6/30/06
Noviant BV.	
CP Kelco BV.	
Akzo Nobel Surface Chemistry.	
Sweden: Purified Carboxymethylcellulose, A–401–808	12/27/04–6/30/06
Noviant AB.	
CP Kelco AB.	
Taiwan: Stainless Steel Butt-Weld Pipe Fittings,[1] A–583–816	6/1/05–5/31/06
Liang Feng Stainless Steel Fitting Co., Ltd.	
Tru-Flow Industrial Co., Ltd.	

	Period to be reviewed
Censor International Corporation.	
PFP Taiwan Co., Ltd.	
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/05–6/30/06
Ta Chen Stainless Pipe Co., Ltd.	
Yieh United Steel Corporation.	
Chia Far Industrial Factory Co., Ltd.	
China Steel Corporation.	
Emerdex Stainless Flat-Rolled Products, Inc.	
Emerdex Stainless Steel, Inc.	
Emerdex Group.	
Tang Eng Iron Works.	
PFP Taiwan Co., Ltd.	
Yieh Loong Enterprise Co., Ltd.(aka Chung Hung Steel Co., Ltd.).	
Yieh Trading Corp.	
Goang Jau Shing Enterprise Co., Ltd.	
Yieh Mau Corp.	
Chien Shing Stainless Co.	
Chain Chon Industrial Co., Ltd.	
Thailand: Canned Pineapple, A–549–813	7/1/05–6/30/06
Vita Food Factory (1989) Co., Ltd.	
Thailand: Furfuryl Alcohol, A–549–812	7/1/05–6/30/06
Indorama Chemicals Thailand Ltd.	
The People's Republic of China: Persulfates,[2] A–570–847	7/1/05–6/30/06
Shanghai AJ Import and Export Corporation.	
The People's Republic of China: Saccharin,[3] A–570–878	7/1/05–6/30/06
Amgal Chemical Products (1989) Ltd.	
Shanghai Fortune Chemical Co., Ltd.	
Suzhou Fine Chemical Co. Group Ltd.	
Countervailing Duty Proceedings	
India: Polyethylene Terephthalate (PET) Film, C–533–825	1/1/05–12/31/05
MTZ Polyfilms, Ltd.	
Jindal Poly Films Limited of India.	
Garware Polyester Limited.	
Italy: Certain Pasta, C–475–819	1/1/05–12/31/05
Atar S.r.L.	
DeMatteis Agroalimentare S.p.A.	
Pastificio Antonio Pallante S.r.L.	

[1] The companies listed for the above referenced case were inadverently omitted from the initiation notice that published on July 27, 2006 (71 FR 42626).

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of Persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Saccharin from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 25, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Adminstration.

[FR Doc. E6–14475 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period for the Revised Management Plan for the Elkhorn Slough National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service,

National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period on the Elkhorn Slough National Estuarine Research Reserve Management Plan Revision which will begin on the day this announcement is published. Comments should be sent within the comment period in hard copy or e-mail to Patricia Delgado at *Patricia.Delgado@noaa.gov* or NOAA's Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

The Elkhorn Slough National Estuarine Research Reserve was designated in 1979 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The Reserve has been operating under a management plan approved in 1985. Pursuant to 15 CFR 921.33(c), a state must revise its management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

This plan is a significant revision of the original management plan developed for the Reserve. For the revision, the Reserve used a collaborative approach, which focused on integrating the Reserve's programs in order to better achieve conservation success. The plan describes the Reserve's long-term conservation goals and details the process involved in identifying those goals. It also maps out the objectives and strategies that the Reserve will use over the next five years in order to move toward accomplishing its goals. The plan also provides an overview of the Reserve's research and monitoring, education, stewardship, coastal training, volunteer, and administration programs and describes the Reserve's plan for public access, acquisition, and facilities.

FOR FURTHER INFORMATION CONTACT: Patricia Delgado at (301) 563–1147 or Kate Barba at (301) 563–1182 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Delaware Management Plan revision, visit *http://www.elkhornslough.org/.*

Dated: August 24, 2006.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 06–7263 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Oregon Coastal Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

Date and Time: The Oregon Coastal Management Program evaluation site visit will be held October 2–6, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, October 4, 2006, at 7:30 p.m. at the City of Newport Public Library, 35 NW Nye Street, Newport, Oregon.

Copies of a state's most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–7118.

Dated: August 24, 2006.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

[FR Doc. E6–14366 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Waquoit Bay National Estuarine Research Reserve Revised Management Plan

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Approval and Availability of the Final Revised Management Plan for the Waquoit Bay National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the revised management plan for the Waquoit Bay National Estuarine Research Reserve (Reserve).

The Reserve was designated in 1988 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 and has been operating under the management plan approved in 2000. Pursuant to 15 CFR Section 921.33(c), a state must revise its management plan every five years. The submission of this plan fulfills this requirement and sets a course for

successful implementation of the goals and objectives of the Reserve.

The mission of the Reserve management plan is to improve the stewardship of the region's estuarine and coastal watershed ecosystems. The management plan identifies the following priority issues facing the Reserve: Water quality/eutrophication/watershed land-use; climate change/sea level rise/shoreline change; and assessment of ecosystem response to natural variability and human impacts.

The management plan identifies five goals that are addressed through active management. The goals are (l) improve the understanding of coastal ecosystems and the human influences on them, (2) improve environmental literacy in communities to enable environmentally-sustainable decision-making, (3) demonstrate sustainable stewardship of the land and water ecosystems within the Reserve to serve as a model for community stewardship in the region, (4) foster dialogue and development of coastal ecosystem management solutions through sustained community engagement, (5) improve operations, infrastructure and stature of the Reserve.

The Reserve's management plan addresses these goals with specific programs for resource management and protection and stewardship, research and monitoring, education and training, public access and visitor use, program administration, and partnerships and regional coordination.

FOR FURTHER INFORMATION CONTACT: Doris Grimm at (301) 563–7101 or Kate Barba, Acting Chief, Estuarine Reserves Division at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: August 25, 2006.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E6–14430 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081406A]

Atlantic Highly Migratory Species; Meeting of Consolidated Atlantic Highly Migratory Species Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NMFS will hold a two-day Highly Migratory Species (HMS) Advisory Panel (AP) meeting in October 2006. The intent of the meeting is to consider options for the conservation and management of HMS.

DATES: The AP meeting will be held from 1 p.m. to 5 p.m. on Tuesday, October 3, 2006, and from 8 a.m. to 5 p.m. on Wednesday, October 4, 2006.

ADDRESSES: The meetings will be held at the Hilton Mark Center, 5000 Seminary Road, Alexandria, VA, 22311; phone: 703–845–1010

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Chris Rilling at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP). NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on: the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), Amendment 1 to the Billfish FMP (April 1999), and the Consolidated Atlantic HMS FMP in February 2006. The October 2006 AP meeting will focus on conservation and management options for Atlantic tunas, swordfish, billfish, and sharks.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman or Chris Rilling at (301) 713–2347, at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 24, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–7262 Filed 8–25–06; 2:36 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082506B]

New England Fishery Management Council (NEFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 26 beginning at 9 a.m., and Wednesday and Thursday, September 27 and 28, beginning at 8:30 a.m., each day.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978)535–4600.Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 26, 2006

Following introductions, the Council will hold elections for 2006–07 officers. A series of brief reports will follow from the Council Chairman and Executive Director, the NOAA Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NOAA Enforcement, the Atlantic States Marine Fisheries Commission, the Scallop Survey Advisory Panel and the Northeast Multispecies Capacity Reduction Committee. During this morning session, the Council also will receive a report from the Northeast Fisheries Science Center on recent oceanographic variability in the Gulf of Maine and Georges Bank regions and the implications for fisheries. The Council will then review and approve the following for inclusion in phase I of the NEFMC's Essential Fish Habitat Omnibus Amendment: essential fish habitat designation alternatives for red crab and Atlantic salmon; alternatives for habitat areas of particular concern

(HAPCs); the prey species-related sections of the amendment, as well as the non-fishing impacts section. The Council's Sea Scallop Committee intends to recommend approval of final alternatives to be considered and analyzed in the Draft Supplemental Environmental Impact Statement to accompany Amendment 11 to the Scallop Fishery Management Plan. This will be followed by a presentation on the updated estimate of exploitable scallop biomass in the Elephant Trunk area.

Wednesday, September 27, 2006

During the morning session, the Council's Research Steering Committee Chairman will report on the committee's recommendations concerning the use of information provided in several cooperative research final reports. This will be followed by a presentation on the recent activities of the Northeast Cooperative Research Partners Program. The rest of the morning session will be used to discuss the Groundfish Committee's report. Items will include possible action on recommendations for the 2009 Northeast Multispecies (Groundfish) Plan adjustment as well as consideration of recommendations concerning standards for approving additional gear for the Eastern U.S./Canada Haddock Special Access Program. During the afternoon portion of the meeting, there will be a presentation on the results of the 43rd Stock Assessment Workshop/Stock Assessment Review Committee meeting. Species to be addressed include dogfish, red crab and black sea bass. A report on the results of the Transboundary Resource Assessment Committee's findings on the status of Eastern Georges Bank cod, haddock and yellowtail flounder will follow. The Council will then consider and could approve the recommendations of the Transboundary Management Guidance Committee for fishing year 2007 Total Allowable Catches for yellowtail flounder, cod and haddock caught in the U.S./Canada area. The day will conclude with a report from the Standard Bycatch Reporting Methodology (SBRM) Committee on the development of an amendment to implement an SBRM process across all NEFMC fishery management plans (FMPs). This will include comments from the Council's Scientific and Statistical Committee on a recommended approach and the selection of preferred alternatives.

Thursday, September 28, 2006

The Council will spend the morning session on Atlantic herring management issues. Members will consider final recommendations for multi-year fishery specifications (2007–09). Beforehand, members will consider the recommendations of the Herring Committee, Advisory Panel and Atlantic States Marine Fisheries Commission Herring Section. During the afternoon session, the Council will receive a summary of the comments collected during recent scoping meetings on the management of small mesh multispecies. Following this review, members will provide guidance to the Small Mesh Multispecies Committee as they move forward to develop a fishery management plan amendment. The Skate Annual Review will follow in which the status of the seven species managed through the Skate Fishery Management Plan will be discussed, along with any necessary actions that might be required. Prior to adjournment, there will be consideration of a recommendation to NOAA Fisheries to initiate a data collection program for the hagfish fishery.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 25, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–14461 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082406B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Crustaceans Plan Team (CPT) meeting, in Honolulu, HI.

ADDRESSES: The CPT meeting will be held at the Western Pacific Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

DATES: The meeting of the CPT will be held on September 15, 2006, from 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The CPT will meet on September 15, 2006, to discuss the following agenda items:

1. Introductions
2. Review of Last Plan Team Meeting and Recommendations
3. Adding Heterocarpus as a Management Unit Species to the Crustaceans Fishery Management Plan
4. Update on Lobster Research Activities

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda.

The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during this meeting. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–14460 Filed 8–29–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps Online Payment System Launched

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service is announcing a new online payment system that will allow Segal AmeriCorps Education Award payment requests and other benefits-related requests from AmeriCorps members to be submitted and processed online. The new system eliminates the need to submit and process paper forms, while increasing the accuracy of the data and the speed with which payments are made. The new system became available for institutions registration on August 16, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Yetter, National Service Trust, Corporation for National and Community Service, 1225 New York Ave., Washington, DC 20004, tel: 202–606–7547. Additional information can also be found on the AmeriCorps Web site, *www.AmeriCorps.gov.*

SUPPLEMENTARY INFORMATION: The National Service Trust (Trust), an office of the Corporation for National and Community Service, administers Segal AmeriCorps Education Awards on behalf of AmeriCorps members. These awards include the payment of interest accrued on student loans during members' terms of service and the payment of educational expenses or outstanding qualified student loan balances. The Trust is embarking on a landmark project to improve the way it does business with its members and partner institutions by automating these processes.

Beginning August 2006, AmeriCorps members and partner institutions will have access to the new online payment system where they will be able to submit and process Segal AmeriCorps Education Award payments and other requests completely online. AmeriCorps members will be able to register for the system as soon as they have been enrolled in their AmeriCorps program. Online registration by institutions became available on August 16th, and we encourage both financial and education institutions to sign up as soon as possible to be able to receive and process payment requests online. Registration for members will begin a week after we open registration for institutions. At that point, AmeriCorps members will also be able to submit requests and begin to experience the benefits of the system. Registering for the system will be a simple and secure process, and once online, members and institutions will immediately be able to reap the benefits of the automated online payment process. Here are just a few of the highlights:

• Quicker turn-around of payments

Institutions will receive payments much sooner than with the old paper-based process, reducing the turnaround time from 30 days to seven or less depending on when in a payment cycle a request is processed.

• Reduces administrative burden

Certain information will be auto-populated and verified by the system, thereby reducing the administrative burden of completing requests and rejections due to faulty or missing information. Additionally, electronic forms remove the problem of paper forms that are illegible or damaged due to irradiation.

• Eliminates need to scan and copy documents

The AmeriCorps online system creates an electronic record of the former paper form, eliminating the need to scan and copy documents for storage.

• Reduces mailing costs

The new system will eliminate the time and cost of mailing documents and paper forms.

• View up to date account information

Account information and available balances will be updated in real time and can be viewed from your homepage. Users can also track the status of pending requests and payments online.

• Designed to be user friendly

The new system is simple and easy to use. No training is necessary.

• Provides accessible help and information features

Definitions of terminology and help text explaining procedures are readily available from multiple areas on the site.

The Corporation for National and Community Service expects the online payment system to provide much faster, more accurate, and cost-effective service to our partner institutions and AmeriCorps members and alumni. Please visit *www.AmeriCorps.gov* for the latest updates as this new system is implemented.

Dated: August 23, 2006.

Jerry Yetter,

Director, National Service Trust.

[FR Doc. E6–14470 Filed 8–29–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2006–OS–0109]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 29, 2006.

Title, Associated Form and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Control Number 0704–0377.

Type of Request: Extension.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 hours.

Annual Burden Hours: 153,600.

Needs and Uses: The Industrial Capability Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment labor skills, facilities, equipment, processes and technology), and manufactured item information to conduct required industrial assessments and support DoD planning and decisions. The questionnaires are directed at key industrial facilities supporting DoD requirements.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7241 Filed 8–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2006–OS–0080]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 29, 2006.

Title, Associated Form and OMB Number: Application for Department of Defense Impact Aid for Children with Severe Disabilities; SD Form 816 and SD Form 816C, OMB Control Number 0704–0425.

Type of Request: Extension.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 8 hours.

Annual Burden Hours: 400.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEA)s that educate military dependent students with severe disabilities and meet certain criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities, when they completed the Impact Program form for the Department of Education. This application will be requested of LEAs who educate military dependent students with disabilities, who have been deemed eligible for the U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education costs of the military dependents with severe disabilities that they serve.

Affected Public: State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe. Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7242 Filed 8–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Memorandum of Understanding Between the U.S. Department of Defense and the U.S. Fish and Wildlife Service To Promote the Conservation of Migratory Birds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces a public notice of the signing of a Memorandum of Understanding (MOU) between the U.S. Department of Defense and the U.S. Fish and Wildlife Service to Promote the Conservation of Migratory Birds. Pursuant to Executive Order 13186 (January 17, 2001), ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' this MOU outlines a collaborative approach to promote the conservation of migratory bird populations. This MOU identifies specific activities where cooperation between the Parties will contribute substantially to the conservation of migratory birds and their habitats. It does not authorize the ''take'' of migratory birds. Take, as defined in 50 CFR 10.12, includes the pursuit, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

The complete text of the MOU is attached.

EFFECTIVE DATES: This notice is effective August 30, 2006. The MOU is effective July 31, 2006 and shall remain effective for a period of five years.

FOR FURTHER INFORMATION CONTACT: Peter Boice, 703–704–0524.

SUPPLEMENTARY INFORMATION: The notice is required by Section 3(g) of Executive Order 13186 which states ''Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.''

Dated: August 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

Memorandum of Understanding Between the U.S. Department of Defense and the U.S. Fish and Wildlife Service To Promote the Conservation of Migratory Birds

This Memorandum of Understanding (MOU) is entered into between the U.S. Department of Defense (DoD) and the U.S. Fish and Wildlife Service (FWS) (hereinafter ''the Parties'').

A. Purpose and Scope

Pursuant to Executive Order 13186 (January 17, 2001), Responsibilities of Federal Agencies to Protect Migratory Birds, this MOU outlines a collaborative approach to promote the conservation of migratory bird populations.

This MOU does not address incidental take during military readiness activities, which is being addressed in a rulemaking in accordance with section 315 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, 116 Stat. 2458).

This MOU specifically pertains to the following categories of DoD activities:

(1) Natural resource management activities, including, but not limited to, habitat management, erosion control, forestry activities, agricultural

outleasing, conservation law enforcement, invasive weed management, and prescribed burning;

(2) Installation support functions, including but not limited to, the maintenance, construction or operation of administrative offices, military exchanges, road construction, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, non-tactical equipment, laundries, morale, welfare, and recreation activities, shops, landscaping, and mess halls;

(3) Operation of industrial activities;

(4) Construction or demolition of facilities relating to these routine operations; and

(5) Hazardous waste cleanup.

This MOU identifies specific activities where cooperation between the Parties will contribute substantially to the conservation of migratory birds and their habitats. This MOU does not authorize the take of migratory birds.

B. Authorities

The Parties' responsibilities under the MOU are authorized by provisions of the following laws:

Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh–3233).

Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668–668d).

Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Fish and Wildlife Act of 1956 (16 U.S.C. 742 *et seq.*).

Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901–2911).

Fish and Wildlife Coordination Act (16 U.S.C. 661–667).

Migratory Bird Conservation Act (16 U.S.C. 715–715d, 715e, 715f–715r).

Migratory Bird Treaty Act (16 U.S.C. 703–711).

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

Sikes Act Improvement Act of 1997 (16 U.S.C. 670a–670o).

Agreements to limit encroachments and other constraints on military training, testing, and operations (10 U.S.C. 2684a)

C. Background

The Parties have a common interest in the conservation and management of America's natural resources. The Parties agree that migratory birds are important components of biological diversity and that the conservation of migratory birds will both help sustain ecological systems and help meet the public demand for conservation education and outdoor recreation, such as wildlife viewing and hunting opportunities. The Parties also agree that it is important to: (1) Focus on bird populations; (2) focus on habitat restoration and enhancement where actions can benefit specific ecosystems and migratory birds dependent upon them; and (3) recognize that actions taken to benefit some migratory bird populations may adversely affect other migratory bird populations.

The DoD mission is to provide for the Nation's defense. DoD's conservation program works to ensure continued access to land, air, and water resources for realistic military training and testing while ensuring that the natural and cultural resources entrusted to DoD's care are sustained in a healthy condition.

The DoD is an active participant in international bird conservation partnerships including Partners in Flight (PIF) and the North American Bird Conservation Initiative (NABCI). Military lands frequently provide some of the best remaining habitat for migratory bird species of concern, and DoD plans to continue its leadership role in bird conservation partnerships.

Through the PIF initiative, DoD works in partnership with numerous Federal and State agencies and nongovernmental organizations for the conservation of migratory and resident birds and to enhance migratory bird survival. Through DoD PIF, a list of species of concern (see Definitions) has been developed for each Bird Conservation Region where DoD facilities occur, thus improving DoD's ability to evaluate any migratory bird conservation concerns on respective DoD lands.

Integrated Natural Resources Management Plans (INRMPs) offer a coordinated approach for incorporating habitat conservation efforts into installation management. INRMPs are a significant source of baseline conservation information and conservation initiatives used when preparing National Environmental Policy Act (NEPA) documents for all DoD management activities. This linkage helps to ensure that appropriate conservation and mitigation measures are identified in NEPA documents and committed to, when appropriate, in final decision documents.

The DoD PIF program provides a framework for incorporating landbird, shorebird and waterbird habitat management efforts into INRMPs. DoD's strategy focuses on inventorying and long-term monitoring to determine changes in migratory bird populations on DoD installations. Effective on-the-ground management may then be applied to those areas identified as having the highest conservation value. DoD's PIF goal is to support the military's training and testing mission while being a vital and supportive partner in regional, national, and international bird conservation initiatives. DoD strives to implement cooperative projects and programs on military lands to benefit the health and well-being of birds and their habitats, whenever possible.

The Department of Defense implements bird inventories and monitoring programs in numerous ways including Monitoring Avian Productivity and Survivorship (MAPS) and Next Generation Radar (NEXRAD) for studying bird movements in the atmosphere. DoD also maintains an integrated pest management (IPM) program designed to reduce the use of pesticides to the minimum necessary.

The mission of the FWS is to work with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The FWS is legally mandated to implement the provisions of the Migratory Bird Treaty Act (MBTA), which include responsibilities for population management (e.g., monitoring), habitat protection (e.g., acquisition, enhancement, and modification), international coordination, and regulation development and enforcement. The FWS also promotes migratory bird conservation through its coordination and consultation efforts with other entities.

Many FWS programs are involved in bird conservation activities, including:

1. The Division of Migratory Bird Management and Regional Migratory Birds and Habitat Programs serve as focal points in the United States for policy development and strategic planning, developing and implementing monitoring and management initiatives that help maintain healthy populations of migratory birds and their habitat, and providing continued opportunities for citizens to enjoy bird-related recreation.

2. The Division of Bird Habitat Conservation is instrumental in supporting habitat conservation partnerships through the administration of bird conservation grant programs and development of Joint Ventures that serve as major vehicles for implementing the various bird conservation plans across the country.

3. Ecological Services Field Offices across the country serve as the primary contacts for environmental reviews that include, when requested, projects developed by local military installations and DoD regional offices involving

migratory bird issues. The Field Offices coordinate with the Regional Migratory Bird Offices, as necessary, during these reviews regarding permits and overall migratory bird conservation coordination for DoD activities.

4. The Office of Law Enforcement is the principal FWS program that enforces the legal provisions of the MBTA.

The Parties agree this MOU shall be implemented to the extent permitted by law and in harmony with agency missions, subject to the availability of appropriations and budgetary limits.

D. Responsibilities

1. Each Party shall:

a. Emphasize an interdisciplinary, collaborative approach to migratory bird conservation in cooperation with other governments, State and Federal agencies, and non-Federal partners within the geographic framework of the NABCI Bird Conservation Regions

b. Strive to protect, restore, enhance, and manage habitat of migratory birds, and prevent or minimize the loss or degradation of habitats on DoD-managed lands, by:

(1) Identifying and avoiding management actions that have the potential to adversely affect migratory bird populations, including breeding, migration, or wintering habitats; and by developing and implementing, as appropriate, conservation measures that would avoid or minimize the take of migratory birds or enhance the quality of the habitat used by migratory birds.;

(2) Working with partners to identify, conserve, and manage Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, and other significant bird conservation sites that occur on DoD-managed lands;

(3) Preventing or abating the pollution or detrimental alteration of the habitats used by migratory birds;

(4) Developing and integrating information on migratory birds and their habitats into outreach and education materials and activities; and

(5) Controlling the introduction, establishment, and spread of non-native plants or animals that may be harmful to migratory bird populations, as required by Executive Order 13112 on Invasive Species.

c. Work with willing landowners to prevent or minimize the loss or degradation of migratory bird habitats on lands adjacent or near military installation boundaries. This cooperative conservation may include:

(1) Participating in efforts to identify, protect, and conserve important migratory bird habitats or other significant bird conservation sites and ecological conditions that occur in landscapes or watersheds that may be affected by activities on DoD lands;

(2) Developing and integrating information on migratory bird resources found on DoD lands into other partners' outreach and education materials and activities; and

(3) Using available authorities to enter into agreements with other Federal agencies, States, other governmental entities, and private conservation organizations to conserve and enhance habitat in a compatible manner so military operations are not restricted.

d. Promote collaborative projects such as:

(1) Developing or using existing inventory and monitoring programs, at appropriate scales, with national or regional standardized protocols, to assess the status and trends of bird populations and habitats, including migrating, breeding, and wintering birds;

(2) Designing management studies and research projects using national or regional standardized protocols and programs, such as MAPS to identify the habitat conditions needed by applicable species of concern, to understand interrelationships of co-existing species, and to evaluate the effects of management activities on habitats and populations of migratory birds;

(3) Sharing inventory, monitoring, research, and study data for breeding, migrating, and wintering bird populations and habitats in a timely fashion with national data repositories such as Breeding Bird Research and Monitoring Database (BBIRD), National Point Count Database, National Biological Information Infrastructure, and MAPS;

(4) Working in conjunction with each other and other Federal and State agencies to develop reasonable and effective conservation measures for actions that affect migratory birds and their natural habitats;

(5) Participating in or promoting the implementation of existing regional or national inventory and monitoring programs such as Breeding Bird Survey (BBS), BBIRD, Christmas Bird Counts, bird atlas projects, or game bird surveys (e.g., mid-winter waterfowl surveys) on DoD lands where practicable and feasible.

(6) Using existing partnerships and exploring opportunities for expanding and creating new partnerships to facilitate combined funding for inventory, monitoring, management studies, and research.

e. Provide training opportunities to DoD natural resources personnel on migratory bird issues, to include bird population and habitat inventorying, monitoring methods, and management practices that avert detrimental effects and promote beneficial approaches to migratory bird conservation.

f. Participate in the Interagency Council for the Conservation of Migratory Birds to evaluate implementation of this MOU.

g. Promote migratory bird conservation internationally, as it relates to wintering, breeding and migration habitats of birds that breed on DoD lands.

h. Promote and undertake ecologically sound actions to curb the introduction in the wild of exotic or invasive species harmful to migratory birds.

2. The Department of Defense shall:

a. Follow all migratory bird permitting requirements for non-military readiness activities that are subject to 50 CFR Parts 21.22 (banding or marking), 21.23 (scientific collecting), 21.26 (special Canada goose permit), 21.27 (special purposes), or 21.41 (depredation). No permit is required to take birds in accordance with Parts 21.43–21.47 (depredation orders).

b. Encourage incorporation of comprehensive migratory bird management objectives in the preparation of DoD planning documents, including Integrated Natural Resource Management Plans, Pest Management Plans, Installation Master Plans, NEPA analyses, and non-military readiness elements of Bird Aircraft Strike Hazard documents. Comprehensive planning efforts for migratory birds include PIF Bird Conservation Plans, the North American Waterfowl Management Plan, U.S. Shorebird Conservation Plan, and North American Waterbird Conservation Plan and associated regional plans where available.

c. Incorporate conservation measures addressed in Regional or State Bird Conservation Plans in INRMPs.

d. Consistent with imperatives of safety and security, allow the FWS and other partners reasonable access to military lands for conducting sampling or survey programs such as MAPS, BBS, BBIRD, International Shorebird Survey, and breeding bird atlases.

e. Prior to starting any activity that is likely to affect populations of migratory birds:

(1) Identify the migratory bird species likely to occur in the area of the proposed action and determine if any species of concern could be affected by the activity;

(2) Assess and document, through the project planning process, using NEPA when applicable, the effect of the proposed action on species of concern.

Use best available demographic, population, or habitat association data in the assessment of effects upon species of concern;

(3) Engage in early planning and scoping with the FWS relative to potential impacts of a proposed action, to proactively address migratory bird conservation, and to initiate appropriate actions to avoid or minimize the take of migratory birds.

f. Manage military lands and non-military readiness activities in a manner that supports migratory bird conservation, giving consideration to the following factors:

(1) Habitat protection, restoration, and enhancement. Military lands contain many important habitats for migratory birds. Some unique, sensitive, endangered and/or declining habitat types that may require special management attention include:

(a) Grasslands. Many native grassland communities require intensive management to maintain and restore vigor and species diversity and to provide habitat for migratory birds and other wildlife dependent on native grasslands. Grassland management and restoration tools include controlled burning, mowing, grazing, native species planting, and exotic plant removal. Many grasslands have evolved with a natural fire regime, and the management activities often emulate this fire regime.

(b) Riparian and wetland habitats. Military lands contain riparian and wetland habitats that may be critical for migratory birds. DoD will strive to prevent the destruction or degradation of wetlands and riparian vegetation, and also restore those habitats, when feasible, where they have been degraded.

(c) Coastal beach, salt marsh, and dune habitats. Military lands support some of the best remaining undisturbed coastal habitats. DoD will strive to protect, restore and prevent the destruction of coastal and island habitats that are important to breeding, migrating and wintering shorebirds, salt marsh land birds and colonial water birds.

(d) Longleaf pine ecosystem. Some of the best remaining examples of the longleaf pine ecosystem occur on military lands. Such habitats benefit from prescribed fire and other management measures which DoD regularly implements on thousands of acres in the Southeast. The DoD manages and will continue to manage this ecosystem to benefit and promote migratory bird conservation.

(2) Fire and fuels management practices. Fire plays an important role in shaping plant and animal communities and is a valuable tool in restoring habitats altered by decades of fire suppression. Fire management may include fire suppression, but also involves fire prevention and fuels treatment, including prescribed burning and monitoring, to protect communities and provide for healthy ecosystems. Fire management planning efforts will consider the effects of fire management strategies on the conservation of migratory bird populations.

(3) Invasive Species and Aquatic Nuisance Species management practices. Invasive Species and Aquatic Nuisance Species are a threat to native habitats and wildlife species throughout the United States, including military lands. Efforts to control/contain these species must take into account both the impacts from invasive species and the effects of the control efforts on migratory bird populations. Invasive Species and Aquatic Nuisance Species that can threaten migratory birds and their habitats include, but are not limited to, exotic grasses, trees and weeds, terrestrial and aquatic insects and organisms, non-native birds, and stray and feral cats.

(4) Communications towers, utilities and energy development. Increased communications demands, changes in technology and the development of alternative energy sources result in impacts on migratory birds. DoD will review wind turbine and powerline guidelines published by FWS and the Avian Power Line Interaction Committee, respectively, and consult with FWS as needed, in considering potential effects on migratory birds of proposals for locating communications towers, powerlines or wind turbines on military lands. Construction of new utility and energy systems and associated infrastructure should be designed to avoid and minimize impacts on migratory bird populations. Existing utilities may also be considered for retrofitting to reduce impacts.

(5) Recreation and public use. The demand for outdoor recreational opportunities on public lands is increasing. Impacts on migratory birds may occur both through direct and indirect disturbances by visitors and through agency activities associated with providing recreational opportunities to visitors and installation personnel and morale facilities (e.g., facilities construction). DoD provides access to military lands for recreation and other public use, such as Watchable Wildlife and bird watching, where such access does not compromise security and safety concerns or impact migratory birds, other species, or their habitats.

Many conservation measures have been developed to benefit a variety of migratory bird species and their associated habitats. Some of these conservation measures may be directly applicable to DoD non-military readiness related activities; however, the appropriateness and practicality of implementing any specific conservation measure may have to be determined on a case-by-case basis. The FWS will work cooperatively with DoD in providing existing conservation measures and developing new ones as needed. Examples of some conservation measures may be found at *http://www.partnersinflight.org/pubs/BMPs.htm* for landbird species.

g. Develop and implement new and/or existing inventory and monitoring programs, at appropriate scales, using national standardized protocols, to evaluate the effectiveness of conservation measures to minimize or mitigate take of migratory birds, with emphasis on those actions that have the potential to significantly impact species of concern.

h. Advise the public of the availability of this MOU through a notice published in the **Federal Register**.

i. In accordance with DoD INRMP guidance, promote timely and effective review of INRMPs with respect to migratory bird issues with the FWS and respective state agencies. During the INRMP review process, evaluate and coordinate with FWS on any potential revisions to migratory bird conservation measures taken to avoid or minimize take of migratory birds.

3. The Fish and Wildlife Service shall:

a. Work with DoD by providing recommendations to minimize adverse effects upon migratory birds from DoD actions.

b. Through the Division of Migratory Bird Management, maintain a Web page on permits that provides links to all offices responsible for issuing permits and permit application forms for take of migratory birds.

c. Provide essential background information to the DoD when requested to ensure sound management decisions. This may include migratory bird distributions, status, key habitats, conservation guidelines, and risk factors within each BCR. This includes updating the FWS publication of *Birds of Conservation Concern* at regular intervals so it can be reliably referenced.

d. Work to identify special migratory bird habitats (i.e., migration corridors, stop-over habitats, ecological conditions important in nesting habitats) to aid in collaborative planning.

e. Through the Ecological Service Field Office, provide to DoD, upon

request, technical assistance on migratory bird species and their habitats.

f. In accordance with FWS Guidelines for Coordination with DoD and Implementation of the 1997 Sikes Act (2005), work cooperatively with DoD in the development, review and revision of INRMPs.

g. Review and comment on NEPA documents and other planning documents forwarded by military installations.

E. It Is Mutually Agreed and Understood That

1. This MOU will not change or alter requirements associated with the MBTA, Endangered Species Act, NEPA, Sikes Act or other statutes or legal authority.

2. The responsibilities established by this MOU may be incorporated into existing DoD actions; however, DoD may not be able to implement some responsibilities identified in the MOU until DoD has successfully included them in formal planning processes. This MOU is intended to be implemented when new actions are initiated as well as during the initiation of new, or revisions to, INRMPs, Pest Management Plans, and non-military readiness elements of Bird Aircraft Strike Hazard plans. It does not apply to ongoing DoD actions for which a NEPA decision document was finalized prior to, or within 180 days of the date this MOU is signed.

3. This MOU in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.

4. An elevation process to resolve any dispute between the Parties regarding a particular practice or activity is in place and consists of first attempting to resolve the dispute with the DoD military installation and the responsible Ecological Services Field Office. If there is no resolution at this level, either Party may elevate the issue to the appropriate officials at the applicable Military Service's Chain of Command and FWS Regional Offices. In the event that there is no resolution by these offices, the dispute may be elevated by either Party to the headquarters office of each agency.

5. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority.

6. The Parties shall schedule periodic meetings to review progress and identify opportunities for advancing the principles of this MOU.

7. This MOU is intended to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

8. Modifications to the scope of this MOU shall be made by mutual consent of the Parties, through issuance of a written modification, signed and dated by both Parties, prior to any changes.

9. Either Party may terminate this instrument, in whole or in part, at any time before the date of expiration by providing the other Party with a written statement to that effect.

The principal contacts for this instrument are as follows:

Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS4107, Arlington, VA 22203.

L. Peter Boice, Conservation Team, Leader, Office of the Secretary of Defense, 1225 S. Clark St., Suite 1500, Arlington, VA 22202–4336.

This MOU is executed as of the last date signed below and expires no later than five (5) years thereafter, at which time it is subject to review and renewal, or expiration.

F. Definitions

Action—a program, activity, project, official policy, rule, regulation or formal plan directly carried out by DoD, but not a military readiness activity.

Breeding Biology Research and Monitoring Database (BBIRD)—national, cooperative program that uses standardized field methodologies for studies of nesting success and habitat requirements of breeding birds (*http://pica.wru.umt.edu/BBIRD/*).

Breeding Bird Survey (BBS)—a standardized international survey that provides information on population trends of breeding birds, through volunteer observations located along randomly selected roadside routes in the United States, Canada and Mexico (*http://www.mbr-pwrc.usgs.gov/bbs/bbs.html*).

Bird Conservation Region—a geographic unit used to facilitate bird conservation actions under the North American Bird Conservation Initiative (*http://www.manomet.org/USSCP/bcrmaps.html*).

Birds of Conservation Concern—published by the FWS Division of Migratory Bird Management, refers to the list of migratory and non-migratory birds of the United States and its territories that are of conservation concern. The current version of the list Birds of Conservation Concern 2002 is available at (*http://migratorybirds.fws.gov/reports/bcc2002.pdf*).

Comprehensive Planning Efforts for Migratory Birds—includes Partners in Flight, North American Waterfowl Management Plan, U.S. Shorebird Conservation Plan, Western Hemisphere Shorebird Reserve Network, North American Waterbird Conservation Plan, and other planning efforts integrated through the North American Bird Conservation Initiative.

Conservation Measure—an action undertaken to improve the conservation status of one or more species of migratory birds. Examples include surveys and inventories, monitoring, status assessments, land acquisition or protection, habitat restoration, population manipulation, research, and outreach.

Conservation Planning—strategic and tactical planning of agency activities for the long-term conservation of migratory birds and their habitats.

Council for the Conservation of Migratory Birds—an interagency council established by the Secretary of the Interior to oversee the implementation of Executive Order 13186.

Ecological Condition—the composition, structure, and processes of ecosystems over time and space. This includes the diversity of plant and animal communities, the productive capacity of ecological systems and species diversity, ecosystem diversity, disturbance processes, soil productivity, water quality and quantity, and air quality. Often referred to in terms of ecosystem health, which is the degree to which ecological factors and their interactions are reasonably complete and functioning for continued resilience, productivity, and renewal of the ecosystem.

Effect (adverse or beneficial)—''effects'' and ''impacts,'' as used in this MOU are synonymous. Effects may be direct, indirect, or cumulative, and refer to effects from management actions or categories of management actions on migratory bird populations, habitats, ecological conditions and/or significant bird conservation sites.

Important Bird Areas (IBAs)—a network of sites that provide essential habitat for the long-term conservation of birds. In the United States, the IBA network is administered by the American Bird Conservancy and the National Audubon Society. (*http://www.audubon.org/nird/iba/*)

Integrated Natural Resources Management Plan (INRMP)—an integrated plan based, to the maximum extent practicable, on ecosystem management that shows the interrelationships of individual components of natural resources management (*e.g.*, fish and wildlife, forestry, land management, outdoor recreation) to military mission requirements and other land use activities affecting an installation's natural resources. INRMPs are required for all DoD installations with significant natural resources, pursuant to the Sikes Act Improvement Act.

International Shorebird Survey—a monitoring program started in 1974 to survey shorebirds (sandpipers, plovers, etc.) across the Western Hemisphere. (*http://www.manomet.org/programs/shorebirds*).

Management Action—an activity by a government agency that could cause a positive or negative impact on migratory bird populations or habitats. Conservation measures to mitigate potential negative effects of actions may be required.

Migratory Bird—any bird listed in 50 CFR 10.13, Code of Federal Regulations.

Military Readiness Activity—all training and operations of the Armed Forces that relate to combat, including but not limited to the adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use.

Monitoring Avian Productivity and Survivorship (MAPS)—a program that uses the banding of birds during the breeding season to track the changes and patterns in the number of young produced and the survivorship of adults and young (*http://www.birdpop.org/maps.htm*).

National Environmental Policy Act (NEPA)—a Federal statute that requires Federal agencies to prepare a detailed analysis of the environmental impacts of a proposed action and alternatives, and to include public involvement in the decision making process for major Federal actions significantly affecting the quality of the human environment 42 U.S.C. 4321, *et seq.*

North American Bird Conservation Initiative (NABCI)—an initiative to align the avian conservation community to implement bird conservation through regionally-based, biologically driven, landscape-oriented partnerships across the North American continent. NABCI includes Federal agencies of Canada, Mexico and the United States, as well as most landbird, shorebird, waterbird, and waterfowl conservation initiatives (*http://www.nabci-us.org*).

North American Waterbird Conservation Plan—a partnership of Federal and State government agencies, non-governmental organizations, and private interests focusing on the conservation of waterbirds, primarily including marshbirds and inland, coastal, and pelagic colonial waterbirds (*www.nacwcp.org/pubs/*). The vision of the partnership is that the distribution, diversity and abundance of populations and breeding, migratory, and nonbreeding waterbirds are sustained throughout the lands and waters of North America, Central America, and the Caribbean.

North American Waterfowl Management Plan—a partnership of Federal and State agencies, non-governmental organizations, and private interests focusing on the restoration of waterfowl populations through habitat restoration, protection, and enhancement (*http://birdhabitat.fws.gov/NAWMP/nawmphp.htm*).

Partners in Flight (PIF)—a cooperative partnership program of more than 300 partners including Federal and State government agencies, non-governmental organizations, conservation groups, foundations, universities and industry focusing on the conservation of landbirds. DoD was an original signatory to the PIF Federal Agencies' MOA. (*http://www.partnersinflight.org* and *http://www.dodpif.org*).

Species of Concern—refers to those species listed in the periodic report *Birds of Conservation Concern*; priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan, U.S. Shorebird Conservation Plan, Partners in Flight Bird Conservation Plans); species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and MBTA listed game birds below desired population sizes.

Take—as defined in 50 CFR 10.12, to include pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

U.S. Shorebird Conservation Plan—an effort undertaken by a partnership of Federal and State government agencies, as well as non-governmental and private organizations to ensure that stable and self-sustaining populations of all shorebird species are restored and protected (*http://www.fws.gov/shorebird*).

The Parties hereto have executed this agreement as of the date shown below.

Signed: July 7, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

Signed: July 31, 2006.

Alex Albert Beehler,

Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational Health), U.S. Department of Defense.

[FR Doc. E6–14352 Filed 8–29–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0016]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 29, 2006.

Title, Associated Form and OMB Number: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Internet Expense; DD Forms 2065 and 1375; OMB Number 0704–0030.

Type of Request: Extension.

Number of Respondents: 3200.

Response per Respondent: 1.

Annual Responses: 3200.

Average Burden per Response: 20 minutes (DD 2065) and 10 minutes (DD 1375).

Annual Burden Hours: 550.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is not to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7243 Filed 8–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0014]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 29, 2006.

Title, Associated Form and OMB Number: International Military Student Information; DD Form 2339; OMB Control Number 0702–0064.

Type of Request: Extension.

Number of Respondents: 3000.

Responses per Respondent: 1.

Annual Responses: 3000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 750.

Needs and Uses: The DD Form 2339 is required in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2339 is utilized in gathering information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe. Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information:

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 24, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7244 Filed 8–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Policy and Standards Team, 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 30, 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 Acting Leader, Information Policy and Standards Team, 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 24, 2006.

Dianne Novick,

Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Focus Group Input from Individuals with Disabilities and Targeted Individuals.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 120.

Burden Hours: 480.

Abstract: Results will identify research gaps, develop research priorities, and promotes coordinated plans, programs and activities across Interagency Committee on Disability Research (ICDR) agencies. Respondents will be persons with disabilities and other targeted individuals such as caregivers.

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 3164. 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. E6–14437 Filed 8–29–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Policy and Standards Team, 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 30, 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 Acting Leader, Information Policy and Standards Team, 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 24, 2006.

Dianne Novick,

Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: The IEPS Reporting System (NRC) Program Which Includes the Performance Reports for 14 Programs—the FLAS Program, IIPP Program, UISFL Program, BIE Program, CIBE Program, AORC Program, LRC Program, IRS Program, FRA Program, DDRA Program, SA Program, GPA Program, and TICFIA Program.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,433.

Burden Hours: 14,386.

Abstract: International Education Programs Service (IEPS) requests the approval of the IEPS Reporting System. This information collection will assist IEPS in meeting program planning and evaluation requirements. Program Officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continued funding from the Department of Education.

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 3140. 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. E6–14438 Filed 8–29–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from April 1, 2006 through June 30, 2006.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(f) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. *Telephone:* (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2006 through June 30, 2006. Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate. Although the Department typically publishes a list of correspondence pursuant to section 607(f) of IDEA on a quarterly basis, please note that no list of correspondence was published covering the period January 2, 2006 through March 31, 2006 because the Department did not issue letters interpreting the IDEA during that time period.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Use of Funds.

• Letter dated June 22, 2006 to Louisiana Department of Education State Superintendent Cecil J. Picard, approving the State's request to reallocate Part B funds for State-level activities to purchase equipment and materials for a regional Assistive Technology Center and clarifying that no prior approval from the Department is required to fund a new staff position for the Center.

Section 612—State Eligibility

Topic Addressed: Individualized Education Programs.

• Letter dated June 6, 2006 to El Paso, Texas Attorney Luther Jones, Esq., regarding when amendments to individualized education programs (IEPs) become effective and when the provisions of a prior IEP or subsequent IEP govern.

Topic Addressed: Children with Disabilities Placed in Private Schools by Their Parents.

• Letter dated May 16, 2006 to Massachusetts State Director of Special Education Marcia Mittnacht regarding the obligation of Massachusetts' school districts to provide and pay for special education and related services for parentally-placed private school children with disabilities who reside outside of Massachusetts and attend private elementary schools and secondary schools located in Massachusetts.

Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: No Child Left Behind Act Of 2001.

• Letter dated May 15, 2006 to Chief State School Officers regarding how States can improve implementation of the public school choice and supplemental educational services provisions of the No Child Left Behind Act of 2001.

Topic Addressed: Confidentiality of Education Records.

• Letter dated March 28, 2006 to Los Angeles County Office of Education Deputy General Counsel Monique C. Shay and Los Angeles Unified School District Assistant General Counsel Kelly Rozmus Barnes, from Family Policy Compliance Office Director LeRoy S. Rooker, regarding how the Family Educational Rights and Privacy Act applies to the release of education records without parental consent to comply with a court order.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: August 21, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–14412 Filed 8–29–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 25, 2006 1 p.m.–6:30 p.m., Tuesday, September 26, 2006, 8:30 a.m.–4 p.m.

ADDRESSES: Double Tree Hotel, 181 Church Street, Charleston, SC 29401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 25, 2006

1 p.m. Combined Committee Session.
5:15 p.m. Adjourn.
5:30 p.m. Executive Committee Meeting.
6:30 p.m. Adjourn.

Tuesday, September 26, 2006

8:30 a.m. Approval of Minutes, Agency Updates.
9:15 a.m. Public Comment Session.
9:30 a.m. Chair and Facilitator Update.
10 a.m. Administrative Committee Report—Bylaws Amendment Proposal.
10:45 a.m. Strategic Legacy Management Committee Report.
11:45 a.m. Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Facility Disposition and Site Remediation Committee Report.
2:10 p.m. Nuclear Materials Committee Report.
3:15 p.m. Public Comment Session.
3:30 p.m. Waste Management Committee Report.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, September 25, 2006.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on August 24, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–14434 Filed 8–29–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: September 21, 2006, from 2 p.m. to 3 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Intergovernmental Projects & Outreach, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters, and discuss revisions to the STEAB Annual Report and logistical issues for the full Board meeting in October 2006.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 24, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–14444 Filed 8–29–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC06–715–000; FERC–715]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 24, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due October 31, 2006.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, *Attn:* Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC06–715–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing'', and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through the Commission's homepage using the eLibrary link. For user assistance, contact *FERCOlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by

telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–715 ''Annual Transmission Planning and Evaluation Report'', (OMB No. 1902–0171) is mandated by section 213(b) of the Federal Power Act (FPA), as amended by the Energy Policy Act of 1992. Through section 213(b) Congress requires the Commission to collect annually from transmitting utilities, certain transmission system information and make it available to potential transmission providers, customers and state regulatory authorities. This information collection also supports the Commission's responsibilities under sections 202, 207, 210–213, 304, 309 and 311 of the FPA, as amended (49 Stat. 838; 16 U.S.C. 791a–825r). The Commission's FERC–715 filing requirements are published in the Code of Federal Regulations (CFR), 18 CFR section 141.300.

Through the FERC–715, the Commission gathers basic electric transmission system information. The Commission staff use the FERC–715 information to evaluate available transmission capacity and assess transmission reliability. Electrical transmission customers and transmission dependent utilities use the information, in conjunction with other information sources, to assess transmission availability. Federal and private agencies use the information in transmission simulations to test the impact of changes to the transmission system, necessary to improve system functioning. FERC–715 filing instructions are provided on the Commission's Web site at *http://www.ferc.gov/docs-filings/elibrary.asp.* In order to assist the Commission in properly analyzing the information received from respondents for the FERC–715, several clarifications of the instructions are proposed and a copy of those clarifications accompanies this notice for comment. These clarifications are not to be considered as changes to the information filed with the FERC–715.

Some or all of the information collected may be treated as Critical Energy Infrastructure Information (CEII) (see Order 630, OMB Control No. 1902–0197). CEII is information concerning proposed or existing critical infrastructure (physical or virtual) that:

1. Relates to the production, generation, transmission or distribution of energy;

2. Could be useful to a person planning an attack on critical infrastructure;

3. Is exempt from mandatory disclosure under the Freedom of Information Act; and

4. Gives strategic information beyond the location of the critical infrastructure.

CEII is not available to the public. The Commission has established procedures for gaining access to CEII that would otherwise not be available under the Freedom of Information Act (FOIA) requests. These actions are necessary to keep highly sensitive infrastructure information out of the public domain thus decreasing the likelihood that such information could be used to plan and execute terrorist attacks.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data and only clarifications to the instructions.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
183	1	160	29,280

Estimated cost burden to respondents is $1,651,519. (29,280 hours/2080 hours per year times $117,321 per year average per employee). The cost per respondent is $9,025).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14402 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS06–13–000]

American Transmission Company LLC; Notice of Filing

August 24, 2006.

Take notice that on August 16, 2006, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and

Procedure, 18 CFR 385.207(a)(5), American Transmission Company LLC filed a request for clarification of Order 2004 and Rule 358.5(b)(8) of the Commission's Rules of Practice and Procedure.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14398 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Changes in FERC Gas Tariff

August 24, 2006.

Black Marlin Pipeline Company	Docket No. RP06–491–000.
Cheyenne Plains Gas Pipeline Company, L.L.C	Docket No. RP06–481–000.
Colorado Interstate Gas Company	Docket No. RP06–482–000.
Discovery Gas Transmission LLC	Docket No. RP06–492–000.
Dominion Cove Point LNG, LP	Docket No. RP06–472–000.
Dominion South Pipeline Company, LP	Docket No. RP06–471–000.
Dominion Transmission, Inc	Docket No. RP06–474–000.
Dominion Transmission, Inc	Docket No. RP05–474–001.
El Paso Natural Gas Company	Docket No. RP06–480–000.
Enbridge Pipelines (AlaTenn) L.L.C	Docket No. RP06–498–000.
Enbridge Pipelines (KPC)	Docket No. RP06–497–000.
Enbridge Pipelines (Midla) L.L.C	Docket No. RP06–502–000.
Garden Banks Gas Pipeline, LLC	Docket No. RP06–500–000.
Kern River Gas Transmission Company	Docket No. RP06–476–000.
Kinder Morgan Interstate Gas Transmission LLC	Docket No. RP06–503–000.
Mississippi Canyon Gas Pipeline, LLC	Docket No. RP06–504–000.
Mojave Pipeline Company	Docket No. RP06–478–000.
Nautilus Pipeline Company, L.L.C	Docket No. RP06–501–000.
Northwest Pipeline Corporation	Docket No. RP06–505–000.
Pine Needle LNG Company, LLC	Docket No. RP06–487–000.
Rockies Express Pipeline, LLC	Docket No. RP06–496–000.
Southern Star Central Gas Pipeline, Inc	Docket No. RP06–493–000.
Steuben Gas Storage Company	Docket No. RP06–485–000.
Stingray Pipeline Company, L.L.C	Docket No. RP06–499–000.
TransColorado Gas Transmission Company	Docket No. RP06–495–000.
Transcontinental Gas Pipe Line Corporation	Docket No. RP06–488–000.
Wyoming Interstate Company, Ltd	Docket No. RP06–479–000.
Young Gas Storage Company, LTD	Docket No. RP06–483–000.

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, pursuant to section 154.402 of the Commission's Regulations to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to applied to rates for recovery of 2006 Annual Charges pursuant to Order No. 472, in Docket No. RM87–3–000. The proposed effective date of the tariff sheets is October 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Due to the large number of pipelines that have filed to comply with the Annual Charge Adjustment Billing, the Commission is issuing this single notice of the filings. The filings issued and received are reflected in the caption of this notice.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14404 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF89–7–004]

Brush Cogeneration Partners; Notice of Filing

August 23, 2006.

Take notice that on August 15, 2006, pursuant to section 292.205(c) of the regulations of the Commission implementing the Public Utility Regulatory Policies Act of 1978, Brush Cogeneration Partners filed a request for limited waiver for calendar year 2006 of the operating and efficiency standards for its natural gas fueled topping-cycle cogeneration facility field located in Brush, Colorado.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14393 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–119–002; CP05–121–002]

Cameron Interstate Pipeline, LLC; Notice of Amendment

August 22, 2006.

Take notice that on August 4, 2006, with supplemental information added on August 17, and August 21, 2006, Cameron Interstate Pipeline, LLC (Cameron Interstate Pipeline), 101 Ash Street, San Diego, CA 92101, filed in the above referenced docket(s), an abbreviated application to amend its certificates of public convenience and necessity issued pursuant to section 7(c) of the Natural Gas Act, and the Commission's regulations, 18 CFR Parts 157 and 284. In Docket No. CP05–119–002 Cameron Interstate Pipeline is seeking to amend its certificate to construct and operate its pipeline, and in Docket No. CP05–121–002 it is seeking to amend its blanket certificate to transport natural gas.

The application is on file with the Commission and open for public inspection. This 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding Cameron Interstate Pipeline's application should be directed to: William D. Rapp, Senior Regulatory Counsel, Sempra Energy, 101 Ash Street HQ 13, San Diego, CA 92101, phone (619) 699–5050, e-mail *wrapp@sempra.com;* or Marty C. Swartz, Director of Development, Sempra Pipelines & Storage, 101 Ash Street HQ 13, San Diego, CA 92101, phone (619) 696–2533, e-mail *mswartz@semprapipelines.com.*

Cameron Interstate requests authority to: (i) Increase the diameter of the pipeline facilities previously authorized by the Commission from 36 inches to 42 inches, (ii) construct an additional 1.1 miles of 42 inch pipeline, (iii) construct the necessary facilities to establish three additional pipeline interconnections, and (iv) revise its transportation rates to reflect the increased costs of the additional 1.1 miles of pipeline and three new interconnections (about $ 9.8 million), and to allocate costs to interruptible transportation.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all filing to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, other persons do not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party

to the proceeding. The Commission's rules require that persons filing comments in opposition to this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. 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.

Comment Date: September 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14380 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–431–000]

The Cincinnati Gas & Electric Company, d/b/a Duke Energy Ohio, Inc.; Notice of Application

August 21, 2006.

Take notice that on August 16, 2006, The Cincinnati Gas & Electric Company d/b/a/ Duke Energy Ohio, Inc. (DEO), 139 E. Fourth Street EM025, Cincinnati, OH 15202, filed in Docket No. CP06–431–000, an application pursuant to section 7(f) of the Natural Gas Act requesting the determination of a service area within which DEO may enlarge and extend its distribution facilities to interconnect with KO Transmission Company without further Commission authorization. DEO also requests: (i) A finding that it qualifies as a local distribution company for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA); (ii) a waiver of the regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA; and (iii) such further relief as the Commission may deem appropriate, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to William A. Tucker, Duke Energy Ohio, Inc., 139 E. Fourth Street EMO2S, Cincinnati, Ohio 45202; (513) 287–1060 (telephone); (513) 287–2938 (fax); *bill.tucker@duke-enery.com* or Peter C. Lesch, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036–1600; (202) 263–4175 (telephone); (202) 331–8330 (fax); *peter.lesch@thompsonhine.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *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.

Comment Date: 5 p.m. EST on September 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14374 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–413–001]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

August 24, 2006.

Take notice that on August 16, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, proposed to be effective on September 16, 2006.

East Tennessee states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order Issuing Certificate issued February 8, 2006, in Docket No. CP05–413–000.

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 on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at

http://www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14399 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–21–000]

ETC Katy Pipeline, Ltd.; Notice of Petition for Rate Approval

August 24, 2006.

Take notice that on August 11, 2006, ETC Katy Pipeline, Ltd. (ETC Katy) filed a petition for rate approval for NGPA section 311 maximum firm transportation rates, pursuant to Section 284.123(b)(2) of the Commission's regulations. ETC Katy requests that the Commission approve an initial maximum rate for firm transportation of $4.410 per MMBtu and a usage fee of $0.055 per MMBtu, plus a retainage charge of 1.50% for compressor fuel, company use and lost and unaccounted for gas for gas transported under section 311. ETC Katy affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA, with its pipeline located entirely within the state of Texas.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14403 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–400–002]

Golden Pass Pipeline LP; Notice of Application

August 21, 2006.

Take notice that on August 11, 2006, Golden Pass Pipeline LP (GPPL) filed in Docket No. CP04–400–002 an application seeking to amend the certificate of public convenience and necessity issued July 6, 2005, in Docket No. CP04–400–000, as amended in Docket No. CP04–400–001. That certificate issued pursuant to section 7(c) of the NGA and Part 157, Subpart A of the Commission's Regulations, authorized construction and operation of facilities to transport natural gas originating from liquefied natural gas (LNG) receiving terminal to be located approximately 10 miles south of Port Arthur, Texas, and two miles northeast of the town of Sabine Pass, Texas. The previous amendment application, still under review by the Commission, seeks authorization to alter the size and route of the southern 43 miles of pipeline.

GPPL now requests authorization to make certain variations in the design of the proposed pipeline. The new design component would replace the approximately 35-mile northern segment of 36-inch diameter pipeline with a 42-inch diameter pipeline from the AEP Texoma interconnect site to the terminus of the pipeline at an interconnect with Transcontinental Gas Pipe Line Corporation near Starks, LA.

This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to Mrs. Gina M. Dickerson, 17001 Northchase Drive, Houston, Texas, 77060. *Phone:* (281) 654–4816.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. EST on September 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14373 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP00–6–014]

Gulfstream Natural Gas System L.L.C.; Notice of Application

August 22, 2006.

On August 15, 2006, Gulfstream Natural Gas System L.L.C. (GNGS), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend their currently certificated Phase III facilities to include 34.3 miles of a 30-inch pipeline extending from the existing GNGS mainline in Martin County to the proposed West County Energy Center in Palm Beach County, Florida. The pipeline extension would transport up to 345,000 Dth/d of natural gas for the 2,200 Mw of electric generating facilities proposed at the Energy Center. GNGS requests that currently-approved initial recourse rates be modified to reflect cost estimates to construct the amended Phase III facilities. GNGS asks the Commission to grant the requested certificate amendment by June 1, 2007 to ensure that the modified Phase III facilities can meet the timing and economic assurance needs of the Project's anchor shipper.

Questions concerning the application should be directed to: P. Martin Teague, Associate General Counsel, Gulfstream Natural Gas System, L.L.C., 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642 or telephonically at (713) 627–5242.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14387 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL06–99–000, QF05–147–001]

Pedricktown Cogeneration Company, LP; Notice of Filing

August 22, 2006.

Take notice that on August 14, 2006, Pedricktown Cogeneration Company, LP (Pedricktown) submitted a request for a waiver of the efficiency standard for its qualifying cogeneration facility located in Pedericktown, New Jersey, filed pursuant to section 292.205(c) of the Commission's regulations in the above-captioned dockets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14383 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS06–12–000]

Perryville Energy Partners, L.L.C., Notice of Filing

August 23, 2006.

Take notice that on August 7, 2006, Perryville Energy Partners, L.L.C. filed a request for a complete waiver of the standards of conduct, pursuant to Section 358.1(d) of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14390 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–010]

Rockies Express Pipeline LLC; Notice of Compliance Filing

August 22, 2006.

Take notice that on August 16, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 22 and First Revised Sheet No. 24, to be effective August 17, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed 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. E6–14386 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–494–000]

SCG Pipeline, Inc.; Notice of Penalty Revenue Report

August 22, 2006.

Take notice that on August 17, 2006, SCG Pipeline, Inc. (SCG) submitted for filing its Penalty Revenue Report. SCG states that the purpose of this filing is to inform the Commission that SCG did not assess or collect any penalty revenues in the year ending July 31, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a

copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Intervention and Protest Date: 5 p.m. Eastern Time August 28, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14379 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF06–3041–000]

Southeastern Power Administration; Notice of Filing

August 24, 2006.

Take notice that on August 16, 2006, the Deputy Secretary, U.S. Department of Energy transmitted for filing Rate Order No. SEPA–46. This order lists certain rate schedules that the Deputy Secretary, pursuant to authority vested on the Deputy Secretary by Delegation Order Nos. 00–001–00B and 00–037–00 and sections 302(a) and 302(b) of the Department of Energy Organization Act (Pub. L. 95–91), approved on an interim basis, effective October 1, 2006. Pursuant to the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037–00, the Deputy Secretary transmits, for confirmation and approval on a final basis, the following rate schedules effective October 1, 2006 and ending October September 30, 2011: Rates Schedules VA–1–A, VA–2–A, VA–3–A,VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, Replacement–2, and VANC–1 for sale of power from Southeastern's Kerr-Philpott System.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14400 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–34–005]

Transcontinental Gas Pipe Line Corporation; Notice of Cancellation of Rate Schedule

August 24, 2006.

Take notice that on August 15, 2006, Transcontinental Gas Pipe Line Corp (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twenty-Fifth Revised Sheet No. 1 and First Revised Sheet No. 582, effective September 15, 2006. The revised tariff sheets reflect the cancellation of Rate Schedule X–66 and its removal from the Table of Contents.

Notice is hereby given that Transco seeks cancellation, effective September 15, 2006 of Rate Schedule X–66 in Volume No. 2 of Transco's FERC Gas Tariff.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14405 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–164–001]

Venice Gathering System, L.L.C.; Notice of Filing

August 23, 2006.

Take notice that on August 3, 2006, pursuant to section 358.1(d) of the Commission's regulations, Venice Gathering System, L.L.C. filed a request for continuation of and supplement to a partial waiver of the standards of conduct for transmission providers that was granted by the Commission on October 27, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14394 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–97–000]

Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., WPS Power Development, L.L.C. Complainants v. Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C. Respondents; Notice of Complaint

August 22, 2006.

Take notice that on August 16, 2006, Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc. and WPS Power Development, L.L.C. (Complainants) filed a formal complaint, pursuant to section 206 of the Federal Power Act and 18 CFR. 385.206, against the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (the Respondents) alleging that the Respondents' June 28, 2006 report to the Commission in Docket Nos. ER04–375–017 and ER04–375–018 fails to comply with the Commission's orders requiring the actual implementation by the Respondents of a comprehensive Joint and Common Market. On August 18, 2006, Complainants filed an amended Exhibit WPS–1 to replace the same exhibit filed on August 16, 2006.

The Complainants state that copies of the complaint were served on the contacts for the Respondents and the affected 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, 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14382 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–101–000]

Xcel Energy Services Inc. Complainants, v. Midwest Independent Transmission System Operator, Inc. Respondent; Notice of Complaint

August 22, 2006.

Take notice that on August 18, 2006, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.C.S. 824E and 825E, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Xcel Energy Services Inc. on behalf of Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) wholly owned subsidiaries of Xcel Energy Inc., (Complainants) filed a formal complaint against Midwest Independent Transmission System Operator, Inc. (Respondent) seeking an order from the Commission requiring the Respondent to refund to the Complainants for: (1) $124,750 (plus interest) in Real-Time replacement energy charges; and (2) $368,035 (plus interest) in Revenue Sufficiency Guarantee ''uplift'' charges

assessed to the Complainants under the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT) as a result of outages that occurred from April 14, 2005 to April 17, 2005, and from April 18, 2005 to May 1 2005, at the Complainant's Sherco Unit 3 generation facility in Becker, Minnesota, jointly owned with the Southern Minnesota Municipal Power Agency (SMMPA). The Complainants allege that the penalties result from the Respondent's violation of the TEMT and governing business practices.

The Complainants state that a copy of the Complaint has been served on the Respondent and SMMPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14381 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 22, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC05–43–000.

Applicants: Public Service Enterprise Group Incorporated.

Description: Exelon Corp and Public Service Enterprise Group Inc. file an amendment to an interim fossil mitigation commitment in connection with the proposed merger.

Filed Date: 08/10/2006.

Accession Number: 20060810–5001.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 5, 2006.

Docket Numbers: EC06–152–000.

Applicants: WPS Resources Corporation; Peoples Energy Corporation.

Description: WPS Resources Corporation and Peoples Energy Corporation submit their Joint Application for all required authorizations and approvals under section 203 of the Federal Power Act to effect the proposed merger transaction.

Filed Date: 08/15/2006.

Accession Number: 20060818–0169.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: EC06–153–000.

Applicants: BG Dighton Power, LLC; Dighton Power Associates Ltd Partnership.

Description: Dighton Power Associates Ltd Partnership & BG Dighton Power, LLC submit a joint application for sec 203 approval that may be deemed to be required for DPA's sale & BG Dighton's purchase of approximately 170 NM natural gas-fired combined-cycle electric generation plant *etc.*

Filed Date: 08/15/2006.

Accession Number: 20060817–0054.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: EC06–154–000.

Applicants: Northeast Generation Company; Holyoke Water Power Company; NU Enterprises, Inc.; Select Energy, Inc.; NE Energy, Inc.; Mt. Tom Generating Company LLC; ECP Energy, LLC.

Description: Northeast Generation Co, Holyoke Water Power Co, et al. submit an application for authorization of transaction under section 203 of the Federal Power Act and request waivers of filing requirements *etc.*

Filed Date: 08/15/2006.

Accession Number: 20060817–0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–72–000.

Applicants: Mt. Tom Generating Company LLC.

Description: Mt Tom Generating Co, LLC submits a notice of self-certification of exempt wholesale generator status re facilities in Holyoke, MA.

Filed Date: 08/15/2006.

Accession Number: 20060817–0139.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: EG06–73–000.

Applicants: BG Dighton Power, LLC.

Description: BG Dighton Power, LLC submits a notice of self-certification of exempt wholesale generator status pursuant to the Public Utility Holding Company Act of 2005.

Filed Date: 08/15/2006.

Accession Number: 20060817–0140.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2948–009; ER00–2918–008; ER00–2917–008; ER05–261–005; ER01–558–007; ER01–559–007; ER01–557–007; ER01–560–007; ER01–556–007; ER01–1654–010; ER01–2641–008; ER02–2567–008; ER05–728–005; ER01–1949–008; ER04–485–005.

Applicants: Baltimore Gas & Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group, Inc.; Holland Energy, LLC; Wolf Hills Energy, LLC; University Park Energy, LLC; Big Sandy Peaker Plant, LLC; Handsome Lake Energy, LLC; Nine Mile Point Nuclear; High Desert Power Project, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group Maine, LLC; Power Provider LLC; R.E. Ginna Nuclear Power Plant, LLC.

Description: The Constellation MBR Entities submit an errata to their joint triennial market power update submitted on 8/14/06.

Filed Date: 08/16/2006.

Accession Number: 20060817–0224.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER00–565–020; ER97–2358–009; ER04–1233–008.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits its Scheduling Coordinator Services Tariff Refund Report.

Filed Date: 08/16/2006.
Accession Number: 20060816–5027.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER01–1807–023; ER01–2020–020.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits an Energy Imbalance Revenues Refund Report pursuant to Commission's 5/23/03 order.
Filed Date: 08/14/2006.
Accession Number: 20060814–5004.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER04–810–002.
Applicants: TransAlta Centralia Generating L.L.C.
Description: TransAlta Centralia Generation, LLC submits its compliance filing to inform the FERC that the Parties have recalculated and agreed to a revised service factor beginning 10/1/06 etc., pursuant to sections D.14 and D.15 of the Settlement Agreement.
Filed Date: 08/15/2006.
Accession Number: 20060817–0007.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER05–1050–002.
Applicants: AmerGen Energy Company LLC.
Description: AmerGen Energy Company, LLC submits a revised version of their FERC Electric Rate Schedule No. 6.
Filed Date: 07/27/2006.
Accession Number: 20060731–0168.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 5, 2006.

Docket Numbers: ER06–993–001.
Applicants: Orion Power MidWest, L.P.
Description: Orion Power MidWest, LP submits its response to the deficiency letter issued 7/13/06.
Filed Date: 08/14/2006.
Accession Number: 20060817–0072.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1006–001.
Applicants: International Transmission Company; Midwest Transmission System Operator, Inc.
Description: International Transmission Co *et al.* submit Substitute Original Sheet 1365Z.05A *et al.* to its Electric Tariff, Third Revised Volume No. 1 to be effective 7/1/06.
Filed Date: 08/14/2006.
Accession Number: 20060816–0089.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1124–001.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits the final notice of cancellation of the Interconnection Agreement w/ Eastern Kentucky Power Cooperative, effective 8/31/06.
Filed Date: 08/16/2006.
Accession Number: 20060818–0082.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER06–1223–001.
Applicants: Fairchild Energy, LLC.
Description: Fairchild Energy, LLC submits it amended Electric Tariff, Original Volume No. 1, to become effective 7/5/06.
Filed Date: 08/16/2006.
Accession Number: 20060818–0124.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 29, 2006.

Docket Numbers: ER06–1310–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an amendment to its 7/31/06 filing of an agreement for network integration transmission service with American Electric Power Service Co. *et al.*
Filed Date: 08/14/2006.
Accession Number: 20060816–0088.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1351–000.
Applicants: BP West Coast Products LLC.
Description: BP West Coast Products, LLC submits a Notice of Succession in order to request that the Commission re-designate the name appearing on its market-based rate tariff.
Filed Date: 08/10/2006.
Accession Number: 20060811–0228.
Comment Date: 5 p.m. Eastern Time on Thursday, August 31, 2006.

Docket Numbers: ER06–1353–000.
Applicants: Duke Power Company LLC.
Description: Duke Power Company, LLC submits a non-conforming Long-Term Transmission Service Agreement w/ North Carolina Municipal Power Agency 1.
Filed Date: 08/11/2006.
Accession Number: 20060814–0207.
Comment Date: 5 p.m. Eastern Time on Friday, September 01, 2006.

Docket Numbers: ER06–1361–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Co submits a Notice of Cancellation of its Contract for Sale and Purchase of Capacity and Energy with Florida Power & Light Co. dated 9/10/79.
Filed Date: 08/14/2006.
Accession Number: 20060816–0063.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1366–000.
Applicants: Northeast Utilities Service Company; Holyoke Water Company; Holyoke Power and Electric Company.
Description: Northeast Utilities Service Co. on behalf of Holyoke Water Power Co. and Holyoke Power & Electric Co. submits a revised tariff sheet and notice of cancellation to cancel First Revised Rate Schedule FPC #2.
Filed Date: 08/15/2006.
Accession Number: 20060817–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1367–000.
Applicants: BG Dighton Power, LLC.
Description: BG Dighton Power, LLC submits a proposed rate schedule under which they will have the authority to make market based wholesale sales of electric energy & capacity.
Filed Date: 08/15/2006.
Accession Number: 20060817–0006.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1368–000.
Applicants: Entergy Services Inc.
Description: Entergy Services, Inc agent for Entergy Operating Companies et al submits a mutually-executed Dynamic Transfer Operating Agreement pursuant to section 205 of the Federal Power Act.
Filed Date: 08/15/2006.
Accession Number: 20060817–0008.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1369–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co submits the Cycle 4 filing with a proposed effective date of 9/1/06.
Filed Date: 08/15/2006.
Accession Number: 20060822–0016.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Docket Numbers: ER06–1370–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc agent for Alabama Power Co *et al.* submits an initial Transmission Service Agreement for long-term firm point-to-point transmission service under the Open Access Transmission Tariff.
Filed Date: 08/16/2006.
Accession Number: 20060818–0080.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER06–1371–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a revised rate sheet for FERC Rate Schedule 272 w/ the city of Vernon, California.

Filed Date: 08/16/2006.
Accession Number: 20060818–0081.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER06–1373–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff intended to implement a rate change for Westar Energy, Inc.
Filed Date: 08/16/2006.
Accession Number: 20060818–0083.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER06–1374–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed Construction Service Agreement with Benson Wind Farm, LLC et al pursuant to section 205 of the Federal Power Act.
Filed Date: 08/16/2006.
Accession Number: 20060818–0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 06, 2006.

Docket Numbers: ER06–1375–000.
Applicants: Lumberton Power, LLC.
Description: Lumberton Power, LLC submits an application for order approving market based rates and request for waiver of 60-day notice period.
Filed Date: 08/17/2006.
Accession Number: 20060818–0126.
Comment Date: 5 p.m. Eastern Time on Thursday, September 07, 2006.

Docket Numbers: ER06–1376–000.
Applicants: Elizabethtown Power, LLC.
Description: Elizabethtown Power LLC submits an application for an order approving market based rates and requests for waiver of 60-Day notice period pursuant to section 205.
Filed Date: 08/17/2006.
Accession Number: 20060818–0125.
Comment Date: 5 p.m. Eastern Time on Thursday, September 07, 2006.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES06–60–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc submits its application for authorization to issue up to $750,000,000 worth of its securities and authorization to engage in methods of issuance other than competitive bidding and negotiated offers.
Filed Date: 08/15/2006.
Accession Number: 20060817–0005.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 05, 2006.

Take notice that the Commission received the following public utility holding company filings:
Docket Numbers: PH06–104–000; HC06–1–000.
Applicants: Consolidated Midwest, Inc; Midwest Bottle Gas Co.
Description: Consolidated Midwest Inc and Midwest Bottle Gas Co submits a notice of Holding Co Status and Notice of Waiver pursuant to the PUHCA and 18 CFR section 366.1.
Filed Date: 08/09/2006.
Accession Number: 20060815–0038.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 30, 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. E6–14388 Filed 8–29–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 23, 2006.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER06–1221–002.
Applicants: Parkview AMC Energy, LLC.
Description: Parkview AMC Energy, LLC submits its Electric Rate Tariff, Original Volume No. 1, to become effective as of 7/5/06.
Filed Date: 08/16/2006.
Accession Number: 20060818–0123.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 29, 2006.

Docket Numbers: ER06–1332–001.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas and Electric Company submits its First Revised Rate Schedules FERC 207 & FERC 211 to the Reliability Must-Run Service Agreement with California Independent System Operator Corporation.
Filed Date: 08/21/2006.
Accession Number: 20060823–0006.
Comment Date: 5 p.m. Eastern Time on Monday, September 11, 2006.

Docket Numbers: ER06–1377–000.
Applicants: Rochester Gas and Electric Corporation.
Description: Rochester Gas and Electric Corp submits its Second Amendment to the Interconnection Agreement with RE Ginna Nuclear Power Plant, LLC for the Robert E Ginna Nuclear Station in the Town of Ontario, County of Wayne.
Filed Date: 08/17/2006.
Accession Number: 20060822–0101.
Comment Date: 5 p.m. Eastern Time on Thursday, September 07, 2006.

Docket Numbers: ER06–1378–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Facilities Construction Agreement with Rugby Wind, LLC *et al.*

Filed Date: 08/18/2006.
Accession Number: 20060821–0186.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1379–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Notice of Cancellation of various Transmission Service Agreements *et al.* and also submit an errata to this filing.
Filed Date: 08/18/2006.
Accession Number: 20060821–0185.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1380–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits its revised rate sheets to the Interconnection Facilities Agreement, Service Agreement 96, FERC Electric Tariff, First Revised Volume 5 with the City of Corona.
Filed Date: 08/18/2006.
Accession Number: 20060821–0184.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1381–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits revised rate sheets to the Interconnection Facilities Agreement Service Agreement 106, FERC Electric Tariff, First Revised Volume 5 with the City of Moreno Valley.
Filed Date: 08/18/2006.
Accession Number: 20060821–0183.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1382–000; ER05–522–000.
Applicants: Bluegrass Generation Company, L.L.C.
Description: Blue Grass Generation Co., LLC submits its revised rate schedule for providing cost-based Reactive Supply and Voltage Control from Generation Sources Service pursuant to Section 205 of the Federal Power Act.
Filed Date: 08/18/2006.
Accession Number: 20060821–0182.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1383–000.
Applicants: ISO New England Inc.; Northeast Utilities Service Company; The Connecticut Light and Power Company; Western Massachusetts Electric Company, Holyoke Power and Electric Company.
Description: ISO New England Inc. and Northeast Utilities Service Co on behalf of The Connecticut Light and Power Co. *et al.* submit 15 interconnection agreements.
Filed Date: 08/18/2006.
Accession Number: 20060822–0130.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1384–000.
Applicants: Entergy-Koch Trading, LP.
Description: Entergy-Koch Trading LP submits a Notice of Cancellation of FERC Electric Tariff, Original Volume No. 1.
Filed Date: 08/21/2006.
Accession Number: 20060823–0014.
Comment Date: 5 p.m. Eastern Time on Monday, September 11, 2006.

Docket Numbers: ER06–1385–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp dba National Grid submits Original Service Agreement No. 919 with the County of Monroe.
Filed Date: 08/21/2006.
Accession Number: 20060823–0010.
Comment Date: 5 p.m. Eastern Time on Monday, September 11, 2006.

Docket Numbers: ER06–1386–000.
Applicants: FirstEnergy Generation Corporation.
Description: FirstEnergy Generation Corp submits a revised Genco Power Supply Agreement with FirstEnergy Solutions Corp, effective 1/1/06.
Filed Date: 08/18/2006.
Accession Number: 20060823–0025.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1387–000.
Applicants: FirstEnergy Service Company.
Description: FirstEnergy Service Company submits a revised Mansfield Power Supply Agreement with Toledo Edison Co et al, effective 1/1/06.
Filed Date: 08/18/2006.
Accession Number: 20060823–0028.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1388–000.
Applicants: FirstEnergy Nuclear Generation Corp.
Description: FirstEnergy Nuclear Generation Corp submits a revised Nuclear Power Supply Agreement to become effective 1/1/06.
Filed Date: 08/18/2006.
Accession Number: 20060823–0026.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1389–000.
Applicants: FirstEnergy Service Company.
Description: First Energy Service Co submits Nuclear Sale/Leaseback Power Supply Agreement of Ohio Edison Co and the Toledo Edison Company.
Filed Date: 08/18/2006.
Accession Number: 20060823–0022.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 2006.

Docket Numbers: ER06–1390–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Co submits a Notice of Cancellation of its Rate Schedule FERC 142, Amended and Restated Line Lease Agreement with Oklahoma Municipal Power Authority.
Filed Date: 08/21/2006.
Accession Number: 20060823–0050.
Comment Date: 5 p.m. Eastern Time on Monday, September 11, 2006.

Take notice that the Commission received the following public utility holding company filings:
Docket Numbers: PH06–105–000.
Applicants: El Paso Corporation.
Description: El Paso Corporation submits it notice of Exemption pursuant to sections 366.3(b) and 366.4(b)(1) of PUHCA of 2005.
Filed Date: 08/18/2006.
Accession Number: 20060823–0011.
Comment Date: 5 p.m. Eastern Time on Friday, September 08, 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. E6–14396 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–229–002]

SG Resources Mississippi, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Southern Pines Energy Center Expansion Project and Request for Comments on Environmental Issues

August 21, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Southern Pines Energy Center Expansion Project involving construction and operation of facilities by SG Resources Mississippi, L.L.C. (SGRM) in Greene County, Mississippi and Mobile County, Alabama. These facilities would consist of about 26.1 miles of bi-directional 24-inch-diameter pipeline, expansion of working gas capacity of two previously certificated solution-mined salt caverns, and construction of an additional solution mined salt cavern and two new brine disposal wells. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by an SGRM representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. SGRM would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, SGRM could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that SGRM provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

SGRM wants to provide up to 24 billion cubic feet (Bcf) of working gas storage capacity and receive/deliver up to 1.0 Bcf/day from/to Florida Gas Transmission Company (FGT) and 0.6 Bcf/day from/to Transcontinental Gas Pipe Line Corporation (Transco). SGRM seeks authority to construct and operate the following facilities:

- Expand two certificated solution mined storage caverns to a total working gas volume of 12.0 Bcf;
- A solution-mined storage cavern that would have a working gas volume of 8.0 Bcf;
- Two brine disposal wells;
- FGT/Transco Lateral consisting of 26.1 miles of dual 24-inch-diameter pipelines;
- Two mainline valves;
- A meter station; and
- A 115 Kilovolt substation.

The location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would require about 423.0 acres of land. Following construction, about 162.7 acres would be maintained as new aboveground facility sites and permanent rights-of-way. The remaining 260.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'' ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP02–229–002.
- Mail your comments so that they will be received in Washington, DC on or before September 25, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14378 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

August 21, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 6032–063.

c. *Date Filed:* August 4, 2006.

d. *Applicants:* Fourth Branch Associates (Mechanicville) and Albany Engineering Corporation.

e. *Name and Location of Project:* The Mechanicville Project is located on the Hudson River, in Saratoga and Rensselaer Counties, New York.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. James A. Besha, P.E., President, Albany Engineering Corporation, 447 New Karner Road, Albany, NY 12205, (518) 456–7712.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* September 18, 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. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–6032–063) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all intervenors filing a document 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 documents on that resource agency.

j. *Description of Application:* Applicants request approval, under section 8 of the Federal Power Act, of a transfer of license for the Mechanicville Project No. 6032 from Fourth Branch Associates (Mechanicville) to Albany Engineering Corporation.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–6032) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', 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.

o. *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 filling comments, it will be assumed 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. E6–14372 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

August 21, 2006.

a. *Type of Application:* Request to construct a community marina.

b. *Project Number:* Project No. 1267–077.

c. *Date Filed:* July 31, 2006.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project (FERC No. 1267).

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Larry Smith, County of Greenwood, 600 Monument St., Box P–103, Suite 102, Greenwood, SC 29646, phone (864) 942–8556.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 18, 2006.

k. *Description of Application:* The applicant seeks approval to replace an existing seawall and construct a new marina at the Lighthouse Landing concessionaire. The new marina would consist of four separate piers providing an additional 110 docking slips. The approximate footprint of the new construction would extend up to 150 from the shoreline and would be 145 feet in width. The docks will be constructed of aluminum framing, encapsulated polystyrene floats, and pressure treated lumber, Brazilian redwood or synthetic decking. The docks will be secured in place using flexible hawsers fastened to anchors.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or 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 (p–1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–1267–077). 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. E6–14375 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

August 21, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2413–080.

c. *Date Filed:* July 27, 2006.

d. *Applicant:* Georgia Power Company (GP).

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The project is located on the Sugar Creek in Putnam County, Georgia. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lee Glenn, Lake Resources Manager, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, GA 31024. Phone: (706) 485–8704.

i. *FERC Contact:* Gina Krump, *gina.krump@ferc.gov,* 202–502–6704.

j. *Deadline for filing comments and or motions:* September 18, 2006.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. Please reference ''Wallace Dam Project, FERC Project No. 2413–080'' on any comments or motions filed.

k. *Description of Project:* GP requests Commission approval to permit Chatham Holdings Corporation to construct two 10-slip boat docks for a marina to serve a private residential development. GP is also proposing to construct a dry storage facility for 40 boats on adjoining non-project lands, and an associated concrete boat ramp on project lands. The licensee states that any required dredging would be permitted by GP, consistent with all Federal requirements. The facilities would be available for the private use of an adjoining residential development.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14376 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

August 21, 2006.

a. *Type of Application:* Extension of Comment Deadline: Shoreline Management Plan.

b. *Project Number:* P–487–048.

c. *Date Filed:* July 7, 2006.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project (FERC No. 487).

f. *Location:* The project is located on the Wallenpaupack Creek and the Lackawaxen River in Pike and Wayne Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101. Phone: (610) 774–5996.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and/or motions:* September 25, 2006.

k. *Description of Application:* This notice extends the comment deadline of August 25, 2006, originally set by the initial notice of the application issued July 26, 2006. Under article 409 of the project license, the licensee has filed its proposed shoreline management plan for Commission approval. The plan incorporates existing standards, policies, and permitting processes for uses and activities located within the project boundary. The plan will assist the licensee in continuing to operate the

project and manage the associated lands in compliance with the license requirements for recreation, safety and environmental protection while maintaining operational control over the impoundment for electrical generation. The plan includes a description of the permitting system for shoreline uses, access and maintenance, measures for stabilizing erosion, measures for cooperating with the multiple governing entities surrounding the project and coordinating adjacent land uses with shoreline uses, and measures for preserving the aesthetic quality of the shoreline.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or 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 (P–487) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, 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, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''Comments'', ''Recommendations for Terms and Conditions'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers (P–487–048). 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. E6–14377 Filed 8–29–06; 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 and Protests

August 22, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2155.

c. *Date Filed:* July 15, 2005.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Chili Bar Project.

f. *Location:* On the South Fork American River in El Dorado, near Placerville, California. The project affects 48 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randal S. Livingston, Power Generation Senior Director, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11E, San Francisco, CA 94177.

i. *FERC Contact:* Jim Fargo, (202) 502–6095 or *james.fargo@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is ready for environmental analysis at this time.

l. The existing Chili Bar Project consists of: (1) A 120-foot-high concrete gravity dam; (2) a 110-acre reservoir with a useable storage of 1,339 acre-feet; (3) a powerhouse with one 7–MW unit and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 33,500 megawatt hours. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion

to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14384 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

August 23, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No.:* 2413–081.

c. *Date Filed:* July 31, 2006.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Hydroelectric Project (Lake Oconee).

f. *Location:* The proposed action will take place at the Wallace Dam Project on Lake Oconee at the former ''Brantley's Marina'', now known as ''Southbay at Lake Oconee'', which is located in Putnam County, Georgia near the intersection of Lick Creek and Oconee River sections of the lake. The address is 144 Marina Road, Eatonton, GA 31024.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Lee B. Glenn, Lake Resources Manager; Georgia Power Company (Southern Company); 241 Ralph McGill Blvd., NE., Atlanta, GA 30308; (706) 485–8704.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175, or by e-mail: *Brian Romanek@ferc.gov*.

j. *Deadline for filing comments and or motions:* September 18, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2413–081) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee has requested Commission approval to issue a commercial lease to Place Properties (Place) to continue operation of a public marina and to install additional boat docks to accommodate the residents of the Southbay at Lake Oconee community. The amount of project land to be leased is 1.92 acres and the total number of boat slips would be 94, which is an increase of 38 slips at the existing marina. Place proposes to upgrade certain existing marina facilities, such as the fueling dock and equipment, and the ingress and egress roads to the ramp. No dredging is proposed.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14392 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–079; Idaho/Oregon]

Idaho Power Company; Notice of Intent To Hold Public Meetings

August 23, 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 reviewed the application for license for the Hells Canyon Project (FERC No. 1971), located on the Snake River in Washington and Adams, Counties, Idaho, and Wallowa and Baker Counties, Oregon, and issued a Draft Environmental Impact Statement (draft EIS) for the project on July 28, 2006.

Copies of the draft EIS are available for review at the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* under the e-Library link by entering the docket number, P–1971,

in the e-Library docket number field. For assistance, e-mail FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You are invited to attend any or all of the public meetings that will be held to receive comments on the draft EIS.

Additional Public Meeting

In addition to previously scheduled public meetings in Boise (September 7 and 8, 2006) and Weiser (September 12, 2006), Idaho, and Halfway, Oregon (September 11, 2006), FERC staff will conduct an additional public meeting in Lewiston, Idaho. The time and location of the additional meeting is as follows:

Lewiston, ID

Date: September 13, 2006.
Time: 7 to 9 p.m. (PDT).
Place: Lewiston Community Center.
Address: 1424 Main Street, Lewiston, ID 83501. (A parking lot is available on G Street behind the Community Center.)

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. These meetings are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Whether or not you attend one of these meetings, you are invited to submit written comments on the draft EIS. Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by October 3, 2006, and should reference Project No. 1971–079. Comments 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 instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Library'' link.

The Commission staff will consider comments made on the draft EIS in preparing a final EIS for the project. Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

For further information, contact Alan Mitchnick at (202) 502–6074, *alan.mitchnick@ferc.gov;* or Emily Carter at (202) 502–6512, *emily.carter@ferc.gov.*

Magalie R. Salas,
Secretary.
[FR Doc. E6–14395 Filed 8–29–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1099–000; ER06–1099–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

August 25, 2006.

Take notice that the Commission will convene a technical conference on September 26, 2006, from 9 a.m. to 4 p.m. (EST), in Hearing Room 4 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will address issues related to the Midwest ISO's proposed shortage and emergency procedures, as discussed in the Commission's August 4, 2006 Order in this proceeding.[1] Specifically the Commission directed Commission staff to examine the reserves impacted and circumstances associated with the different steps of the procedures, the development of the proxy price, the rationale for the pricing mechanism adopted, the application of market power mitigation within the process, the effects upon Revenue Sufficiency Guarantee payments, how demand response may or may not be integrated, and the effects upon reliability of the new procedures.[2] A report on the technical conference is due to the Commission no later than November 2, 2006.

Attached to this notice, in Attachment A, are questions to the Midwest ISO. Responses to these questions should be filed no later than September 15, 2006. The submitted information will be discussed at the technical conference and used to supplement the record. Attachment B lists topical areas that the Midwest ISO will be asked to address at the technical conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All intervening parties are permitted to attend. For further information please contact Laurel Hyde at (202) 502–8146 or e-mail *laurel.hyde@ferc.gov* or Melissa Nimit at (202) 502–6638 or e-mail *melissa.nimit@ferc.gov.*

Magalie R. Salas,
Secretary.
[FR Doc. E6–14401 Filed 8–29–06; 8:45 am]
BILLING CODE 6717–01–P

[1] *Midwest Indep. Transmission Sys. Operator, Inc.,* 116 FERC ¶ 61,124 (2006).

[2] *Id.* at 30.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2106—047–California]

Pacific Gas and Electric; Notice of Site Visit

(August 23, 2006).

On September 19 and September 20, 2006, the Federal Energy Regulatory Commission (Commission) Staff and Pacific Gas and Electric Company, the applicant, will conduct an on-site visit of the McCloud-Pit Project located on the McCloud and Pit Rivers in Shasta County, California. Under the Integrated Licensing Process (ILP), the Commission conducts its National Environmental Policy Act (NEPA) scoping meeting within 90 days of the filing of the applicant's Notice of Intent and Pre-Application Document. A site visit is typically held in conjunction with that scoping meeting; however, scoping for this project is currently planned for October 23 and 24, 2006 and access to some project facilities may be limited by weather conditions. For this reason, the Commission will host the site visit earlier in the process. The Commission encourages all interested parties to participate in this site visit to ensure a productive scoping meeting in October 2006.

The site visit is open to the public and resource agencies. Participants are responsible for their own transportation, but car pooling is encouraged as much as possible. Some roads in upper watershed locations are unpaved and may be in poor condition—4-wheel drive is recommended, but not required. Also, portions of the tour may require hiking steep trails in remote locations, so please plan accordingly. Tour days may be long, so please bring food and water. A tentative schedule is provided below (times given are in Pacific Daylight Savings):

Tuesday, September 19, 2006

6:45 a.m. Individuals arrive at PG&E's Service Center, located at 20818 Black Ranch Road, Burney, CA 96013
8 a.m. Meet at McCloud Reservoir USFS Tarantula Gulch Boat Ramp
9 a.m. Ah-Di-Na Stream Gage (MC–1)
10 a.m. Star City
10:30 a.m. McCloud Dam (Top)
11 a.m. McCloud Dam (Bottom)
11:15 a.m. Stream GageMC–7
11:30 a.m. Hawkins Creek Pipe Crossing
12:30 a.m. Lunch at USFS Deadlum Campground
1:30 p.m. Hawkins Landing Campground & Boat Ramp
2 p.m. Iron Canyon Overflow
2:30 p.m. Iron Canyon Dam
3:30 p.m. Iron Canyon Pipe
4 p.m. James B. Black Surge Chamber
4:30 p.m. James B. Black Penstock

Wednesday, September 20, 2006

6:45 a.m. Individuals arrive at PG&E's Service Center, located at 20818 Black Ranch Road, Burney, CA 96013
8 a.m. James B. Black Powerhouse
10 a.m. Pit 6 Dam
10:30 a.m. Pit 6 Powerhouse
12 p.m. Lunch at Pit 7 Afterbay Dam
2 p.m. Pit 7 Dam
2:30 p.m. Pit 7 Powerhouse
3:30 p.m. Stream Gage PH–47

Please direct any questions regarding the McCloud-Pit Hydroelectric Project licensing to Emily Carter, FERC Team Leader, at (202) 502–6512 or *emily.carter@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–14391 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

August 22, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are 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, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
1. ER06–451–000	8–17–06	Alan McQueen.
Exempt:		
1. CP98–150–006	8–21–06	Jennifer Kerrigan.
2. CP06–102–000	8–21–06	Ken Dupuis.
3. Project No. 2030–000	8–8–06	Hon. Bob Westlund.
4. Project No. 2111–018	8–21–06	Ann-Ariel Vecchio.
5. TX06–2–000	8–1–06	Hon. Jim Gibbons, Hon. Jeff Flake, Hon. Barbara Cubin, Hon. C.L. "Butch" Otter, Hon. Michael K. Simpson.

Magalie R. Salas,

Secretary.

[FR Doc. E6–14385 Filed 8–29–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0162; FRL–8088–2]

Carbofuran; Interim Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Interim Reregistration Eligibility Decision (IRED) for the N-methyl carbamate pesticide carbofuran, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the carbofuran docket. Carbofuran works as a cholinesterase inhibitor and is used to treat pests of food and non-food crops as either a flowable or

granular formulation. It is registered for use on a variety of fruit and vegetable crops, as well as ornamentals and agricultural fallow land. EPA has reviewed carbofuran 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 30, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0162, 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–2005–0162. 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: Stephanie Plummer, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0076; fax number: (703) 308-7070; e-mail address: *plummer.stephanie@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 completed an IRED for the N-methyl carbamate pesticide carbofuran on August 3, 2006, and is now issuing this document for public comment. Carbofuran works as a cholinesterase inhibitor and is used to treat pests of food and non-food crops as either a flowable or granular formulation. It is registered for use on a variety of fruit and vegetable crops, as well as ornamentals and agricultural

fallow land. The carbofuran IRED presents the Agency's conclusions on the risks posed by exposure to carbofuran alone; however, section 408(b)(2)(D)(v) of the Federal Food, Drug and Cosmetic Act (FFDCA) directs the Agency also to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. Because the N-methyl carbamate pesticides share a common mechanism of toxicity, inhibition of the enzyme acetylcholinesterase, the Agency will evaluate the cumulative risk posed by this group before making final tolerance reassessment decisions for carbofuran..

During the pendency of the N-methyl carbamate cumulative assessment, the Agency is proceeding with risk assessments and interim risk management for individual N-methyl carbamate pesticides. EPA has determined that products containing carbofuran will not be eligible for reregistration.

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, carbofuran was reviewed through the full 6 phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for carbofuran.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely reregistration decisions and to involve the public. The Agency is issuing the carbofuran IRED 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 IRED. 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 carbofuran. 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 IRED in the **Federal Register**. In the absence of substantive comments requiring changes, the risk management decisions reflected in the carbofuran IRED will be implemented as 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 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 14, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–14213 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0258; FRL–8087–3]

Triadimefon and Triadimenol; Reregistration Eligibility Decision (RED) for Triadimefon and Tolerance Reassessment and Risk Management Decision (TRED) for Triadimenol; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for triadimefon and Tolerance Reassessment and Risk Management Decision (TRED) for triadimenol, and opens a public comment period on this (RED/TRED) document. The Agency's risk assessments and other related documents for triadimefon and triadimenol are also available in the docket under docket number EPA–HQ–OPP–2005–0258 (Triadimefon) and EPA–HQ–OPP–2006–0038 (Triadimenol), respectively. Triadimefon is a broad spectrum, systemic fungicide used to control rust and mildew on pineapple. In addition, it is used to control various fungal diseases on non-food use sites such as golf course and sod farm turf, pine seedlings, Christmas trees, and ornamentals. Use on residential turf will be voluntarily cancelled. The primary metabolite of triadimefon is triadimenol, which is also registered separately as a systemic fungicide for seed treatment of barley, corn, cotton, oats, rye, sorghum, and wheat. EPA has reviewed triadimefon and triadimenol 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 30, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0258 (Triadimefon) and EPA–HQ–OPP–2006–0038 (Triadimenol), 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–2005–0258 and EPA–HQ–OPP–2006–0038. 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 Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8195; fax number: (703) 308-7070; e-mail address: *pates.john@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 and Tolerance Reassessment (RED/TRED) for the pesticides, triadimefon and triadimenol under section 4(g)(2)(A) of FIFRA. Triadimefon is a broad spectrum, systemic fungicide used to control rust and mildew on pineapple. In addition, it is used to control various fungal diseases on non-food use sites such as golf course and sod farm turf, pine seedlings, Christmas trees, and ornamentals. Use on residential turf will be voluntarily cancelled. There are tolerances for triadimefon on apples, grapes, pears, pineapples, and raspberries. All tolerances other than pineapple will be proposed for revocation. The primary metabolite of triadimefon is triadimenol, which is also registered separately as a systemic fungicide for seed treatment of barley, corn, cotton, oats, rye, sorghum, and wheat. Additionally, an import tolerance for triadimenol on bananas has been established. EPA has determined that the data base to support reregistration is substantially complete and that products containing triadimefon/triadimenol are eligible for reregistration, provided the use deletions and other mitigation measures described in the regulatory decision are implemented. Furthermore, tolerances for triadimenol are considered reassessed. 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/TRED) or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing triadimefon/triadimenol.

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 triadimefon/triadimenol tolerances.

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, triadimefon/triadimenol was reviewed through a 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for triadimefon/triadimenol.

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 triadimefon/triadimenol (RED/TRED) 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/TRED). 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 triadimefon/triadimenol. 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/TRED) in the **Federal Register**. In the absence of substantive comments requiring changes, the triadimefon/triadimenol (RED/TRED) 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: August 9, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–14318 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0684; FRL–8084–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Anne Ball, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8717; e-mail address: *ball.anne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, 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–2006–0684. 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. EUP

EPA has issued the following EUP:

82761–EUP–1. Issuance. Montana Microbial Products, 510 East Kent Avenue, Missoula, Montana 59801. This EUP allows the use of 5.82 pounds of the fungicide *Bacillus mycoides* isolate J on 232.25 acres of sugar beets to evaluate the control of Cercospora Leaf Spot (Cercospora beticola). The program is authorized only in the States of Minnesota, Montana, and North Dakota. The EUP is effective from June 8, 2006 to December 31, 2007.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 21, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–14445 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8215–1]

Adequacy of Michigan's Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination of Adequacy of Michigan's Research, Development, and Demonstration (RD&D) Permit Provisions for Municipal Solid Waste Landfills.

SUMMARY: On March 22, 2004, the U.S. EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states (40 CFR 258.4). On May 26, 2006 Michigan submitted an application to the U.S. EPA Region 5 seeking Federal approval of its RD&D requirements per the procedures in 40 CFR 239.12. Michigan's RD&D requirements allow the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with state law. Subject to public review and comment, this notice approves Michigan's RD&D permit requirements.

DATES: This determination of RD&D program adequacy for Michigan will become effective October 30, 2006 unless adverse comments are received on or before October 30, 2006. If adverse comments are received, the U.S. EPA will review those comments and publish another FR document responding to those comments and either affirming or revising the U.S. EPA's initial decision.

ADDRESSES: Written comments should be sent to Ramon Mendoza, Waste Management Branch (Mail Code DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, telephone: (312) 886–4314. Comments may also be submitted electronically to *mendoza.ramon@epa.gov* or by facsimile at (312) 353–4788. You may examine copies of Michigan's application and relevant portions of Michigan's regulations during normal business hours at U.S. EPA Region 5.

FOR FURTHER INFORMATION CONTACT: Ramon Mendoza, Waste Management Branch (mail code DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4314, *mendoza.ramon@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR Part 258 are outlined in 40 CFR 239.12.

Michigan's MSWLF permit program was approved on April 8, 1997 (62 FR 16804). On May 26, 2006, Michigan applied for approval of its RD&D permit provisions. Michigan submitted its amended laws under Part 115 of Act 451 Sections 324.11511b and 324.11514 for review.

B. Decision

After a thorough review, U.S. EPA Region 5 determined that Michigan's RD&D permit provisions as defined under Part 115 of Act 451 Sections 324.11511b and 324.11514 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: August 15, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–14453 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8214–6]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Feldman Barrel and Drum Superfund Site, Buffalo, Erie County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(I), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with 17 settling parties, for recovery of past response costs concerning the Feldman Barrel and Drum Superfund Site (''Site'') located in Buffalo, Erie County, New York. The settlement requires the settling parties to pay the EPA Hazardous Substance Superfund a total $346,188. The settlement includes a covenant not to sue the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for EPA's past response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 29, 2006.

ADDRESSES: To request a copy of the proposed settlement agreement, please contact the individual identified below. The proposed settlement is also available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Feldman Barrel and Drum Superfund Site, Buffalo, Erie County, New York, Index No. CERCLA–02–2006–2005.

FOR FURTHER INFORMATION CONTACT: Brian Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: 212–637–3170.

Dated: June 29, 2006.

George Pavlou,

Division Director, Emergency Remedial Response Division, Region 2.

[FR Doc. E6–14426 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8214–7]

Proposed CERCLA Section 122(g) De Minimis Administrative Agreement Regarding the Feldman Barrel and Drum Superfund Site, Located in Buffalo, Erie County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed *de minimis* administrative agreement pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), pertaining to the Feldman Barrel and Drum Site (''Site'') located in Buffalo, Erie County, New York. The settlement requires that 21 settling parties, identified by EPA as having contributed a minimal volume of hazardous substances, pay a total of $41,984 into a special account which has been established for the Site. This amount is considered to be their fair share of cleanup costs incurred at the Site. The settlement includes a covenant not to sue the settling parties for claims pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 29, 2006.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Feldman Barrel and Drum Site located in Buffalo, Erie County, New York, Index No. CERCLA–02–2006–2004. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Brian Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3170.

Dated: June 29, 2006.

George Pavlou,

Division Director, Emergency Remedial Response Division, Region 2.

[FR Doc. E6–14454 Filed 8–29–06; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Thursday, September 7, 2006, 9:30 a.m. eastern time.

PLACE: Clearance M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Federal Sector EEO Investigations—Panels of Invited Experts.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions).

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Issued August 28, 2006.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 06–7352 Filed 8–28–06; 2:53 pm]

BILLING CODE 6570–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

Summary: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, September 20, 2006, from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting will focus on a review of the Advisory Committee's work during the past year and on other related issues and implications that Ex-Im Bank may be facing within the context of its changing competitive landscape.

Public Participation: The meeting will open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Teri Stumpf to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 15, 2006, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

For Further Information Contact: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Howard A. Schweitzer,

Acting General Counsel.

[FR Doc. 06–7240 Filed 8–29–06; 8:45 am]

BILLING CODE 0690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

August 24, 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 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 29, 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kristy L. LaLonde, Office of Management and Budget, Room 10234 NEOB, Washington, DC 20503, (202) 395–3087, or via fax at 202–395–5167 or via internet at *Kristy_L._LaLonde@omb.eop.gov*. and to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *The Commission is requesting emergency OMB processing of this information collection and has requested OMB approval by September 11, 2006.*

OMB Control Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Forms 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local and tribal government.

Number of Respondents: 250,920.

Estimated Time Per Response: 1.25 hours (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 219,505 hours.

Total Annual Cost: $50,144,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking emergency processing of this information collection by September 11, 2006.

The Commission is requesting emergency OMB approval to modify the FCC Form 601 to implement a modified information collection by the conclusion of the ongoing Auction 66 for wireless spectrum. The FCC Form 601, specifically Schedule B, is being modified in order to ensure that the Commission will receive from winning bidders claiming special designated entity benefits all information necessary to permit the Commission to review the qualifications of that winning bidder to receive such benefits. While the FCC Form 601, Schedule B, already requires the submission of most of the information that the Commission requires to conduct this review, this requested information collection modification will ensure that the Commission receives additional information as mandated by a recent Commission order revising the rules applicable to entities seeking designated entity benefits.

The Commission uses the information provided by applicants on FCC Form 601 to update its database and to determine if the applicant is legally, technically and financially qualified to provide licensed services and to make proper use of the frequency spectrum. The information collected pursuant to this modified information collection will be used to ensure that only legitimate designated entities, as defined by the Commission's rules, reap the benefits of the Commission's designated entity program.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–14436 Filed 8–29–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 06–159; DA 06–1603]

Neutral Tandem Petition for Interconnection

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document establishes the pleading cycle for comments on a petition for interconnection filed by Neutral Tandem. This action is necessary to notify interested parties of the dates by which comments and reply comments on Neutral Tandem's petition should be filed. The intended effect of this action is to establish a record on which the Commission can base a decision on Neutral Tandem's petition seeking interconnection with Verizon Wireless.

DATES: Submit comments on or before September 8, 2006. Submit reply comments on or before September 25, 2006.

ADDRESSES: You may submit comments, identified by WC Docket No. 06–159, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS); *http://www.fcc.gov/cgb/ecfs/.*
- E-mail: To *victoria.goldberg@fcc.gov.* Include WC Docket No. 06–159 in the subject line of the message.
- Fax: To the attention of Victoria Goldberg at 202–418–1587. Include WC Docket No. 06–159 on the cover page.
- Mail: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554.
- Hand Delivery/Courier: The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition

Bureau, Pricing Policy Division, (202) 418–1530, or Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

SUPPLEMENTARY INFORMATION: On August 2, 2006, Neutral Tandem, Inc., (Neutral Tandem) filed a petition for interconnection pursuant to sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 201(a) and 332(c)(1)(B). Neutral Tandem seeks to establish direct physical connections and through routes with Verizon Wireless, Inc. (Verizon Wireless). Specifically, Neutral Tandem requests that the Commission require Verizon Wireless to establish a connection, adequate for the relevant level of traffic, in all markets served by both Verizon Wireless and Neutral Tandem, for terminating traffic from Neutral Tandem.

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Interested parties may file comments on or before September 8, 2006 and reply comments on or before September 25, 2006. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 06–159. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.
—All hand deliveries must be held together with rubber bands or fasteners.
—Any envelopes must be disposed of before entering the building.
—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
—U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Victoria.Goldberg@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Documents in WC Docket No. 06–159 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*. These documents may also be viewed on the Commission's Web site at *http://www.fcc.gov/cgb/ecfs*. 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).

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–14215 Filed 8–29–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–1639]

Payment Methods and Procedures for Fiscal Year 2006 Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this document, the Commission announces, the FY 2006 regulatory fee payment window is now available to accept the annual regulatory fees from licensees and regulatees.

DATES: Payments due September 6, 2006 through September 19, 2006, 11:59 p.m.

ADDRESSES: Mail payment of billed regulatory fees to Federal Communications Commission, Regulatory Fees, P.O. Box 358365, Pittsburgh, PA 15251–5365.

Courier delivery address of billed regulatory fees to Federal Communications Commission, Regulatory Fees, c/o Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262–0001, Attn: FCC Module Supervisor. See **SUPPLEMENTARY INFORMATION** for payment procedures for all other entities.

FOR FURTHER INFORMATION CONTACT: Regina Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at *regina.dorsey@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, released August 21, 2006. The complete text of the Public Notice is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II,

445 12th Street, SW., Room CY–A257, Washington, DC 20554 or via the internet at *http://www.fcc.gov/fees/regfees.html.* Licensees and regulatees who are required to pay annual regulatory fees pursuant to 47 U.S.C. 159 (Pub. L. 103–66) must make their Fiscal Year (FY 2006) fee payments by 11:59 p.m. on September 19, 2006. The official fee payment window will open on September 6, 2006, but payments may be sent prior to September 6. Payments received after 11:59 p.m. on September 19, 2005 will be assessed a 25% late payment penalty. The Commission is required by Congress to collect regulatory fees to recover the regulatory costs associated with its enforcement, policy, rulemaking, user information, and international activities.

Licensees and regulatees pay differing fees dependent on a variety of factors, such as the number of subscribers, number of assigned telephone numbers, or revenue, etc. For more information, on how the FY 2006 regulatory fees were determined or instructions on how to make payment, go to *http://www.fcc.gov/fees/regfees.html.*

Federal Communications Commission.

Anthony J. Dale,

Managing Director, Office of the Managing Director.

[FR Doc. E6–14433 Filed 8–29–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010099–044.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; ANL Container Line Pty Ltd.; American President Lines, Ltd.; APL Co. Pte. Ltd.; APL Limited; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores S.A.; COSCO Container Lines Company Limited; CP Ships USA LLC; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Sud; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Malaysian International Shipping Company Berhad; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Line Limited; Orient Overseas Container Line, Limited; Pacific International Lines (Pte) Ltd.; Safmarine Container Line N.V.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; Preston Gates Ellis & Rouvelas Meeds LLP; 1735 New York Avenue, Suite 500; Washington, DC 20006–5209.

Synopsis: The amendment reflects the organizational consolidation of Hapag-Lloyd and the integration of the CP Ships companies under Hapag-Lloyd.

Agreement No.: 011938–002.

Title: HSDG/Alianca/CSAV/Libra/Montemar Cooperative Working Agreement.

Parties: Hamburg-Sud; Alianca Navegacao e Logistica Ltda. e CIA; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Montemar Maritima S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would revise Article 5.1(a) to authorize the chartering of additional space to Hamburg-Sud and Alianca and the sub-chartering of such space by these lines to CMA CGM. It also makes a corresponding change and a technical correction to Article 5.1(c).

Agreement No.: 011972.

Title: HSDG/Alianca/CMA CGM Space Charter Agreement.

Parties: Alianca Navegacao e Logistica Ltda e CIA (''Alianca''); CMA CGM S.A.; and Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft KG (''Hamburg-Sud'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize Hamburg-Sud and Alianca to charter space to CMA CGM between the U.S. East Coast and Brazil and Venezuela. It would also authorize the parties to engage in a limited range of cooperative activities in connection with the chartering of space.

By Order of the Federal Maritime Commission.

Dated: August 25, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–14448 Filed 8–29–06; 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 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

Benco Shipping International, LLC, 9450 Skillman Street, Suite 101, Dallas, TX 75243, Ben C. Ukwu, Managing Member, Sole Proprietor.

Mercury Cargo Services, Inc., 14547 Titus Street, Suite 203, Panorama City, CA 91402, *Officers:* Pedro Tandoc, President, (Qualifying Individual), Jun Soriano, Vice President.

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicant

Thomas Griffin International, Inc., 15903 Kent Ct., Tampa, FL 33647–1402, *Officer:* Thomas Griffin, President, (Qualifying Individual).

Dated: August 25, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–14455 Filed 8–29–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
016017N	Carotrans International, Inc., 2401 Morris Avenue, 2nd Floor, West Union, NJ 07083.	June 18, 2006.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–14440 Filed 8–29–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 014272N.
Name: CDC USA, Inc.
Address: 2000 Kennedy Avenue, 3rd Floor, San Juan, PR 00920.
Date Revoked: July 10, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016680F.
Name: International Freight Express (USA), Inc.
Address: 147–39 175th St., Suite 206A, Jamaica, NY 11434.
Date Revoked: June 5, 2006.
Reason: Failed to maintain a valid bond.

License Number : 014695N.
Name: Sumikin International Transport (U.S.A.), Inc. dba Sitra.
Address: 2180 South Wolf Road, Des Plaines, IL 60018.
Date Revoked: July 19, 2006.
Reason: Surrendered license voluntarily.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–14442 Filed 8–29–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Charter Corporation, Charlotte, North Carolina; to merge with GBC Bancorp, Inc., Lawrenceville, Georgia, and thereby indirectly acquire Gwinnett Banking Company, Lawrenceville, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Blackridge Financial, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Carlos Bancshares, Inc., Alexandria, Minnesota, and thereby indirectly acquire voting shares of First State Bank of Alexandria, Alexandria, Minnesota.

Board of Governors of the Federal Reserve System, August 25, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–14447 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0137]

New Century Health Quality Alliance, Inc., Prime Care of Northeast Kansas, L.L.C., et al.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 22, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''New Century Health Quality Alliance, et al., File No. 051 0137,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: David Narrow, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2744.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 24, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/08/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with New Century Health Quality Alliance, Inc. (''New Century''), Prime Care of Northeast Kansas (''Prime Care''), four current or former officials of New Century or Prime Care, and 18 physician practices that are members of New Century or Prime Care (collectively referred to as ''Proposed Respondents'').

New Century and Prime Care each are a type of physician joint venture known as an independent practice association (IPA). The New Century and Prime Care IPAs were comprised of competing physician practices in the Kansas City area who came together to jointly offer their services to certain payors who sought to purchase the physicians' services under capitation payment arrangements. Through the IPAs, the physicians shared financial risk that the services provided under the contracts might exceed the capitation payment from the payor to the IPA. In addition to together offering capitation risk-sharing contracts through the IPAs, each individual physician practice also continued to offer and sell its medical services to individual patients and payors on a fee-for-service basis as the physician practice's primary method of doing business.

At various times, certain payors attempted to purchase the services of the individual physician practices in New Century and Prime Care not as part of the IPAs' risk-sharing capitation contracts as the payors had done in the past, but rather directly and on an individual fee-for-service basis. Although the physician practices continued to offer their services in competition with one another individually and on a fee-for-service basis in the market to other payors, the physician practices, acting through New Century and Prime Care and their officials, agreed that they would only sell their services to those payors through capitation contracts entered into between the payors and the IPAs. The physician practices did this because they believed that they would receive lower payments under the direct, fee-for-service arrangements than they were making under the capitation contracts with the payors.

The four named officials led New Century's and Prime Care's efforts to force the payors to deal through the IPAs in order to obtain access to the services of those physician practices, and actively encouraged the physician practice members of New Century and Prime Care to refuse to deal individually with health plans outside the IPAs. Each of the 18 named physician practices took one or more affirmative actions in furtherance of the illegal agreement alleged in the proposed Complaint.

In the absence of market power, jointly offering medical services on a capitation risk-sharing basis through New Century and Prime Care may be lawful and even procompetitive. However, the agreement by the physician members of New Century and Prime Care, respectively, to provide capitation risk contracts through each IPA does not justify their agreements not to deal, or only to deal on collectively determined terms, including price terms, regarding the sale of the individual physician practices' services outside the joint ventures. The member physicians' practices have not been fully integrated through either of the IPAs, and the individual physician practices in each IPA continue to compete with each other outside the IPAs in the sale of their services on a fee-for-service basis. Moreover, the offering by each IPA of capitation risk contracts does not justify the agreement of the two IPAs, at various times, to coordinate their actions, and the actions of their physician members, regarding the separate capitation risk contracts that each IPA had with payors. Neither the two IPAs, nor their respective physician memberships, were integrated at all with each other regarding those separate capitation risk contracts. Likewise, the IPAs' offering of capitation risk contracts, either separately or together, does not justify the two IPAs' agreement to act together, and their joint actions, regarding the sale of their individual member physician practices' medical services on a fee-for-service basis outside of the IPAs.

The agreement settles charges that the Proposed Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by entering into, orchestrating, and implementing agreements to fix prices and other contract terms on which the physician practice members of the IPAs would deal with health plans. Even though the physician practice members offered their services jointly regarding their capitation risk contracts through the IPAs, they remained competitors in the sale of physician services and their refusals to deal with health plans except collectively and on collectively-determined terms through the IPAs violated Section 5.

The proposed consent order has been placed on the public record for 30 days to receive comments from interested

persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final. The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Proposed Respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the Complaint are summarized below.

New Century is an independent practice association (''IPA'') that consists of 16 medical practice groups with a total of approximately 87 primary care physicians who treat patients in the Kansas City area. Prime Care also is an IPA, and consists of nine medical practice groups with a total of about 40 primary care physicians who treat patients in the Kansas City area. In 2002, the two IPAs began combining their Board meetings, offices, and administrative staff and operations. They voted to merge into a single entity, effective January 1, 2005, but never completed the steps legally necessary to consolidate.

At various times, the physician practice members of New Century and Prime Care, acting jointly through those IPAs and their officials, and with the two IPAs acting either in concert or separately on different occasions, refused to deal with various health plans on any terms except by contracting through the IPAs and on a capitated basis.

Most recently, in 2004 and 2005, the physician practice members of New Century and Prime Care, acting together through the two IPAs and their officials, agreed to refuse to contract, and did refuse to contract, with Humana Health Plan, Inc. (''Humana'') regarding its offers of fee-for-service payment contracts with the individual physician practices. Humana notified New Century and Prime Care of its intention to eliminate its use of capitated arrangements in the Kansas City area, and also notified them of its intention to terminate the separate, pre-existing, capitated contracts it had with each IPA. Before the capitated contract terminations were to become effective, Humana attempted to enter into new, individual, fee-for-service contracts with each of the physician practices that were members of New Century or Prime Care. However, New Century's and Prime Care's physician members agreed that they would deal with Humana only through their IPAs, acting in concert, and only on terms, including price terms, that were collectively agreed upon by the IPAs' physician practice members. These demands included, among other things, continued joint contracting, payment by capitation, and a 30% increase in physician reimbursement under one health plan contract.

New Century and Prime Care, and their physician practice members, realized that together, with approximately 125 primary care physicians concentrated in certain parts of the Kansas City Area, they would have a better chance of forcing health plans, including Humana, to accept their contract demands. For example, they and their member physician practices were aware that Humana would be unable to offer certain of its programs to customers in the Kansas City area without the New Century and Prime Care physicians under contract as participating providers, and used that information to attempt to coerce Humana to accede to their contract demands.

When Humana objected to New Century and Prime Care's demands, and refused to contract on a capitated basis or otherwise to deal with New Century or Prime Care in attempting to contract with the physician practices, New Century and Prime Care embarked on a multi-faceted campaign to encourage employers, brokers, and patients to put pressure on Humana to accept the contract terms demanded by the IPAs. Among the actions taken in furtherance of the challenged agreement were that various physician practice members of New Century and Prime Care, with the active encouragement and assistance of New Century and Prime Care officials: notified Humana that they were closing their medical practices to new patients covered by Humana's programs; mailed or distributed notices to patients covered by Humana programs informing the patients of impending disruption in their physician care due to Humana's refusal to enter into a contract with the physicians on acceptable terms; and rebuffed efforts by Humana to contract with the individual physician practices, referring Humana back to New Century and Prime Care for all contracting issues. By the acts set forth in the Complaint, the Proposed Respondents violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the Complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the Proposed Respondents from entering into, or facilitating, any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) regarding on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving New Century or Prime Care.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Proposed Respondents from facilitating exchanges of information between or among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes the Proposed Respondents from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. The Proposed Respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians in a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not facilitate the refusal of, or restrict, physicians in contracting with payors outside of the arrangement. As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be

reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires New Century and Prime Care to notify the Commission before entering into any arrangement to act as an agent on behalf of any physicians, with payors regarding contracts. Paragraph III also sets out the information necessary to make the notification complete.

Paragraph IV, for three years, requires the Proposed Respondents to notify the Commission before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement, or a qualified clinically-integrated joint arrangement. The contracting discussions that trigger the notice provision may be either among physicians, or between New Century or Prime Care and health plans. Paragraph IV also sets out the information necessary to satisfy the notification requirement.

Paragraph V provides that, for three years, the New Century and Prime Care officials named in the proposed complaint and order may not: (1) Negotiate or act as an agent on behalf of any physician or medical group practice that participates or has participated in either New Century or Prime Care; or (2) advise any physician or medical group practice that participates in or has participated in either New Century or Prime Care on contracts, offers, contract terms, conditions, or requirements for dealing with any payors. Exempted from Paragraph V's prohibition are the officials' participation in: (1) Certain qualified risk-sharing joint arrangements; (2) certain qualified clinically-integrated joint arrangements; and (3) activities that solely involve physicians in a medical group practice in which the official participates.

For three years, Paragraph VI requires both New Century and Prime Care, respectively, to distribute the complaint and order: (1) To all physicians who have participated in the IPAs, who currently participate in the IPAs, or who express interest in participating in the IPAs; and (2) to payors that have negotiated contracts with the IPAs, or that contract with the IPAs in the future.

Paragraphs VII, VIII, IX, and X of the proposed order impose various obligations on the Proposed Respondents to report or provide access to information to the Commission to facilitate the monitoring of compliance with the order. Paragraph XI provides that the proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–14360 Filed 8–29–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP).

Times and Dates: October 17, 2006, 8:30 a.m.–5 p.m., October 18, 2006, 8:30 a.m.–12:30 p.m.

Place: Hilton St. Louis at the Ballpark, One South Broadway, St. Louis, MO 63102, Telephone: 314 421–1776 or Toll free 1–877–845–7354.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Update on the Lead and Pregnancy Workgroup activities, update on the clinical implications of blood lead levels (BLL) less than 10 and discussions of laboratory capacity to analyze BLL <2 µg/dL. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

For Further Information Contact: Claudine Johnson, Clerk, (Contractor) Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Hwy., NE., Mailstop F–40, Atlanta, GA 30341, telephone 770 488–3629,fax 770 488–3635.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 22, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–14441 Filed 8–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: State-Based Occupational Safety and Health Surveillance and Occupational Health and Safety Research, Request for Application (RFA) PAR–04–106; and Occupational Health and Safety Research, RFA PAR–04–038

Correction: This notice was published in the **Federal Register** on August 17, 2006, Volume 71, Number 159, page 47498. The meeting has been changed to reflect an additional Request for Applications.

Title: State-Based Occupational Safety and Health Surveillance and Occupational Health and Safety Research, RFA PAR–04–106; and Occupational Health and Safety Research, RFA PAR–04–038.

Contact Person for More Information: M. Chris Langub, Scientific Review Administrator, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS E–74,

Atlanta, GA 30333, Telephone 404.639.2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 21, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–14418 Filed 8–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Savannah River Site Dose Reconstruction Project

AGENCY: The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR).

ACTION: CDC and ATSDR announce the following meeting.

Name: Public Meeting to Present Final Report of the Savannah River Site Dose Reconstruction Project.

Time and Date: 6 p.m.–8 p.m., (Eastern Time), Tuesday, September 19, 2006.

Place: University of South Carolina/Aiken, Conference Center/Business and Education Building, Room 122, 471 University Parkway, Parking Lot ''C'', Aiken, South Carolina 29801.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: CDC will present the Final Report of the Savannah River Site Dose Reconstruction Project to area stakeholders and provide a forum for community interaction. This meeting will also serve as a vehicle for members of the public to express concerns to CDC.

Matters To Be Discussed: The National Center for Environmental Health (NCEH) will make a presentation of the Final Report of the Savannah River Site Dose Reconstruction Project. There will be time for public questions and comments. Agenda items are subject to change as priorities dictate.

Contact Person For Additional Information: Phillip R. Green, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE., (MS–E39), Atlanta, GA 30333, telephone 404/498–1717, fax 404/498–1811, or e-mail address: *prg1@cdc.gov*

Dated: August 23, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–14424 Filed 8–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Prophylactic Use of *Pneumococcal Surface Adhesin A Protein* as a Vaccine

AGENCY: Office of Technology Transfer; Centers for Disease Control and Prevention (CDC); Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patent and patent applications referred to below to Intercell, having a place of business in Vienna, Austria. The patent rights in these inventions have been assigned to the government of the United States of America. The patent and patent applications to the licensed are: U.S. Patent No. 5,422,427 entitled ''Pneumococcal Fimbrial Protein A,'' issued 06.06.95.

U.S. Patent No. 6,312,944 entitled ''Pneumococcal Fimbrial Protein A,'' issued 11.06.01.

U.S. Patent No. 5,854,416 entitled ''*Streptococcus pneumoniae* 37-kDa Surface Adhesin A Protein and Nucleic Acids Coding Therefore,'' issued 12.29.98 (CDC Ref: E–157–91/4).

U.S. Patent No. 6,217,884 entitled ''*Streptococcus pneumoniae* 37-kDa Surface Adhesin A Protein,'' issued 04.17.01.

U.S. Patent No. 6,773,880 entitled ''*Streptococcus pneumoniae* 37-kDa Surface Adhesin A Protein,'' issued 06.05.03.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Thomas E. O'Toole, MPH, Chief Licensing Officer, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8600; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure

Agreement will be required to receive a copy of any pending patent application.

Dated: August 21, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–14423 Filed 8–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs (VA) Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on September 7, 2006, from 8:30 a.m. to 4 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Leonard Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, rm. 16–85, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following items: (1) Summary of Dioxin 2006 presentations; (2) summary of Technical Reports and manuscripts; (3) summary of transition activities.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 4, 2006. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 4, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard Schechtman at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the September 7, 2006, Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee) meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee) were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 2006.

Randall W. Lutter,

Associate Commissioner for Policy.

[FR Doc. E6–14371 Filed 8–29–06; 8:45 am]

BILLING CODE 4160–01–S

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, Public Law 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) The proposed collection of information for the proper performance of the functions of the agency; (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: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247)—Revision

The CHGME PP was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Data are collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial Application)	60	1	60	26	1,560
HRSA 99–1 (Reconciliation Application)	60	1	60	8	480
HRSA 99–2 (Initial Application)	60	1	60	15	900
HRSA 99–2 (Reconciliation Application)	60	1	60	5	300
HRSA 99–3 (Initial Application)	60	1	60	.25	15
HRSA 99–3 (Reconciliation Application)	60	1	60	.25	15
HRSA 99–4 (Reconciliation Application)	60	1	60	14	840
HRSA 99–5 (Initial Application)	60	1	60	.25	15
HRSA 99–5 (Reconciliation Application)	60	1	60	.25	15
Total	60		60		4,140

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 23, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–14411 Filed 8–29–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; National Network of Tobacco Cessation Quitlines Evaluation

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 27, 2006 (page 4595) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Evaluation of the HHS National Network of Tobacco Cessation Quitlines Initiative.

Type of Information Collection Request: New.

Need and Use of Information Collection: In February 2004, the U.S. Department of Health and Human Services announced plans for a national network of tobacco cessation quitlines to provide all smokers in the United States access to the support and latest information to help them quit. To provide the highest level of assistance to smokers across the country who wants to quit, NCI established a new toll-free telephone number (1–800–QUIT–NOW) on November 8, 2004. The aim of the National Network of Tobacco Cessation Quitlines (NNTCQ) initiative (the Initiative) is to strengthen service delivery; provide a mechanism for integration and implementation of state, regional, and national campaigns; and increase healthcare utilization by minority and medically underserved populations. NCI, CDC, and other state, private industry, and partner organizations (the North American Quitline Consortium) have created the infrastructure and a coordinated mechanism to offer cessation services to the American public. The Initiative seeks to enhance existing state-managed quitlines and to encourage the establishment of quitlines in states without them. It is expected that successful implementation of the Initiative will foster partnerships across state quitlines for technology transfer, sharing of effective practices, and understanding patterns of use and reach to special populations, thereby ensuring a sustained level of effectiveness over time. The goal of this evaluation is to monitor the implementation of the Initiative, assess its impact on key stakeholders, and examine its implications for public health. To that end, this study will conduct a series of in-depth key informant telephone interviews and selected site visits with state tobacco control officers, quitline administrators and counseling staff. Representatives of organizations and individuals that partner with quitlines, such as community health organizations or health care providers, will also be interviewed. The findings will provide valuable information concerning the development and implementation of the NNTQC initiative as a potential model for Federal-State partnerships, the impact on building and enhancing state quitline capacity, and implications for the state tobacco control community.

The annual reporting burden is presented in exhibit 1, below.

Frequency of Response: One occasion.

Affected Public: State agencies, businesses or other for-profit, non-profit associations.

Type of Respondents: Federal and state employees, health services providers, administrators and researchers.

The annual reporting burden is as follows:

Estimated Number of Respondents: 228.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: .7445.

Estimated Total Annual Burden Hours Requested: 169.75.

The annualized cost to respondents is $7,129.50.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
State Tobacco Control Manager	51	1	1.00	51.00
State Quitline Administrator	51	1	1.00	51.00
State Quitline Service Provider	19	1	.75	14.25
State Quitline Partner	102	1	.50	51.00
NAQC Representative	5	1	.50	2.50
Total	228			169.75

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Candace Deaton, M.P.A., Project Officer, National Cancer Institute, Cancer Information Service, 6116 Executive Blvd., Suite 3056A, Room 3028, Rockville, MD 20892 or call non-toll-free number 301–594–9072 or e-mail your request, including your address to: *deatonc@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 21, 2006.

Rachelle Ragland Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–14354 Filed 8–29–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

ABCB1 Genotyping To Predict Paclitaxel Toxicity

Description of Technology: Paclitaxel has been a frontline chemotherapeutic drug used for the treatment of various cancers including metastatic breast cancer and ovarian cancer. Its use has successfully prolonged patient survival. A major drawback of paclitaxel is the cytotoxic side-effects that are associated with it such as myologenic and neurogenic toxicities. The degree of such toxicities varies with individual patients. Predicting the extent of such toxicities following paclitaxel treatment will immensely help in defining optimal treatment schedules for each individual patient. Concurrently, it will significantly improve patient quality of life.

This technology describes the identification of three genetic markers in the *ABCB1* (MDR–1, P-glycoprotein) gene that can be used to predict the degree of neutropenia and peripheral neuropathy that an individual will experience following paclitaxel treatment. These markers were identified using DNA from blood samples of cancer patients undergoing paclitaxel treatment. This technology can be developed into a routine blood test to identify patient subsets that are more susceptible to paclitaxel treatment associated neutropenia and neuropathy.

Applications:

1. Three novel genetic markers that can predict extent of paclitaxel associated toxicities.

2. A screening test based on ABCB1 genotype profiling using patient blood samples that predicts paclitaxel associated neutropenia and peripheral neuropathy.

Market: The diagnostic market is worth about $3 billion by 2007 and estimated to grow further.

Development Status:

1. The technology is a pilot study currently in the pre-clinical stage of development.

2. A prospective ABCB1 genotype directed clinical trial is foreseen in the near future.

Inventors: William D. Figg (NCI), Alex Sparreboom (NCI), Tristan M. Sissung (NCI), Stephan Mielke (NCI), *et al.*

Publication: T. M Sissung *et al.* Association of ABCB1 genotypes with paclitaxel-mediated neutropenia and peripheral neuropathy, To be submitted to *Clinical Pharmacology and Therapy.*

Patent Status: U.S. Provisional Application No. 60/807,453 filed 14 Jul 2006 (HHS Reference No. E–237–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: David Lambertson, PhD; 301/435–4632; *lambertsond@od.nih.gov.*

Collaborative Research Opportunity: The NCI Medical Oncology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize ABCB1 genotyping to predict paclitaxel toxicity. Please contact Betty Tong, PhD at 301–496–0477, *tongb@mail.nih.gov* for more information.

Use of Grape Skin Extracts as Anti-Cancer Agents

Description of Technology: The invention describes anti-tumor effects of extracts from grape skins. Grape skin extract and derivatives may therefore be useful as preventive or therapeutic agents against tumor development.

Literature indicates that grape and red wine consumption may be inversely associated with prostate cancer risk. Moreover, to date there are no known grape skin extract-associated toxicities described. The current invention discloses that grape skin extract, or purified fractions thereof, inhibited metastatic growth in human prostate transformed cell lines. Specifically, grape skin extract induced cellular apoptosis via inhibition of the phosphatidylinositol 3-kinase (PI3-K)/Akt survival pathway.

Historically, anti-tumor effects of grapes were mainly attributed to resveratrol, a phytoalexin present in grapes, nuts and wild berries. However, resveratrol's mechanism of anti-tumor action is distinct from that of grape skin extract, in that it arrests cell cycle division without significant induction of apoptosis.

The current invention also provides for methods of treating patients with prostate cancer or persons at risk for developing prostate cancer with compositions that include grape skin extract or active anti-tumor fractions thereof.

Development Status: Pre-clinical stage.

Inventors: Tamaro Hudson and Jeffrey E. Green (NCI).

Patent Status: U.S. Provisional Application No. 60/789,181 filed 03 April 2006 (HHS Reference No. E–179–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@od.nih.gov.*

Collaborative Research Opportunity: The NCI's Laboratory of Cell Regulation and Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Patrick Twomey, PhD at 301–496–0477 or *twomeyp@mail.nih.gov* for more information.

Dated: August 23, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14353 Filed 8–29–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meting of the National Cancer Institute Special Emphasis Panel, September 11, 2006, 5 p.m. to September 13, 2006, 5 p.m. Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD, 20814 which was published in the **Federal Register** on July 25, 2006, 71 FR 42099.

The meeting notice is amended to reflect the change in hotel from the Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814 to the Clarion Hotel, 8400 Wisconsin Ave., Bethesda, MD 20814. The meeting is closed to the public.

Dated: August 22, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7228 Filed 8–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, September 11, 2006, 5 p.m. to September 13, 2006, 6 p.m., Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD, 20814 which was published in the **Federal Register** on July 25, 2006. 71 FR 42098.

The meeting notice is amended to reflect the change in hotel from the Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814 to the Clarion Hotel, 8400 Wisconsin Ave., Bethesda, MD 20814. The meeting is closed to the public.

Dated: August 22, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7229 Filed 8–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Minority Health and Health Disparities, September 12, 2006, 8:30 a.m. to September 12, 2006, 5 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the **Federal Register** on August 18, 2006, 71 FR 47817.

The meeting location changed to the Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, Maryland 20814. The meeting is partially closed to the public.

Dated: August 23, 2006.

Anna Snouffer

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7227 Filed 8–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute, NEI Conference Application Review.

Date: August 31, 2006.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892; (Telephone Conference Call).

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute; 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892; 301–451–2020; *haraj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7226 Filed 8–29–06; 8:45 am]

BILLING CODE 4141–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Proposed Policy for Sharing of Data Obtained in NIH Supported or Conducted Genome-Wide Association Studies (GWAS)

ACTION: Notice.

SUMMARY: The NIH is seeking comments regarding a proposed policy for NIH supported or conducted Genome-Wide Association Studies (GWAS). A genome-wide association study is currently defined as any study of genetic variation across the entire human genome that is designed to identify genetic associations with observable traits (such as blood pressure or weight), or the presence or absence of a disease or condition. The proposed policy addresses (1) data sharing procedures, (2) data access principles, (3) intellectual property and (4) issues regarding the protection of research participants through all phases of GWAS. Many of the principles contained in the policy reflect and extend existing NIH polices (*e.g.*, the 2003 data sharing policy [1]) and other recent NIH discussions.[2]

DATES: Reponses must be received by October 31, 2006 in order to ensure that the NIH will be able to consider the comments when developing new policies.

FOR FURTHER INFORMATION CONTACT: Inquiries will be accepted at: *http://grants.nih.gov/grants/guide/rfi_files/NOT–OD–06–094_rfi_add.htm* or *GWAS@nih.gov*. Comments can be mailed to NIH GWAS RFI Comments, National Institutes of Health, Office of Extramural Research, 6705 Rockledge Drive, Room 350, Bethesda, MD 20892–7963.

SUPPLEMENTARY INFORMATION:

Background

The NIH is interested in advancing GWAS to identify common genetic factors that influence health and disease. Whole genome information, when combined with clinical and other phenotypic data, offers the potential for increased understanding of basic biological processes affecting human health, improvement in the prediction of disease and patient care, and ultimately the realization of the promise of personalized medicine. In addition, rapid advances in understanding the patterns of human genetic variation and maturing high-throughput, cost-effective methods for genotyping are providing powerful research tools for identifying genetic variants that contribute to health and disease. For these reasons, the NIH announced this spring that it has planned to: (1) Update the NIH data sharing policy for research applications involving GWAS data; (2) initiate a public consultation process to inform policy development activities; and (3) track GWAS applications and awards at a central level (see *http://grants.nih.gov/grants/guide/notice-files/NOT-OD–06–071.html*). This RFI serves as the first step in the public consultation process referenced in the May 15, 2006 Notice.

Protecting Research Participants. The potential for public benefit to be achieved through sharing GWAS data is significant. However, genotypic and phenotypic information generated about individuals, such as data related to the presence or risk of developing particular diseases or conditions, and information regarding paternity or ancestry, may be sensitive and substantial. Therefore, it is critically important that the privacy and confidentiality of the participants be protected. Risks to individuals, groups, or communities should be carefully balanced with potential benefits of the knowledge to be gained through GWAS. The nature of GWAS information about participants and the broad data distribution goals of the NIH GWAS data repository highlight the importance of the informed consent process to this research. In order to protect research participants, the NIH will establish mechanisms to oversee the repository and monitor GWAS data use practices.

The NIH recognizes that there are evolving scientific, ethical and societal issues relevant to this proposed policy and will revisit and revise the policy as appropriate.

Proposed Policy for Genome-Wide Association Studies (GWAS)

Principles

Consistent with both the NIH mission to improve public health through research and its longstanding legislative mandate to make available to the public the results of the research activities that it supports and conducts, the NIH believes that the full value of GWAS to the public can be realized only if the genotype and phenotype datasets are made available as rapidly as possible to a wide range of scientific investigators. Rapid and broad data access is particularly important for GWAS because of the significant resources involved; the challenges of analyzing large datasets; and the extraordinary opportunities for making comparisons across multiple studies.

Protection of research participants is a fundamental principle underlying biomedical research. The NIH is committed to responsible stewardship of data throughout the research process, which is essential to protecting the interests of study participants and to maintaining public trust in biomedical research.

Applicability

This draft policy is proposed to apply to active research applications identified by applicants or NIH staff as GWAS per NOT–OD–06–071.

Data Management

Data Repository. To facilitate broad and consistent access to NIH-supported GWAS datasets, the NIH proposes the development of a central GWAS data repository, at the NIH (National Center for Biotechnology Information [NCBI], National Library of Medicine). The repository will provide a single point of

[1] The 2003 NIH Data Sharing Policy applies to investigators seeking $500,000 or more in direct costs in any year (*http://grants2.nih.gov/grants/policy/data_sharing/data_sharing_guidance.htm*).

[2] Request for Information on Modifications to the NHLBI Policy for Distribution of Data from Clinical Trials and Epidemiology Studies (*http://www.nhlbi.nih.gov/funding/policies/rfi-genome.htm*), 2006.

access to basic information about NIH-supported GWAS and to available genotype-phenotype datasets for GWAS. Although the NIH envisions that access to all NIH-supported GWAS datasets will be possible through this repository, it does not intend this repository to become the exclusive source of these data. The repository will also accept GWAS datasets contributed from other sources.

Data Submission. All investigators who receive NIH support to conduct genome-wide analysis of genetic variation in a study population are expected to submit to the GWAS data repository descriptive information about their studies for inclusion in an open access portion of the GWAS data repository. This information should include the following:

- The protocol,
- Questionnaires,
- Study manuals,
- Variables measured, and
- Other supporting documentation.

In addition, the NIH strongly encourages the submission of curated and coded phenotype, exposure, genotype, and pedigree data, as appropriate, to the GWAS data repository as soon as quality control procedures have been completed at the local institution. These detailed data will be made available through a controlled access process according to the GWAS Data Access procedures (described below). Investigators who elect to submit their GWAS data to additional data repositories or networks should verify that appropriate data security, confidentiality, and privacy measures are in place for the protection of GWAS participants.

In order to minimize the risks to study participants, data will be submitted to the GWAS data repository without identifiable information and using a random, unique code. Keys to codes will be held by submitting institutions. Submissions of GWAS data should be accompanied by a written certification stating that the identities of research participants will not be disclosed to the GWAS data repository or to secondary users of the coded data without appropriate institutional approvals. Therefore, research participants should not expect the return of individual research results derived from analyses of submitted data.

All submissions to the GWAS data repository should be accompanied by:

- A certification by the responsible IRB that they have reviewed and approved the submission to the GWAS data repository, noting specifically that:
  - Inclusion in the GWAS data repository and subsequent sharing for appropriate research purposes is consistent with the initial informed consent process of study participants from whom the data were obtained; and
  - Identifying any uses of the data that are specifically excluded within the informed consent provided by study participants, which will be noted in the database; and
- A statement from the institution from which data are contributed that submission of the data is in accord with all applicable laws and regulations.[3]

Data Access. The basic descriptive information submitted to the GWAS data repository for each NIH-conducted or supported GWAS will be available to the public through the GWAS data repository. Access to the genotype and phenotype datasets submitted and stored in the GWAS data repository along with pre-computed analyses (such as simple genotype-phenotype associations and a listing of all variants known to be in linkage disequilibrium[4] with variants showing significant association with a phenotype or trait) will be provided for research purposes through an NIH Data Access Committee (DAC). NIH anticipates that individual DACs may be established based on programmatic areas of interest and the relevant needs for technical and ethics expertise. All DACs will operate through common principles and under similar mechanisms to ensure the consistency and transparency of the GWAS data access process.

Investigators seeking data from the GWAS data repository will be asked to submit a Data Use Certification that is co-signed by the designated Institutional Official, for approval by the appropriate NIH DAC. Data Use Certifications should include a brief description of the proposed research use of the requested GWAS dataset(s). Within a Data Use Certification, investigators will stipulate that they will:

- Use the data only for the approved research use;
- Protect data confidentiality;
- Follow all applicable laws and any local institutional policies and procedures for handling GWAS data;
- Not attempt to identify individual participants from whom data within a dataset were obtained;
- Not sell or share any of the data elements from datasets obtained from the GWAS data repository with third parties; and
- Provide annual progress reports on research.

Access to GWAS datasets through the GWAS data repository will be approved by DACs following: (1) The completion of the Data Use Certification; and (2) confirmation that the proposed research use is consistent with any constraints identified by the institutions that submitted the dataset to the GWAS data repository.

Publication

The NIH expects that for a defined period of time following the release of a given genotype-phenotype dataset through the GWAS data repository (including the pre-computed analyses of the data), the investigators who contributed the data to the GWAS data repository should retain the exclusive right to publish analyses of the dataset. During this period of exclusivity, the NIH may grant access to other investigators, who may analyze the data, but are expected not to publish their analyses or conclusions during this period. This period of exclusivity is presently anticipated to be nine months from the date that the GWAS dataset is made available for access through the GWAS data repository, although a shorter period of exclusivity may be requested by the NIH funding Institute or Center. Contributing investigators are encouraged to shorten any such period of publication exclusivity at their own discretion. Following the expiration of the exclusive publication period for a given GWAS dataset, NIH expects that any investigator with access to the data may submit publications for any purpose consistent with the practices and policies of their institution and the NIH.

The NIH also expects that all investigators who access GWAS datasets will acknowledge the Contributing Investigator(s) who conducted the original study, and the funding organization(s) that supported the work in all resulting oral or written presentations, disclosures, or publications of the analyses.

Intellectual Property

It is the hope of the NIH that genotype-phenotype associations identified through NIH-supported and maintained GWAS datasets and their obvious implications will remain available to all investigators, unencumbered by intellectual property claims. The NIH discourages premature claims on pre-competitive information that may impede research, though it encourages patenting of technology

[3] Applicable Federal regulations may include HHS human subjects regulations (45 CFR Part 46), FDA human subjects regulations (21 CFR Parts 50 and 56), and the Health Insurance Portability and Accountability Act Privacy Rule (45 CFR Part 160 and Part 164, Subparts A and E).

[4] Linkage disequilibrium information will be based on data from the International HapMap Project (*http://www.hapmap.org*).

suitable for subsequent private investment that may lead to the development of products that address public needs.

The NIH will provide approved GWAS data users with information regarding any significant associations within GWAS genotype-phenotype data and other pre-computed analyses (described under the Data Access section on page 4) as a component of the GWAS datasets distributed through the GWAS data repository.

The NIH expects that NIH-supported genotype-phenotype data made available through the GWAS data repository and all conclusions derived directly from them will remain freely available, without any licensing requirements, for uses such as, but not necessarily limited to, markers for developing assays and guides for identifying new potential targets for drugs, therapeutics, and diagnostics. The intent is to discourage the use of patents that would prevent the use of or block access to any genotype-phenotype data developed with NIH support. The NIH encourages broad use of NIH-supported genotype-phenotype data that is consistent with a responsible approach to management of intellectual property derived from downstream discoveries as outlined in NIH's Best Practices for the Licensing of Genomic Inventions (*http://www.ott.nih.gov/policy/genomic_invention.html*) and its Research Tools Policy (*http://ott.od.nih.gov/policy/research_tool.html*).

The filing of patent applications and/or the enforcement of resultant patents in a manner that might restrict use of NIH-supported genotype-phenotype data could substantially diminish the utilization of information and the potential public benefit they could provide. Approved Users and their institutions, through the execution of an NIH Data Use Certification, will acknowledge the goal of ensuring the greatest possible public benefit from NIH-supported GWAS.

Expectations for Investigators Under the Proposed Policy

Although the detailed expectations are enumerated in the individual sections of this proposed policy, they are summarized as follows:

Investigators submitting GWAS data will be expected to:

- Provide descriptive information about their studies;
- Submit coded genotypic and phenotypic data to the GWAS data repository;
- Submit certification by the responsible IRB that it has reviewed and approved submission to the NIH, noting any limitations on data use based on the relevant informed consents; and
- Submit an assurance from the responsible institution that all data are submitted to the NIH in accord with applicable law.

Investigators requesting GWAS data will be expected to:

- Submit a description of the proposed research project;
- Submit a Data Use Certification co-signed by their sponsoring institution;
- Protect data confidentiality; and
- Submit annual progress reports detailing significant research findings.

Information Requested

The goal of the proposed policy is to advance science for the benefit of the public through the creation of a centralized NIH GWAS data repository. Maximizing the availability of resources facilitates research and enables medical science to better address the health needs of people based on their individual genetic information. The NIH is seeking public input and advice on the overall concept of the proposed policy and specific feedback on the following questions:

1. What are the potential benefits and risks associated with wide sharing of phenotypic and genotypic data where identifying information has been removed?
2. In addition to removing personal identifying information, what protections are needed to minimize risks to research participants whose phenotypic and genotypic data are included in a centralized NIH data repository and shared with qualified investigators for research purposes?
3. What are the advantages and disadvantages of the proposed:
   a. Centralized NIH data repository?
   b. Approach to data submission?
   c. Approach to scientific publication?
   d. Approach to intellectual property?
4. What specific resources may investigators and institutions need to meet the goals of this proposed policy?

Responses

The NIH encourages comments concerning its proposed policy to enhance access to GWAS data as outlined in this notice. Persons, groups, and organizations interested in commenting on NIH's proposed policy should direct their comments to the following NIH Web site: *http://grants.nih.gov/grants/guide/rfi_files/NOT–OD–06–094_rfi_add.htm.* As an alternative, comments may be submitted by e-mail to GWAS@nih.gov or sent by mail to the following address: NIH GWAS RFI Comments, National Institutes of Health, Office of Extramural Research, 6705 Rockledge Drive, Room 350, Bethesda, MD 20892–7963.

Dated: August 24, 2006.

Sally Rockey,

Acting Deputy Director for Extramural Research, National Institutes of Health.

[FR Doc. E6–14416 Filed 8–29–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1657–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–1657–DR), dated August 4, 2006, and related determinations.

EFFECTIVE DATE: August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, William M. Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Lee Champagne as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–14414 Filed 8–29–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1650–DR]

New York; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1650–DR), dated July 1, 2006, and related determinations.

EFFECTIVE DATE: August 22, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 2006: Westchester County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050; Individuals and Households Program–Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–14415 Filed 8–29–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1655–DR]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1655–DR), dated July 13, 2006, and related determinations.

EFFECTIVE DATE: August 22, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 13, 2006: The independent City of Galax for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050; Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–14413 Filed 8–29–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Choctaw Creek National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Choctaw National Wildlife Refuge in Choctaw County, Alabama.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Choctaw National Wildlife Refuge are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969. It describes how the refuge will be managed for the next 15 years.

ADDRESSES: A copy of the plan may be obtained by contacting Robbie Dailey, Refuge Manager, Choctaw National Wildlife Refuge, P.O. Box 808, Jackson, Alabama 36545; telephone: 251/246–3583; fax: 251/246–5414. The plan may also be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: The availability of the draft comprehensive conservation plan and environmental assessment for a 45-day review period was announced in the **Federal Register** on January 24, 2006 (71 FR 3878). The Service analyzed four alternatives for managing the refuge and selected alternative D as the preferred alternative. This alternative will promote greater protection for the refuge's fish, wildlife, and habitats and will emphasize wildlife-dependent recreational opportunities for visitors. Hunting and fishing will continue with greater emphasis on increasing opportunities and enhancing the quality of the experience. Education and interpretation will be promoted with regular programs and partnerships with local schools. Wildlife observation and photography opportunities will be expanded, including a trans-refuge birding trail and an observation tower, highlighting refuge management programs and unique wildlife habitats.

Research studies on the refuge will be fostered and partnerships developed with other agencies and universities, providing needed resources and experiment sites while meeting the needs of the refuge's wildlife and habitat management programs. Research will also benefit conservation efforts throughout southwest alabama to conserve, enhance, restore, and manage native habitat. New surveys on birds, reptiles, and amphibians will be initiated to develop baseline information.

Additional staff will include management and biological personnel. An assistant refuge manager and a wildlife biologist will be added to accomplish objectives for establishing

baseline data on refuge resources, managing habitats, providing opportunities and facilities for wildlife observation and photography, providing educational programs that promote a greater understanding of the refuge resources, and protecting natural and cultural resources and refuge visitors.

Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach included an open house, public meeting, technical workgroups, planning update mailings, and **Federal Register** notices. During the draft comprehensive conservation plan/environmental assessment comment period, the Service received several comments, which were incorporated, when appropriate, and responded to in the final comprehensive conservation plan.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: May 10, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–7245 Filed 8–29–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were collected from Grays Harbor County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Quinault Tribe of the Quinault Reservation, Washington.

In 1899, human remains representing a minimum of one individual were collected by Harlan I. Smith from the surface, one-half mile beyond the Copalis River, Grays Harbor County, WA, and were acquired by the American Museum of Natural History the same year. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the presence of cranial deformation. Museum documentation identifies the human remains as ''probably recent.'' Geographic location is consistent with the postcontact territory of the Copalis band of the Quinault Tribe of the Quinault Reservation, Washington.

In 1899, human remains representing a minimum of one individual were collected by Harlan I. Smith from north of the mouth of the Copalis River in Grays Harbor County, WA, and were acquired by the American Museum of Natural History the same year. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the type of burial and the presence of cranial deformation. The human remains were found on the surface, under cedar boards that presumably formed a grave house. Based on the presence of preserved wood, the human remains appear to be postcontact in age. Burial in a grave house is consistent with postcontact Quinault burial practices. Geographic location is consistent with the postcontact territory of the Copalis band of the Quinault Tribe of the Quinault Reservation, Washington.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Quinault Tribe of the Quinault Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before September 29, 2006. Repatriation of the human remains to the Quinault Tribe of the Quinault Reservation, Washington may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Quinault Tribe of the Quinault Reservation, Washington that this notice has been published.

Dated: August 16, 2006.

Sherry Hutt,

Manager, National NAGPRA Program

[FR Doc. E6–14473 Filed 8–29–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Colorado Historical Society, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (5), of the completion of an inventory of human remains in the possession of the Colorado Historical Society, Denver, CO. The human remains were removed from Cannonball Ruin (site 5MT338), Montezuma County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals by deleting one individual in a Notice of Inventory Completion published in the **Federal Register** on November 23, 2004, (FR Doc 04–25918, pages 68162–68169) because the Colorado Historical Society has determined that the human remains from Cannonball Ruin (site 5MT338), Montezuma County, CO, were removed from Federal property and are in the control of the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO. A new Notice of Inventory Completion published by the Bureau of Land Management, Anasazi Heritage Center includes the human remains from Cannonball Ruin.

This notice corrects the previously published notice by deleting paragraph number 20.

Paragraph numbers 1 and 75 are replaced with the following paragraph:

Officials of the Colorado Historical Society have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described represent the physical remains of 360 individuals of Native American ancestry. Officials of the Colorado Historical Society also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 345 objects described are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Colorado Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Paragraph 4 of the original notice is corrected by substituting the following paragraph:

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Georgianna Contiguglia, President/SHPO/CEO, Colorado Historical Society, 1300 Broadway, Denver, CO 80212, telephone number (303) 866–3355, before September 29, 2006. Repatriation of the human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Colorado Historical Society is responsible for notifying the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 8, 2006.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. E6–14469 Filed 8–29–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO and Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO, and in the possession of the Colorado Historical Society, Denver, CO. The human remains were removed from Cannonball Ruin (site 5MT338), Montezuma County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

The human remains in this notice were previously published by the Colorado Historical Society in a Notice of Inventory Completion published in the **Federal Register** on November 23, 2004 (FR Doc 04–25918, pages 68162–68169). After publication, the Colorado Historical Society determined that the human remains from Cannonball Ruin (site 5MT338), Montezuma County, CO, were removed from Federal property and the U.S. Interior Department, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO, has control of the human remains. A corrected Notice of Inventory Completion published by the Colorado Historical Society corrects the minimum number of individuals and deletes Cannonball Ruin (site 5MT338) from the November 23, 2004 notice.

A detailed assessment of the human remains were made by the Colorado Historical Society professional staff on behalf the Bureau of Land Management, Anasazi Heritage Center in consultation with representatives of Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of

Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1908, human remains representing a minimum of one individual were removed from Cannonball Ruin (site 5MT338), located near Yellow Jacket Canyon, Montezuma County, CO, by the Colorado Historical Society, the University of Colorado and the Archaeological Institute of America under the direction of Sylvanus Morley who was supervised by Edgar Hewett. In 1931, the human remains were transferred to the Colorado Historical Society by Carl E. Guthe and accessioned into the collection (Accession number O.6016.1). No known individual was identified. No known associated funerary objects are present.

On the basis of archeological context, and architectural, ceramic and other types of artifactual evidence, site 5MT338 dates to the late Pueblo III period (A.D. 1220–1300). Based on geographical, archeological, anthropological, linguistic, historical, and oral tradition evidence there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico

Officials of the Bureau of Land Management, Anasazi Heritage Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management Anasazi Heritage Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Susan Thomas, Anasazi Heritage Center Curator and NAGPRA coordinator, Bureau of Land Management, 27501 Highway 184, Dolores, CO 81323, telephone (970) 882–5600, before September 29, 2006. Repatriation of the human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Bureau of Land Management, Anasazi Heritage Center is responsible for notifying Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 8, 2006.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. E6–14468 Filed 8–29–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology (Peabody Museum), Harvard University, Cambridge, MA, that meet the definition of ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

An assessment of the cultural items was made by Peabody Museum staff in consultation with representatives of the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota.

In 1941, two cultural items were donated to the Peabody Museum, as the legacy of David I. Bushnell, Jr. The two cultural items are cloth drum tabs with beaded decoration. One tab measures 20 x 16 x 1 cm and depicts a white human-like figure surrounded by floral elements. The second tab measures 19 x 15 x 0.5 cm and depicts four blue human figures (three men and one woman). Museum records indicate that Mr. Bushnell obtained the cultural items at United States Point, Basswood Lake, MN, in 1899. When Mr. Bushnell Jr. acquired the drum tabs they had been removed from a large, stationary drum, also known as a Dance Drum.

The Dance Drum was introduced to the Chippewa people, also known as the Ojibwa people, in the late nineteenth century. Consultation evidence supports that stylistic characteristics of objects reported here are consistent with traditional Chippewa art forms. Historical research and consultation with tribal representatives indicate that Dance Drums and accoutrements, including drum tabs, were specialized objects associated with ceremonial Drum Dances and may be understood as externalized, materialized sacred visions. Dance Drums and portions of Dance Drums were transferred among communal drum societies in a formalized process and not between individuals. Therefore, Mr. Bushnell's purchase of the drum tabs did not meet proper, traditional requirements for the transfer of Dance Drums and accoutrements.

United States Point lies within the traditional territory of the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe. Mr. Bushnell recorded the name of the Basswood Lake Dance Drum's caretaker as ''Kingfisher.'' Federal records, including tribal allotment lists, payment rolls, and censuses, list a ''Kingfisher'' and his relations as members of Bois Forte Band.

Consultation evidence indicates that the drum tabs have an ongoing historical, traditional, and cultural importance central to the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota. Cultural affiliation with the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota is established through anthropological, geographical, and historical information; museum records, including Mr. Bushnell's account of his trip to Basswood Lake and acquisition of the drum tabs; Federal documentary records; and consultation evidence.

Officials of the Peabody Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural items have ongoing historical, traditional, and cultural importance central to the tribe and could not have been alienated, appropriated, or conveyed by any individual tribal member. Officials of the Peabody Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the two objects of cultural patrimony and the Bois Forte (Nett Lake) Band of the Minnesota Chippewa Tribe, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural patrimony should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before September 29, 2006. Repatriation of the objects of cultural patrimony to the Bois Forte (Nett Lake) Band of the Minnesota Chippewa, Minnesota may proceed after that date if no additional claimants come forward.

The Peabody Museum is responsible for notifying Bois Forte (Nett Lake) Band of the Minnesota Chippewa, Minnesota that this notice has been published.

Dated: August 14, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–14471 Filed 8–29–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK. The human remains were removed from Crittendon, Mississippi, and Poinsett Counties, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History and Oklahoma State Archeologist professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

After further consultation with the Quapaw Tribe of Indians, Oklahoma, previously culturally unidentifiable human remains (Arkansas–161) consisting of a skull and dentition representing a minimum of one individual have been determined to be culturally affiliated with the Quapaw Indians. This notice supersedes the Notice of Inventory Completion published in the **Federal Register** on Wednesday, December 28, 2005 (FR Doc. E5–7886, pages 76864–76865).

In 1933, human remains representing a minimum of two individuals were removed from Cummin's Place, also called Cumming's Place (Arkansas–7/130, 7/131), in Poinsett County, AR, by Frank Newkumet. Mr. Newkumet loaned the human remains to the Oklahoma Museum of Natural History (now the Sam Noble Oklahoma Museum of Natural History) from 1933 until 1947. The museum purchased the collection from Mr. Newkumet in 1947. No known individuals were identified. No associated funerary objects are present. A deer bone found with the human remains at Arkansas–7/130 was not located during the inventory process.

In 1933, human remains representing a minimum of three individuals were removed from Upper Nodena Place (Arkansas–7/137, 7/138, and Arkansas–161) in Mississippi County, AR, by Frank Newkumet. Mr. Newkumet loaned the human remains to the Oklahoma Museum of Natural History from 1933 until 1947. The museum purchased the collection from Mr. Newkumet in 1947. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing a minimum of three individuals were removed from the Banks site (Arkansas–31A) in Crittendon County, AR, by Greg Perino. Mr. Perino donated the human remains to the Oklahoma Museum of Natural History later that same year. No known individuals were identified. No associated funerary objects are present.

Diagnostic artifacts found at the Cummin's Place, Upper Nodena Place, and Banks sites indicate that the human remains are Native American and were probably buried during the Parkin phase of the Mississippian nucleation horizon (A.D. 1350–1650). The Parkin phase is characterized by Nodena leaf-shaped arrow points, Madison arrow points, pipe drills, chisels, adzes, use of basalt, conch shell beads, mushroom shaped beads, ear plugs, copper disks, discoidals, catlinite pipes, Parkin punctate and Barton incised pottery, Mississippian Plain pottery, effigy forms such as, head pots, compound vessels, and occasionally red and white Nodena ware. Although many of these types of artifacts were found at the sites, none of the artifacts besides the missing deer bone are considered associated funerary objects because they were not found in a burial context nor is there any other information that attests to their being from a burial context. Many of the Parkin phase artifact traits continued to be practiced by people later identified as Quapaw. European documentation concerning the geographical range of the Quapaw people supports their presence in the northeastern part of Arkansas. Present-day descendants of the Quapaw people are members of the Quapaw Tribe of Indians, Oklahoma.

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the Sam Noble Oklahoma Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ellen Censky, Director, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua, Norman, OK 73072, telephone (405) 325–4712, before September 29, 2006. Repatriation of the human remains to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

Sam Noble Oklahoma Museum of Natural History is responsible for notifying the Quapaw Tribe of Indians, Oklahoma that this notice has been published.

Dated: August 14, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–14472 Filed 8–29–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF LABOR

Office of the Secretary

Center for Faith-Based and Community Initiatives; Proposed Collection; Comment Request; Agency Information Collection Activities: Proposed Information Collection; Comment Request: Survey of PY 2002–2006 ETA Grassroots Grant Recipients

ACTION: Notice of an opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 C 2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Center for Faith-Based and Community Initiatives is soliciting comments concerning the proposed collection: Survey of PY 2002–2006 ETA Grassroots Grant Recipients. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 30, 2006.

ADDRESSES: Center for Faith-Based and Community Initiatives, Office of the Secretary, U.S. Department of Labor, Room S–2235, 200 Constitution Avenue, NW., Washington, DC 20210. Phone (202) 693–6450 (this is not a toll-free number), fax (202) 693–6146, TTY/TDD (800) 877–8339, or e-mail *contact-cfbci@dol.gov.* Please reference OMB Control Number 1290–0NEW in the e-mail subject line.

SUPPLEMENTARY INFORMATION:

I. Background

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers for faith-based and community initiatives (CFBCI) in the Departments of Labor (DOL), Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), and Justice (DOJ). President Bush charged the departmental centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community organizations, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the CFBCI and ETA developed and issued Solicitations for Grant Application (SGA) to engage grassroots organizations in our workforce system-building. These SGAs were designed to assist faith-based and community organizations in delivering social services and strengthening their existing partnerships with the local One-Stop Career Center system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order: Creating new avenues through which qualified organizations could participate more fully under the Workforce Investment Act (WIA), while applying their particular strengths and assets in providing services to our customers. These solicitations also were derived from an ETA—CFBCI mutual premise that the involvement of faith-based and community organizations can both complement and supplement the efforts of local workforce investment systems in being accessible to and serving the training, job and career-support needs of many of our citizens.

Many faith-based and community organizations offer unique services and support networks that can contribute to our mutual system-building endeavors; are trusted institutions within our poorest neighborhoods; and are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service, but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations

strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, and entry and retention of all our citizens in good-paying jobs. Faith-based and community organizations benefit from having equal access to federal funds. DOL CFBCI intends to use this data to examine the impact that receiving and managing federal grants has on grassroots, faith-based and community organizations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: New collection of information.

Agency: Center for Faith-Based and Community Initiatives.

Title: Survey of PY 2002–2006 ETA Grassroots Grant Recipients

OMB Number: 1290–0NEW.

Affected Public: Non-profit.

Frequency: Annually.

Number of Respondents: 183.

Number of Responses: 183.

Average Time Per Response: 5 minutes.

Estimated Burden Hours: 91.5.

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the agency's request for OMB approval of the information collection request. Comments will become a matter of public record.

Dated: August 25, 2006.

Jedd Medefind,

Director, Center for Faith-Based and Community Initiatives.

[FR Doc. E6–14435 Filed 8–29–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Program Policy Letter P06–V–9: Section 2 of MINER Act; Emergency Response Plan, Post-Accident Breathable Air

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Request for information.

SUMMARY: On June 15, 2006, the Mine Improvement and New Emergency Response (MINER) Act of 2006 was enacted. In accordance with Section 2 of the MINER Act, each underground coal mine operator must submit an emergency response plan (ERP) to the appropriate MSHA District Manager. The ERP provides for the evacuation of all individuals endangered by an emergency and also for the maintenance of individuals trapped underground in the event that miners are unable to evacuate the mine. MSHA is soliciting comments that address the availability of readily accessible breathable air that would be sufficient to maintain miners trapped underground over a sustained period of time. MSHA will consider these comments in developing guidance to assist in assuring that the ERPs provide safe and reliable post-accident breathable air supplies for trapped miners.

DATES: Comments must be received by MSHA on or before October 16, 2006.

ADDRESSES: Comments must be clearly identified with ''PPL P06–V–9—Emergency Response Plan, Post-Accident Breathable Air'' and may be sent to MSHA by any of the following methods:

(1) Electronic mail: *zzMSHA-comments@dol.gov*. Include ''PPL P06–V–9—Emergency Response Plan, Post-Accident Breathable Air'' in the subject line of the message.

(2) Telefax: (202) 693–9441. Include ''PPL P06–V–9—Emergency Response Plan, Post-Accident Breathable Air'' in the subject line.

(3) Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

(4) Hand Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Stop by the 21st floor and sign in at the receptionist's desk.

Docket: Comments can be accessed electronically at *www.msha.gov* under the ''Program Policy Letter (P06–V–9)'' link on the MINER Act single source page. MSHA will post all comments on the Web site without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd, Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (telefax).

SUPPLEMENTARY INFORMATION: The MINER Act (Pub. L. 109–236) became effective on June 15, 2006. Section 2 of the MINER Act amends Section 316 of the Federal Mine Safety and Health Act of 1977 (Mine Act) to require that every underground coal mine operator have an emergency response plan which is to be approved by MSHA. The Act further requires MSHA, in determining whether to approve a particular plan, to consider comments from miners and miners' representatives. The ERP must provide for the evacuation of miners endangered by an emergency and for the maintenance of miners trapped underground in the event that they are unable to evacuate the mine. The MINER Act requires that the ERP provide for ''emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time.''

On June 27, 2006, MSHA solicited comments related to the implementation of emergency response plans for underground coal mines. Following review of these comments, MSHA issued Program Policy Letter (PPL) Number P06–V–8 on July 21, 2006, which established MSHA policy and guidance for mine operators to facilitate the development of their ERPs.

In the PPL, MSHA stated that the ERP should address the amount of post-accident breathable air necessary to maintain individuals for a sustained period of time. The Agency suggested oxygen, compressed air, or other alternatives to meet the breathable air requirement. Further, MSHA stated that the Agency will need to review thoroughly and evaluate alternatives to ensure that all safety and health risks are taken into consideration. In the PPL,

the Agency also noted that additional time and information is needed to make decisions on the type, amount, and location of post-accident breathable air to be furnished for trapped miners.

On August 4, 2006, MSHA reissued the PPL (as PPL Number P06–V–9) to include an alternative to the distance table for self-contained self-rescuer (SCSR) storage locations to allow mine operators to use a functionality test to establish distances between SCSR storage locations.

At this time, MSHA is soliciting information from the mining community on topics related to post-accident breathable air that would be sufficient to maintain miners trapped underground for a sustained period of time.

The MINER Act requires that all approved plans:

(1) Afford miners a level of safety protection at least consistent with the existing standards, including standards mandated by law and regulation;

(2) Reflect the most recent credible scientific research;

(3) Be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine; and

(4) Reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws.

In making decisions on requirements for post-accident breathable air provisions in the plan, MSHA will take these factors into consideration. Please consider these factors as you develop your responses.

When answering the questions below, please key your response to the topic and number of the question, and explain the reasons supporting your views. Please provide relevant information on which you rely, including, but not limited to, past experience, as well as data, studies and articles, and standard professional practices. Include any data related to technological feasibility or other related issues.

Issues on Which Information is Requested

MSHA requests information on the following issues related to the breathable air provision of the MINER Act:

A. Emergency Supply of Breathable Air

1. What factors should MSHA consider in determining a ''sustained period of time?'' Should a specific time period be adopted? If so, what is the appropriate time period and why? The Agency has received suggestions ranging from one hour of post-accident breathable air to a continuous supply. Please include the rationale for the recommended period of time.

2. Should factors such as mine size, mine design and layout, number of miners potentially affected, and distance from the portals to the working section be used, and if so, how, in determining the sufficient quantity of breathable air? What other factors should be considered and how should they be considered?

3. Where should the post-accident breathable air supply be located in relation to: working sections; outby work stations; and along travel routes?

4. The MINER Act requires that plans be periodically updated to reflect changes in operations in the mine. What specific changes in operations would result in a need to update the breathable air provision of the plan?

B. Oxygen Sources

1. Please provide information and make recommendations on the best way to provide breathable air. Please elaborate on the arguments for and against using oxygen, compressed air, or chemically-induced oxygen to maintain trapped miners for a sustained period of time. What other available means of technology appropriate to maintain miners would you recommend, and why?

2. MSHA solicits information on how compressed air lines routed through mine openings could be protected against damage from explosion or fire. How could techniques such as burying or armoring air lines provide adequate protection?

3. MSHA solicits information on availability and possible obstacles in developing and deploying systems for providing oxygen.

C. Emergency Shelters

Section 13 of the MINER Act requires the National Institute for Occupational Safety and Health (NIOSH) to conduct research concerning various types of refuge alternatives, including commercially-available portable refuge chambers. In the interim, MSHA solicits comments on the use of emergency shelters which contain sufficient quantities of post-accident breathable air to maintain trapped miners.

1. Until specifications for refuge alternatives are developed, what type of emergency shelters (*e.g.*, inflatable or other portable quick-deploy designs) should be provided, what safety features should they offer, where should they be located, and why?

2. How should the use of emergency shelters be tied to emergency supplies of breathable air?

3. If post-accident breathable air is provided through emergency shelters, provide information on appropriate distances between installations and proximity to working sections. Please provide specific feasibility considerations, if any.

4. Under what circumstances, if any, could a barricade be used as an emergency shelter to provide post-accident breathable air?

Dated: August 25, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 06–7260 Filed 8–29–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0184 (2006)]

Standard on 4,4′-Methylenedianiline (MDA) in General Industry; 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 public comment.

SUMMARY: OSHA requests public comment concerning its proposed extension of the information collection requirements specified by the Standard on 4,4′-Methylenedianiline in General Industry (29 CFR 1910.1050). The standard protects employees from the adverse health effects that may result from occupational exposure to MDA, including cancer and liver disease.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 30, 2006.

Facsimile and electronic transmission: Your comments must be received by October 30, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0184 (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.* Follow instructions on the OSHA Web page for submitting comments.

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:

I. 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 minimized, collection instruments are understandable, 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 the Standard on 4,4′-Methylenedianiline in General Industry (the ''Standard'') protect employees from the adverse health effects that may result from their exposure to MDA, including cancer and liver disease. The major paperwork requirements specify that employers must develop a written emergency plan for each workplace where there is a possibility of an emergency (*i.e.*, an unexpected and potentially hazardous release of MDA); perform initial, periodic, and additional exposure monitoring; and notifying each employee in writing within 15 days after the receipt of exposure-monitoring results, either individually or by posting. In addition, employers must perform routine visual inspections of the hands, face, and forearms of each employee potentially exposed to MDA for signs of dermal exposure to MDA and, if they determine that employees have been exposed to MDA, they must maintain records of the corrective actions taken. Employers must also: Establish and implement a written compliance program and implement a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard).

Employers must label any container of MDA-contaminated protective work clothing or equipment that will be taken out of changing rooms or other workplace areas for cleaning, maintenance, or disposal. Employers must also inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clear MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post and maintain legible warning signs demarcating regulated areas and entrances or accessways to regulated areas, as well as provide employees with information and training on the Standard and specific components of the MDA program at the time of their initial assignment, and at least annually thereafter; employers must provide employees, OSHA, and the National Institute for Occupational Safety and Health (''NIOSH'') with access to the training materials.

Additional paperwork provisions of the Standard require employers to provide employees with medical examinations, including initial, periodic, emergency, and additional examinations. Under specified conditions, employers also must establish a multiple-physician review mechanism to provide employees with a second opinion regarding the results of these medical examinations and a program to remove employees from MDA exposure. 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 recordkeeping provisions require employers to establish and maintain records of the monitoring data or objective data they use to gain an exemption from the Standard, as well as exposure-monitoring, medical surveillance, and medical removal information collected under the Standard. Employers also must make any required record available to OSHA compliance officers and 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 without a successor employer to receive and retain records for the required periods 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 4,4′-Methylenedianiline in General Industry (29 CFR 1910.1050), and to decrease the total burden hour estimate by two hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in this request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: 4,4′-Methylenedianiline Standard in General Industry (29 CFR 1910.1050).

OMB Number: 1218–0184.

Affected Public: Business or other for-profit.

Number of Respondents: 13.

Frequency of Recordkeeping: On occasion; quarterly; semi-annually; annually.

Average Time per Response: Varies from five minutes (.08 hours) to provide information to the physician to two hours to perform periodic monitoring.

Total Annual Hours Requested: 293.

Estimated Cost (Operation and Maintenance): $19,037.

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 24, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–7254 Filed 8–29–06; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

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

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established to advise the Assistant Secretary of Labor for OSHA on issued relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce to MACOSH meeting scheduled for September 2006.

DATES: The Committee will meet on September 26, 2006 from 9 a.m. to 4:30 p.m., and September 27, 2006 from 8:30 a.m. to 4 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. On Tuesday September 26, the Committee will meet in conference room C–5521 room #4; on Wednesday September 27, the Committee will meet in conference room N–3437 rooms A, B, and C. Mail comments, views, or statements in response to this notice to Jim Maddux, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH, and this meeting contact: Jim Maddux, Director, Office of Maritime, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 no later than September 19, 2006 to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings, including work group meetings, are open to the public. All interested persons are invited to attend the MACOSH meetings at the times and places listed above. Since the Committee has just been re-established, and his nine new members, the agenda will include discussions of OSHA's programs and activities such as: Standards and guidance; enforcement; cooperative programs; and science, technology and medicine. The agenda will also include discussions on forming MACOSH work groups; identification of maritime safety and health issues; radiation screening of cargo containers and general administrative procedures.

Public Participation: Written data, views or comments for consideration by MACOSH on the various agenda items listed above should be submitted to vanessa L. Welch at the address listed above. Submissions received by September 12, 2006, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. anyone wishing to make an oral presentation to the committee on any of the agenda items listed above should notify Vanessa L. Welch by September 12, 2006. The request should state the amount of time desired, the capacity in which the person will appear,, and a brief outline of the content of the presentation.

Authority: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 23rd day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–7237 Filed 8–29–06; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: Written comments should be received by October 30, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 201 Wilson Blvd., Rm 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

OMB Approval Number: 3145–0174.

Expiration Date of Approval: December 31, 2009.

Abstract: Generic Clearance of the Science Resources Statistics Survey Improvement Projects. The National Science Foundation's Division of Science Resources Statistics (NSF/SRS) needs to collect timely data on constant changes in the science and technology sector and to provide the most complete

and accurate information possible to policymakers in Congress and throughout government and academia, NSF/SRS conducts many surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data is obtained from these surveys. State-of-the-art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents: The respondents will be from industry, academia, nonprofit organizations, members of the public, and state, local, and federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, web, e-mail, or phone modes, depending on the topic under investigation. Up to 19,150 respondents will be contacted across the survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NSF's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

Information being collected is not considered sensitive. In general, assurances of data confidentiality will not be provided to respondents in the pretests. Instead, respondents have the option of requesting that any and all data they provide be kept confidential.

Use of the Information: The purpose of these studies is to use the latest and most appropriate methodology to improve NSF surveys. The data will be used internally to improve NSF surveys. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NSF surveys will help policy makers in decisions on research and development fundings, graduate education, scientific and technical workforce, regulations, and reporting guidelines, as well as contributing to reduced survey costs.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 14,950 hours will result from activities to improve its surveys. The calculation is:

TABLE 1.—ANTICIPATED SURVEYS TO UNDERTAKE IMPROVEMENT PROJECTS, ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER SURVEY FOR THREE YEAR PERIOD

Survey name	Number of respondents[1]	Hours
Graduate Student Survey	[2] 5,000	3,000
SESTAT Surveys	10,000	5,000
Postdoc Project	800	1,600
New and Redesigned R&D Surveys:		
Academic R&D	600	1,200
Government R&D	50	100
Nonprofit R&D	200	100
Industry R&D	500	2,000
Survey of Scientific & Engineering Facilities	300	150
Public Understanding of S&E Surveys	200	50
Survey of Earned Doctorates	300	550
Additional surveys not specified	1,200	1,200
Total	19,150	14,950

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.
[2] This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or including in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 25, 2006.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–7238 Filed 8–29–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic

Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 29, 2006. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2007–001, Olav T. Oftedal, Department of Conservation Biology, Smithsonian Institution, National Zoological Park, 3001 Connecticut Ave., NW., Washington, DC 20008.

Activity for Which Permit is Requested

Take, and import into the U.S.A. The applicant plans to capture and collect samples from up to 120 Weddell seal mother-pup pairs and up to 180 lactating mother-juvenile pairs. The samples will help determine the importance of food intake to lactating Weddell seals and their young during the lactation period. They will measure: (a) Energy expenditure of lactating females, (b) the amount and composition of milk consumed by nursing pups, (c) growth of pups, and (d) onset and prevalence of feeding in mothers and pups, and (e) amount of energy that lactating females derive from food intake.

Location

McMurdo Sound vicinity.

Dates

September 1, 2006 to February 1, 2009.

2. *Applicant:* Permit Application No. 2007–004, Gretchen E. Hofmann, Department of Ecology, Evolution and Marine Biology, University of California, Santa Barbara, Santa Barbara, CA 93106–9610.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. The applicant proposes to bring up to 10 black cod (*Notothenia angustata*) for use in experiments in Crary Lab at McMurdo Station. The fish from temperate waters will be exposed to the subzero conditions of Antarctic coastal waters. The responses of the New Zealand fish will be assessed using genomics techniques, and these results will be compared to the Antarctic species. The New Zealand fish are thought to have initially evolved in the Antarctic and then migrated to more temperate water. These experiments will more carefully test this supposition. The New Zealand fish will not be released into Antarctic waters.

Location

The Crary Science and Engineering Center, McMurdo Station, Antarctica.

Dates

October 1, 2006 to December 31, 2006.

3. *Applicant:* Permit Application No. 2007–006, Paul J. Ponganis, Center for Marine Biotechnology/Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204.

Activity for Which Permit Is Requested

Take and Enter Antarctic Specially Protected Area. The applicant proposes to capture up to 80 adult Emperors, up to 20 Emperor chicks, and 10 adult Adelie penguins. Blood and muscle tissue samples will be collected and depth recorders will be attached. The samples collected will help to understand how Emperors dive so long and avoid complications such as shallow water black out and accumulation of metabolic byproducts such as lactate. In addition, the applicant will conduct censuses of the Emperor colonies at Cape Crozier (ASPA #124), Beaufort Island (ASPA #105), Cape Washington, Franklin Island and Coulman Island. The applicant also proposes to salvage up to 10 Emperor carcasses each year for anatomical studies.

Location

McMurdo Sound sea ice, Cape Washington, Franklin Island, Coulman Island, Cape Crozier (ASPA #124), and Beaufort Island (ASPA #105).

Dates

September 1, 2006 to January 31, 2009.

4. *Applicant:* Permit Application No. 2007–007, Markus Horning, Hatfield Marine Science Center, 2030 SE Marine Science Drive, Newport, OR 97365.

Activity for Which Permit Is Requested

Take and Import into the United States. The applicant proposes to capture up to 48 Weddell seals to be weighed, blood and muscle tissue samples taken and VHF transmitters attached. The samples collected will be returned to the U.S. for analysis to determine the small-scale, immediate and obvious effects of aging on the diving capacity and exercise capability of adult Weddell seals.

Location

McMurdo Sound sea ice.

Dates

October 1, 2006 to January 31, 2008.

5. *Applicant:* Permit Application No. 2007–008, Walker O. Smith, Virginia Institute of Marine Science, P.O. Box 1346, 1208 Greate Road, Gloucester Point, VA 23062.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica. The application proposed to bring 2 flasks each of phytoplankton (*Phaeocystis Antarctica, Pseudo-nitzschia sp.* and *Fragilariopsis cylindus*) for use in experiments during a cruise on the R/V Nathaniel B. Palmer. These cultures are originally from Antarctica and have not been genetically modified. The applicant will study the physiological response of these native species to controlled environmental factors with onboard incubation. It is necessary to use these samples because the occurrence of these species in unpredictable in the Ross Sea and there is limited time on the cruise to perform the experiments.

Location

Ross Sea.

Dates

October 20, 2006 to December 25, 2006.

6. *Applicant:* Permit Application No. 207–011, Mark Buckley, Senior Manager

Multimedia, Raytheon Polar Service Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The RPSC Multimedia team is often tasked with taking video and still footage of scientific activities and general scenery. Request for such coverage is expected to increase during the International Polar Year. The applicant requests to enter the Antarctic Specially Protected Areas in the McMurdo Sound/Ross Sea region when tasked to film scientific activities occurring at any of the sites. Access to the sites will be limited to due to operational and scientific constraints.

Location

Sabrina Island (ASPA 104), Beaufort Island (ASPA 105), Cape Hallett (ASPA 106). Cape Bird (ASPA 116), Mt. Melbourne (ASPA 118), Cape Royds (ASPA 121), Arrival Heights (ASPA 122), Barwick Valley (ASPA 123), Cape Crozier (ASPA 124), Tramway Ridge (ASPA 130), Canada Glacier (ASPA 131), Northwest White Island (ASPA 137), Linneaus Terrace (ASPA 138), Botany Bay (ASPA 154), Cape Evans (ASPA 155), Lewis Bay (ASPA 156), Backdoor Bay (ASPA 157), Hut Point (ASPA 158), Cape Adare (ASPA 150), Terra Nova Bay (ASPA 161).

Dates

October 1, 2006 to February 14, 2009.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 06–7256 Filed 8–29–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414, 50–369 and 50–370]

Duke Power Company Llc, et al., Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35, NPF–52, NPF–9 and NPF–11, issued to Duke Power Company, LLC, et al., for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina, and McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. The proposed amendments would revise technical specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation''. The proposed changes address the incore instrument room sump level instrumentation and containment atmosphere radioactivity monitors and their compliance with Regulatory Guide 1.45.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. This analysis is from the May 4, 2006, submittal and supercedes the analysis from the licensee's July 27, 2005, submittal:

1. Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The changes contained in this LAR (license amendment request) have been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed changes do not make any hardware changes and do not alter the configuration of any plant structure, system, or component. The proposed LAR: (1) Removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the operability requirements of TS 3.4.15 and replaces it with the containment atmosphere particulate radioactivity monitor, (2) clarifies the applicability of the TS to the containment atmosphere particulate radioactivity monitor, (3) adds the incore instrument sump and its level instrumentation to the McGuire and Catawba licensing basis contained in the TS, the Bases, and the Updated Final Safety Analysis Reports, and (4) makes other low risk changes to TS 3.4.15. None of the containment Reactor Coolant System (RCS) leakage detection instrumentation systems are initiators of any accident; therefore, the probability of occurrence of an accident is not increased. The McGuire and Catawba licensing bases will continue to require diverse means of detecting reactor coolant system (RCS) leakage, thus ensuring that leakage due to cracks would continue to be identified prior to breakage and the plant would be shutdown accordingly. Therefore the consequences of an accident are not increased.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The changes proposed in this LAR do not involve the use or installation of any equipment that is less conservative than that already installed and in use. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing basis. The proposed changes do not affect any structure, system, or component associated with an accident initiator. Based on these considerations, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The changes proposed in this LAR do not make any alteration to any RCS leakage detection components. The proposed changes only remove the containment atmosphere gaseous radioactivity monitors as an option for meeting the operability requirements for TS 3.4.15 and replace it with the more responsive containment atmosphere particulate radioactivity monitor. Since the level of radioactivity in the McGuire and Catawba reactor coolant has become much lower than what was assumed in the original licensing bases, the gaseous channel can no longer detect a small RCS leak consistent with the plants' leak-before-break (LBB) analyses. A conservative addition is being made to TS 3.4.15 in order to include controls for the incore instrument sump level instrumentation. The changes contained in the LAR are not risk significant since the RCS leakage detection instrumentation is not credited in the McGuire and Catawba probabilistic risk assessments. The proposed amendment continues to require diverse means of leakage detection equipment with the capability to promptly detect RCS leakage well within the margin of the LBB analyses. Based on this evaluation, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General

Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the , attorney for the licensee, Ms. Lisa F. Vaughn, Legal Department, Duke Power Company LLC, 526 South Church St., P. O. Box 1006, Mail Code EC07H, Charlotte, NC 28201–1006.

For further details with respect to this action, see the application for amendment dated July 27, 2005, as supplemented by letters dated May 4, 2006, and August 8, 2006, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 25th day of August 2006.

For the Nuclear Regulatory Commission

John F. Stang,

Sr. Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14406 Filed 8–29–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40 issued to Omaha Public Power Company (the licensee) for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would revise the technical specifications to allow the use of Sodium Tetraborate instead of Trisodium Phosphate.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no changes to the design or operation of the plant that could affect system, component, or accident functions as a result of replacing trisodium phosphate (TSP) with sodium tetraborate (NaTB). Similarly, there are no changes to the design or operation of the plant affecting system, component or accident functions as a result of revising the volume of buffering agent required during Operating Modes 1 and 2 with an amount dependent upon hot zero power (HZP) critical boron concentration (CBC) to make it consistent with the use of NaTB.

All systems and components function as designed and the performance requirements have been evaluated and found to be acceptable. NaTB will maintain pH ≥7.0 in the recirculation water following a loss-of-coolant accident (LOCA). This function is maintained with the proposed change. Allowing the required volume of NaTB to decrease over the operating cycle (as a result of densification) as HZP CBC decreases still ensures that the pH of the containment sump is ≥7.0.

Further, replacing TSP with NaTB will not increase the probability or consequences of an accident previously evaluated. Other than the Long Term Core Cooling evaluation that establishes the Hot Leg Switchover (HLSO) time, no other safety analysis methodology (LOCA or non-LOCA) specifically models the containment sump buffering agent. As a result, the consequences of any accident (other than determination of the HLSO time) are unaffected by the proposed change to the containment sump buffering agent. The analysis to determine the HLSO time specifically addressed the use of NaTB to assure it would preclude boron precipitation in the core and, therefore, preclude any increase in the consequences of a LOCA.

Analysis demonstrates that a NaTB buffering agent ensures the post LOCA containment sump mixture will have a pH ≥7.0. Replacing TSP with NaTB, which achieves the same pH buffering requirements, will not increase the probability of a LOCA.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All structures, systems, and components (SSCs) previously required for mitigation of an event remain capable of fulfilling their intended design function with this change to the Technical Specifications (TS). The proposed change has no adverse effects on any safety-related system or component and does not challenge the performance or integrity of any safety related system. The proposed change has evaluated the replacement buffering agent and no new accident scenarios or single failures are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Changing the containment sump buffering agent requirement from TSP to NaTB and revising the required volume of NaTB to decrease (as a result of densification) as HZP CBC decreases still ensures containment sump pH ≥7.0. NaTB will maintain pH ≥7.0 in the recirculation water following a LOCA. Therefore, this change does not involve a significant reduction in the margin of safety. Evaluations were made that indicate that the margin for pH control is not altered by the proposed changes. A NaTB volume that is dependent on HZP CBC has been evaluated with respect to neutralization of all borated water and acid sources. These evaluations concluded that there would be no impact on pH control, and hence no reduction in the margin of safety related to post LOCA conditions.

Although NaTB is less effective than TSP at raising the boric acid solubility limit, implementation of a more conservative HLSO time and higher recirculation flow requirements for the hot and cold leg recirculation flows ensures that the margin of safety to preclude boron precipitation, and ultimately assurance of core cooling ability, is not compromised.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(I)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail

addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated August 21, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of August 2006.

Alan B. Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14389 Filed 8–29–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30904]

Notice of Environmental Assessment Related to the Issuance of a License Amendment to Byproduct Material License No. 13–17582–02, for Unrestricted Release of a Facility for the Rose-Hulman Institute of Technology, Terre Haute, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: George M. McCann, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352; Telephone: (630) 829–9856; or by e-mail at *gmm@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to NRC Byproduct Materials License No. 13–17582–02. This license is held by Rose-Hulman Institute of Technology (the Licensee) for a building (the Facility) on its Terre Haute, Indiana campus in which NRC-licensed materials were formerly stored. Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated February 14, 2006, (ADAMS Accession No. ML062230210). The NRC has prepared an Environmental Assessment in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the Environmental Assessment, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate for the proposed action. The amendment to Rose-Hulman Institute of Technology's license will be issued following the publication of this Environmental Assessment and Finding of No Significant Impact in the **Federal Register**.

I. Environmental Assessment

Identification of Proposed Action

The proposed action would approve Rose-Hulman Institute of Technology's request to amend its license and release the Facility for unrestricted use in accordance with 10 CFR Part 20, Subpart E. The Licensee received its initial NRC license on July 19, 1977, pursuant to 10 CFR Part 30, and this license was superceded on February 2, 1989, by NRC License No. 13–17582–02. These licenses authorized the Licensee to use low millicurie quantities of byproduct materials in sealed and unsealed form for training and teaching students in nuclear and radiation physics. The Licensee is currently authorized to possess and use millicurie quantities of byproduct materials in sealed sources.

The Licensee's Facility is a cinder block building of 100–150 square feet located about 60 feet northwest of the north end of Moench Hall (the Institute's main classroom building). The Facility contained a lead storage vault and was used to store plutonium-239/Beryllium neutron sources (which have been transferred to an authorized disposal agent), and an americium-241 sealed source.

Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities in accordance with its NRC-approved operating radiation safety procedures were required. The Licensee was not required to submit a decommissioning plan to the NRC because cleanup activities and procedures are consistent with those approved for routine operations. The Licensee provided survey results which demonstrated that the Facility was in compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.'' No radiological remediation activities are required to complete the proposed action. The NRC completed a closeout inspection and independent radiological surveys of the Licensee's Facility on July 13, 2006, (NRC Inspection Report No. 030–30904/06–001 (ADAMS Accession No. ML062140020)), which verified the Licensee's survey findings.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning that ensures that residual radioactivity at the Facility is reduced to a level that is protective of the public health and safety and the environment, and allows the Facility to be released for unrestricted use.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided and surveys performed by the Licensee to demonstrate that the release of the Facility is consistent with the radiological criteria for unrestricted use

specified in 10 CFR 20.1402. The NRC performed a closeout inspection and survey to confirm the Licensee's findings. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening values described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 1. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR part 20 for unrestricted release. The NRC considers these DCGLs to be in compliance with the As Low As Is Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The Licensee's final status survey results were below these DCGLs, and are thus acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Further, no incidents were recorded involving spills or releases of radioactive material at the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Alternatives to the Proposed Action

The only alternative to the proposed action of allowing unrestricted release is no action. Under the no-action alternative, the Facility would remain under an NRC license and would not be released for unrestricted use. Denial of the license amendment request would result in no change to current conditions at the Facility. The no-action alternative is not acceptable because it would result in violation of NRC's Timeliness Rule (10 CFR Part 30.36), which requires Licensees to decommission their facilities when licensed activities cease. This alternative would also impose an unnecessary regulatory burden and limit potential benefits from future use of the Licensee's property.

Conclusion

The NRC staff concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action will not affect listed species or critical habitats. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

The NRC provided a draft of its Environmental Assessment (EA) to Mr. Rex J. Bowser, Program Director, Radiation Emergency Response Program, Radiological Health Section, Indiana State Department of Health for review on July 25, 2006. On July 26, 2006, Mr. Bowser responded back to the NRC by e-mail and indicated that ''The IN State Dept. of Health, Radiological Health Section has no objections to this proposed action.''

II. Finding of No Significant Impact

On the basis of the EA in support of the proposed license amendment to release the Facility for unrestricted use, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment. Thus, the NRC has not prepared an environmental impact statement for the proposed action.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. The documents and ADAMS accession numbers related to this notice are:

1. Letter dated February 14, 2006, with ''Final Status Survey of the Radioactive Source Storage Building at the Rose-Hulman Institute of Technology,'' dated September 27, 2005, attached. (ADAMS Accession No. ML062230210).

2. NRC Inspection Report No. 030–30904/06–001. (ML062140020).

3. U.S. Nuclear Regulatory Commission, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003.

4. U.S. Nuclear Regulatory Commission, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, August 1994.

5. NRC, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volumes 1–3, September 2003.

Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 18th day of August 2006.

For the Nuclear Regulatory Commission,

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 06–7239 Filed 8–29–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS335]

WTO Dispute Settlement Proceeding Regarding United States—Antidumping Measure on Shrimp From Ecuador

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that Ecuador has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement''). That request may be found at *http://www.wto.org* contained in a document designated as WT/DS335/6. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 22, 2006, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to *FR0603@ustr.eop.gov*, Attn: ''Ecuador Shrimp AD Dispute (DS335)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: Bruce Hirsh, Deputy Assistant United States Trade Representative for Monitoring and Enforcement, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Ecuador

On December 23, 2004, the U.S. Department of Commerce published in the **Federal Register** notice of its affirmative final less-than-fair-value (''LTFV'') determination in the antidumping investigation concerning certain frozen and canned warmwater shrimp from Ecuador (69 FR 76913). On February 1, 2005, the Department of Commerce published notice of an amended final LTFV determination, along with an antidumping duty order (70 FR 5156). The latter notice contains the final margins of LTFV sales.

In its request for the establishment of a panel, Ecuador alleges that the Department of Commerce improperly calculated margins of dumping by ''zeroing'' so-called ''negative anti-dumping margins.'' Based on the use of zeroing, Ecuador alleges that the final LTFV determination and the antidumping duty order are inconsistent with the first sentence of Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. In this regard, on March 6, 2006, the Department of Commerce announced that it will no longer use ''zeroing'' when making average-to-average comparisons in an antidumping investigation. *See* 71 FR 11189.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) Electronically, to *FR0603@ustr.eop.gov*, Attn: ''Ecuador Shrimp AD Dispute (DS335)'' in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–335, Ecuador Shrimp AD Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative, for Monitoring and Enforcement.

[FR Doc. E6–14346 Filed 8–29–06; 8:45 am]

BILLING CODE 3190–W6–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') approve, under the Paperwork Reduction Act, of a collection of information under its regulation on Administrative Appeals. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 30, 2006.

ADDRESSES: Comments may be mailed to the Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address during normal business hours. Comments also may be submitted by e-mail to *paperwork.comments@pbgc.gov*, or by fax to 202–326–4224. The PBGC will make all comments available on its Web site at *http://www.pbgc.gov*.

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The PBGC's regulation on Administrative Appeals may be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, or Donald McCabe, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by the PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with the PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or e-mail. For appeals of benefit determinations, the PBGC has developed new optional forms for filing appeals and requests for extensions of time to appeal.

The PBGC intends to request that OMB approve this collection of information for three years. 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 PBGC estimates that an average of 850 appellants per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 0.75 hours and $55 per appellant, with an average total annual burden of 640 hours and $46,750.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the 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.

Issued in Washington, DC, this 24th day of August 2006.

Cris Birch,

Acting Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. E6–14477 Filed 8–29–06; 8:45 am]

BILLING CODE 7709–01–P

POSTAL RATE COMMISSION

[Docket No. MC2006–7; Order No. 1476]

Stamped Stationery

AGENCY: Postal Rate Commission.

ACTION: Notice of new docket.

SUMMARY: The Commission has determined that Stamped Stationery the Postal Service offers to the general public meets the definition of a ''postal service.'' This order institutes a mail classification docket for the purpose of developing classification language and a fee schedule for Stamped Stationery. Conducting this docket will allow interested persons to participate in developing appropriate classification provisions and fees.

DATES: Deadline for the Postal Service to file a request to establish the stamped stationery classification or, in the absence of a request, date for termination of docket: February 26, 2007; deadline for notices of intervention: March 26, 2007 (28 days after filing of Request).

ADDRESSES: File all documents referred to in this order electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, 202–789–6820.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 3623(b), the Commission is instituting a mail classification case for the purpose of receiving a Request from the Postal Service for a recommended decision establishing a classification and fee schedule for Stamped Stationery.

In Order No. 1475, issued contemporaneously herewith, the Commission held Stamped Stationery to be a postal service.[1] As explained in that order, the Commission found maintaining the status quo for a brief interim period to be in the public interest. *Id.* at 12, *et seq.* This approach provides the Postal Service a reasonable interval to prepare its Request without disrupting the Stamped Stationery market or causing the Postal Service to incur any costs that might be occasioned by withdrawal of the product.

Although its qualities, including design and purpose, make it a postal service, Stamped Stationery is, nonetheless, a specialty item, which, among other things, no mailer is required to purchase. Under the circumstances, a novel pricing approach may be warranted for Stamped Stationery.

By signaling a willingness to consider a novel pricing approach, the Commission hopes to encourage the Postal Service and interested persons to consider innovative rate designs suitable for this specialty product. *See*

[1] PRC Order No. 1475, Docket No. C2004–3, August 24, 2006.

id. at 13–15. In Docket No. C2004–3, pleadings addressed fee levels for Stamped Stationery. Although those arguments were not germane to the jurisdictional issue, they appear, at least at first blush, to be somewhat problematic. Consequently, in suggesting that a creative pricing approach may be appropriate, the Commission hopes to focus interested persons on the challenge at hand and perhaps to temper rote reliance on any preconceived fee structures.

The Commission's observations may also have the salutary effect of encouraging discussion among interested parties concerning an acceptable fee structure. With the threshold issue resolved, this possibility would not appear to be an unobtainable goal. It may, however, prove to be elusive. This guidance simply reflects the Commission's preliminary views. It is not intended to limit any interested persons' option, and participants remain free to present evidence and argument as they wish.

To facilitate discussions among interested persons the Commission will allow notices of intervention to be filed in this proceeding. Intervention, at this stage, will permit intervenors, including the Office of the Consumer Advocate, to participate in any pre-or post-filing conference the Postal Service may wish to convene. To the extent such conference(s) may be convened, any such discussions would be deemed privileged in any proceeding before the Commission.

Sunset date. To ensure this docket proceeds in an orderly fashion, the Commission establishes a due date for the filing of a request of February 26, 2007. Absent a request or other filing related thereto filed on or before that date, this docket will terminate and be considered withdrawn as of February 26, 2007.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2006–7 for the purpose of receiving a request from the Postal Service for a recommended decision establishing a classification and fee schedule for Stamped Stationery.

2. The Commission will sit *en banc* in this proceeding.

3. Notices of intervention are due no later than 28 days following the submission of the Postal Service Request.

4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

5. The due date for filing a request to establish the Stamped Stationery classification in this proceeding is February 26, 2007.

6. Absent a request or other filing related thereto filed on or before February 26, 2007, this docket will terminate and be considered withdrawn as of February 26, 2007.

7. The Secretary shall arrange for publication of this document in the **Federal Register**.

Dated: August 25, 2006.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E6–14408 Filed 8–29–06; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–74, Title I, General Provisions, Section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement, gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower

retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724, as well as the appropriate offices within your agency (*e.g.*, EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: August 24, 2006.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 06–7247 Filed 8–29–06; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Amanda Company, Inc., American International Petroleum Corp., China Continental, Inc., Com21, Inc., Cycomm International, Inc., DeMarco Energy Systems of America, Inc., Eco Soil Systems, Inc., Edulink, Inc., H. Quotient, Inc., Healthtrac, Inc., Management Technologies, Inc., Metal Recovery Technologies, Inc., Paystar Corp., Royal Oak Mines, Inc., Rubber Technology International, Inc., Seven Seas Petroleum, Inc., Surebeam Corp., Syncronys Softcorp, Touch America Holdings, Inc., U.S. Plastic Lumber Corp., and Xcelera, Inc.; Order of Suspension of Trading

August 28, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amanda Company, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American International Petroleum Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Continental, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Com21, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cycomm International, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DeMarco Energy Systems of America, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eco Soil Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Edulink, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of H Quotient, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Healthtrac, Inc. because it has not filed any periodic reports since the period ended November 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Management Technologies, Inc. because it has not filed any periodic reports since the period ended October 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metal Recovery Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Paystar Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Royal Oak Mines, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rubber Technology International, Inc. because it has not filed any periodic reports since the period ended August 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Seven Seas Petroleum, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Surebeam Corp. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Syncronys Softcorp because it has not filed any periodic reports since the period ended March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Touch America Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Plastic Lumber Corp. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xcelera, Inc. because it has not filed any periodic reports since the period ended January 31, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies, including trading in the debt securities of Seven Seas Petroleum, Inc., is suspended for the period from 9:30 a.m. EDT on August 28, 2006, through 11:59 p.m. EDT on September 11, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–7299 Filed 8–28–06; 1:22 pm]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming public Council information gathering meeting. The NWBC will host an information gathering dialogue with female members of the United States Senate. The meeting will be held on Tuesday, September 12, 2006, starting at 4:30 to 5:30 p.m. The meeting will take place at the Dirksen Senate Office Building, Room SD–138, Washington, DC.

The purpose of the meeting is to discuss the impact of current federal policies on women's entrepreneurship and exchange ideas about goals for the women's business community for the next three, five and ten years.

The meeting is open to the public and you must RSVP to attend. Anyone wishing to attend, please contract Katherine Stanley no later than Friday, September 8, 2006, by e-mail at *Katherine.@Stanley.sba.gov* or fax to 202–205–6825.

Stephen Galvan,

Chief Operating Officer.

[FR Doc. 06–7230 Filed 8–29–06; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming public Council Web cast, focusing on policy priorities of women entrepreneurs. The NWBC Web cast will broadcast on Tuesday, September 12, 2006, starting at 3 p.m. until 4 p.m., online at *http:/client.uvault.com/nwbc/*. No registration is required to participate online. To attend in person, the Web cast will take place at the George Washington University School of Business, 2201 G Street, NW., Duques Hall, Suite 660, Washington, DC 20052.

The purpose of this one-hour Web cast is to discuss public policies impacting women business owners and their enterprises. Decisions made in Congress have a profound impact on women-owned businesses everyday.

This event is open to the public and you must RSVP to attend. Anyone wishing to attend, please contact Katherine Stanley, no later than Friday, September 8, 2006, by e-mail *Katherine.Stanley@sba.gov* or telephone (202) 205–3850.

Sincerely,

Stephen Galvan,

Chief Operating Officer.

[FR Doc. E6–14362 Filed 8–29–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming public Council meeting. The meeting will be held on Wednesday, September 13, 2006, starting at 10 a.m. to 1 p.m. The meeting will be held at the Hall of States, 444 North Capitol Street, Suite #237, Rooms 333–335, Washington, DC 20001.

The purpose of the meeting is the swearing in of new members, an update of the Council's current projects, review of our FY 2007 budget, a discussion of project possibilities for the coming year and exchange ideas about goals for the women's business community for the next three, five and ten years.

Anyone wishing to attend the meeting should contact Katherine Stanley no later than Friday, September 8, 2006, by e-mail; *katherine.stanley@sba.gov,* or fax; 202–205–6825. Anyone wishing to make a presentation to the Council during the meeting must contact Margaret M. Barton in writing by Friday, September 8, 2006, at the National Women's Business Council, 409 Third Street, SW., Suite 210, Washington, DC 20024; e-mail; *Margaret.barton@sba.gov* or fax; 202–205–6825 in order to be put on the agenda.

Sincerely,

Stephen Galvan,

Chief Operating Officer.

[FR Doc. E6–14363 Filed 8–29–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5530]

Culturally Significant Objects Imported for Exhibition Determinations: ''Barcelona & Modernity: Picasso, Gaudi, Miro, Dali''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Barcelona & Modernity: Picasso, Gaudi, Miro, Dali,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, Ohio, from on or about October 15, 2006, until on or about January 7, 2007, at The Metropolitan Museum of Art, New York, New York, beginning on or about March 4, 2006, until on or about June 3, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 23, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14450 Filed 8–29–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5528]

Culturally Significant Objects Imported for Exhibition Determinations: ''Discovering the Dead Sea Scrolls''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Discovering the Dead Sea Scrolls,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Pacific Science Center, Seattle, Washington, from on or about September 23, 2006, until on or about January 7, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

August 23, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14465 Filed 8–29–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5529]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gilded Splendor: Treasures of China's Liao Empire (907–1125)''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Gilded Splendor: Treasures of China's Liao Empire (907–1125),'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asia Society and Museum, New York, New York, from on or about October 5, 2006, until on or about December 31, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 23, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14456 Filed 8–29–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5531]

Culturally Significant Objects Imported for Exhibition Determinations: ''Of Gold and Grass: Nomads of Kazakhstan''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Of Gold and Grass: Nomads of Kazakhstan,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Mingei International Museum, San Diego, California, from on or about October 20, 2006, until on or about March 15, 2007, at the Houston Natural Science Museum, Houston, Texas, beginning on or about June 2, 2007, until on or about September 3, 2007, and at possible additional venues yet to be determined, is in the national

interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 23, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14466 Filed 8–29–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5507]

Advisory Committee on Historical Diplomatic Documentation Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 C Street NW., Washington, DC September 11–12, 2006, in Conference Room 1107. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Chris Tudda, Office of the Historian (202–663–3054) no later than September 6, 2006 to provide date of birth, valid government-issued photo ID (such as driver's license, passport, U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult Chris Tudda for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, September 11, 2006, in Room 1105 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, September 11, 2006, and 9 a.m. until 1 p.m. on Tuesday, September 12, 2006, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: August 14, 2006.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E6–14464 Filed 8–29–06; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25695]

Notice of a Proposed Change in Monitor Status of Air Navigational Aids at Two Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration (FAA) is requesting public comment on a proposal to change the monitor status of air navigational aids (NAVAIDS) at two (2) airports.

The NAVAIDS are currently monitored by Automated Flight Service Stations (AFSS) in Florida and Wyoming that were formerly operated by the FAA. Since October 4, 2005 these AFSS sites have been operating under a Federal Contract with Lockheed Martin Corporation. During the early stages of the contracting process, the FAA determined that monitoring of NAVAIDS was not part of the mission of flight service stations and therefore was not included in the contract.

Neither of the NAVAIDS are part of a published instrument approach into an airport. The proposed time for the NAVAIDS to become unmonitored is 30 days prior to the date the respective AFSS site closes for consolidation into a Lockheed Martin FS–21 site.

The Non-Directional Beacons (NDB) that are proposed to become unmonitored are: Antelope (AOP) NDB, Rock Springs, Wyoming; and Vero Beach (VEP) NDB, Vero Beach, Florida.

DATES: Comments must be received by September 29, 2006.

ADDRESSES: Written comments may be submitted [identified by Docket Number FAA–2006–25695] using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.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:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: All comments received will be posted, without change, to *http://dms.dot.gov*, including any personal information you provide (such as signatures on behalf of an association, business, labor union, or any other group). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or by visiting *http://dms.dot.gov*.

Docket: To read the comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeanne Giering, Manager, Flight Services Operations Procedures and Safety; Mail Drop: 1575 Eye Street, NW., Room 9400; 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–7627; fax (202) 385–7617; e-mail *Jeanne.Giering@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons or organizations to submit written comments or views concerning this proposal. Please reference the Docket Number at the beginning of your comments. Comments should be specific and should explain the reason for your concurrence or non-concurrence with the proposal, including supporting data.

Please send two (2) copies of your comments to one of the addresses listed in the **ADDRESSES** section of this document.

All comments submitted will be available for public viewing either in person or online, including any personal information you provide. Please refer to the PRIVACY section of this document.

Issued in Washington, DC, on August 21, 2006.

John T. Staples,

Director, Flight Services Program Operations Office.

[FR Doc. 06–7252 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25687]

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming vehicles imported by registered importers.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Calendar Year 2005 (January 1, 2005 through December 31, 2005) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that NHTSA has decided are substantially similar to vehicles imported into the United States that were not originally manufactured and certified to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are required to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (*i.e.*, ''recall'') campaign, 49 U.S.C. 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Calendar Year 2005. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR Part 573. After December 31, 2006, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current calendar year.

Under 49 U.S.C. 30120(a), a manufacturer may remedy a safety-related defect or noncompliance in a motor vehicle by repairing the vehicle, replacing the vehicle with an identical or reasonably equivalent vehicle, or by refunding the purchase price, less a reasonable allowance for depreciation. For each of the vehicles listed, the manufacturer elected to remedy the defect or noncompliance by repair, and not by replacing the vehicle or by refunding the purchase price.

Authority: 49 U.S.C. 30147(a)(2); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 24, 2006.

Claude H. Harris,

Director, Office of Vehicle, Safety Compliance.

Annex A

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Model year	NHTSA recall No.
ACURA	MDX	2001	05V385000
ACURA	MDX	2002	05V385000
ACURA	TL	1999	05V025000
ACURA	TL	2000	05V025000
ASTON MARTIN	VANQUISH	2002	04V538000
ASTON MARTIN	VANQUISH	2003	04V538000
BMW	X5	2006	05V504000
BUICK	RENDEZVOUS	2004	05V157000
CADILLAC	CTS	2004	05V024000
CADILLAC	ESCALADE	2003	05V163000
CADILLAC	ESCALADE	2004	05V163000
CADILLAC	ESCALADE	2005	05V055000
CADILLAC	ESCALADE	2005	05V163000
CHEVROLET	ASTRO	2001	05V099000
CHEVROLET	ASTRO	2002	05V099000
CHEVROLET	AVALANCHE	2002	05V379000
CHEVROLET	AVALANCHE	2003	05V163000
CHEVROLET	AVALANCHE	2004	05V043000
CHEVROLET	AVALANCHE	2004	05V163000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
CHEVROLET	CAVALIER	2003	04V524000
CHEVROLET	CORVETTE	2005	04V525000
CHEVROLET	CORVETTE	2005	05V455000
CHEVROLET	CORVETTE	2006	05V455000
CHEVROLET	EXPRESS	2004	05V043000
CHEVROLET	MALIBU	2003	04V528000
CHEVROLET	SILVERADO	1999	05V161000
CHEVROLET	SILVERADO	1999	05V379000
CHEVROLET	SILVERADO	2000	05V005000
CHEVROLET	SILVERADO	2000	05V161000
CHEVROLET	SILVERADO	2000	05V379000
CHEVROLET	SILVERADO	2001	05V161000
CHEVROLET	SILVERADO	2001	05V379000
CHEVROLET	SILVERADO	2002	05V161000
CHEVROLET	SILVERADO	2002	05V379000
CHEVROLET	SILVERADO	2003	05V161000
CHEVROLET	SILVERADO	2003	05V163000
CHEVROLET	SILVERADO	2004	05V043000
CHEVROLET	SILVERADO	2004	05V161000
CHEVROLET	SILVERADO	2004	05V163000
CHEVROLET	SILVERADO	2005	05V018000
CHEVROLET	SILVERADO	2005	05V043000
CHEVROLET	SILVERADO	2005	05V055000
CHEVROLET	SILVERADO	2005	05V161000
CHEVROLET	SILVERADO	2005	05V163000
CHEVROLET	SILVERADO	2005	05V455000
CHEVROLET	SILVERADO	2006	05V455000
CHEVROLET	SUBURBAN	2000	05V005000
CHEVROLET	SUBURBAN	2000	05V155000
CHEVROLET	SUBURBAN	2000	05V379000
CHEVROLET	SUBURBAN	2001	05V155000
CHEVROLET	SUBURBAN	2001	05V379000
CHEVROLET	SUBURBAN	2002	05V379000
CHEVROLET	SUBURBAN	2003	05V163000
CHEVROLET	SUBURBAN	2004	05V043000
CHEVROLET	SUBURBAN	2004	05V163000
CHEVROLET	TAHOE	2000	05V379000
CHEVROLET	TAHOE	2001	05V379000
CHEVROLET	TAHOE	2002	05V379000
CHEVROLET	TAHOE	2003	05V163000
CHEVROLET	TAHOE	2004	05V163000
CHEVROLET	TAHOE	2005	05V055000
CHEVROLET	TAHOE	2005	05V103000
CHEVROLET	TAHOE	2005	05V163000
CHEVROLET	TRAILBLAZER	2003	05V198000
CHEVROLET	TRAILBLAZER	2004	05V198000
CHEVROLET	UPLANDER	2005	05V061000
CHEVROLET	UPLANDER	2005	05V287000
CHEVROLET	VENTURE	1997	04V597000
CHEVROLET	VENTURE	1998	04V597000
CHEVROLET	VENTURE	1999	04V597000
CHEVROLET	VENTURE	2000	04V597000
CHEVROLET	VENTURE	2001	04V597000
CHEVROLET	VENTURE	2002	04V597000
CHEVROLET	VENTURE	2003	04V597000
CHEVROLET	VENTURE	2004	04V597000
CHEVROLET	VENTURE	2005	04V597000
CHRYSLER	300	2005	05V460000
CHRYSLER	PACIFICA	2005	05V066000
CHRYSLER	TOWN AND COUNTRY	2001	04V531000
DODGE	CARAVAN	2001	04V531000
DODGE	CARAVAN	2002	04V531000
DODGE	CARAVAN	2003	05V134000
DODGE	DURANGO	2005	05V034000
DODGE	DURANGO	2005	05V460000
DODGE	GRAND CARAVAN	2001	04V531000
DODGE	GRAND CARAVAN	2002	04V531000
FORD	BRONCO	1994	05V388000
FORD	BRONCO	1995	05V388000
FORD	BRONCO	1996	05V388000
FORD	CROWN VICTORIA	1997	05V086000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
FORD	CROWN VICTORIA	2003	05V206000
FORD	CROWN VICTORIA	2004	05V206000
FORD	CROWN VICTORIA	2005	05V206000
FORD	CROWN VICTORIA	2005	05V518000
FORD	E–250	2006	05V520000
FORD	E–350	2006	05V520000
FORD	E–250	2002	04V589000
FORD	E–250	2003	04V589000
FORD	E–250	2004	04V589000
FORD	E–350	2002	04V589000
FORD	E–350	2003	04V589000
FORD	E–350	2004	04V589000
FORD	E–350	2004	05V270000
FORD	E–350	2005	05V270000
FORD	E–450	2004	05V270000
FORD	ESCAPE	2001	04V602000
FORD	ESCAPE	2002	04V574000
FORD	ESCAPE	2002	04V602000
FORD	ESCAPE	2003	04V574000
FORD	ESCAPE	2003	04V602000
FORD	ESCAPE	2004	04V574000
FORD	ESCAPE	2004	04V602000
FORD	ESCAPE	2005	04V602000
FORD	EXCURSION	2004	05V270000
FORD	EXCURSION	2005	05V270000
FORD	EXPEDITION	1997	05V388000
FORD	EXPEDITION	1998	05V388000
FORD	EXPEDITION	1999	05V388000
FORD	EXPEDITION	2000	05V017000
FORD	EXPEDITION	2000	05V388000
FORD	EXPEDITION	2001	05V388000
FORD	EXPEDITION	2002	05V388000
FORD	EXPEDITION	2006	05V310000
FORD	EXPEDITION	2006	05V520000
FORD	EXPLORER	2006	05V520000
FORD	F–150	2006	05V520000
FORD	F–150	1994	05V388000
FORD	F–150	1995	05V388000
FORD	F–150	1996	05V388000
FORD	F–150	1997	05V388000
FORD	F–150	1998	05V388000
FORD	F–150	1999	05V388000
FORD	F–150	2000	05V017000
FORD	F–150	2000	05V388000
FORD	F–150	2001	05V388000
FORD	F–150	2002	05V388000
FORD	F–250	1994	05V388000
FORD	F–250	1995	05V388000
FORD	F–250	1996	05V388000
FORD	F–250	1997	05V388000
FORD	F–250	1998	05V388000
FORD	F–250	1999	05V388000
FORD	F–650	2005	05V202000
FORD	F–650	2005	05V415000
FORD	F–750	2005	05V202000
FORD	F–750	2005	05V415000
FORD	FOCUS	2000	05V030000
FORD	FOCUS	2001	05V030000
FORD	FOCUS	2002	05V030000
FORD	FOCUS	2003	05V030000
FORD	FOCUS	2004	05V030000
FORD	FOCUS	2005	05V030000
FORD	SUPERCREW	2001	05V017000
FREIGHTLINER	COLUMBIA	2002	05V001000
FREIGHTLINER	CORONADO	2004	05V408000
GMC	ENVOY	2003	05V198000
GMC	ENVOY	2004	05V198000
GMC	SAFARI	2001	05V099000
GMC	SAFARI	2002	05V099000
GMC	SAVANA	2000	05V005000
GMC	SIERRA	1999	05V161000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
GMC	SIERRA	1999	05V379000
GMC	SIERRA	2000	05V005000
GMC	SIERRA	2000	05V161000
GMC	SIERRA	2000	05V379000
GMC	SIERRA	2001	05V161000
GMC	SIERRA	2001	05V379000
GMC	SIERRA	2002	05V161000
GMC	SIERRA	2002	05V379000
GMC	SIERRA	2003	05V161000
GMC	SIERRA	2003	05V163000
GMC	SIERRA	2004	05V043000
GMC	SIERRA	2004	05V161000
GMC	SIERRA	2004	05V163000
GMC	SIERRA	2005	05V018000
GMC	SIERRA	2005	05V043000
GMC	SIERRA	2005	05V055000
GMC	SIERRA	2005	05V161000
GMC	SIERRA	2005	05V163000
GMC	SIERRA	2005	05V455000
GMC	W4500	2003	05V168000
GMC	W5500	2003	05V168000
GMC	W5500	2004	05V168000
GMC	YUKON	2000	05V379000
GMC	YUKON	2001	05V379000
GMC	YUKON	2002	05V379000
GMC	YUKON	2003	05V163000
GMC	YUKON	2004	05V163000
GMC	YUKON	2005	05V055000
GMC	YUKON	2005	05V103000
GMC	YUKON	2005	05V163000
GMC	YUKON XL	2000	05V005000
GMC	YUKON XL	2000	05V155000
GMC	YUKON XL	2000	05V379000
GMC	YUKON XL	2001	05V155000
GMC	YUKON XL	2001	05V379000
GMC	YUKON XL	2002	05V379000
HARLEY DAVIDSON	FLSTC	2002	05V151000
HARLEY DAVIDSON	FLSTC	2003	05V151000
HARLEY DAVIDSON	FLSTC	2004	05V151000
HARLEY DAVIDSON	FLSTC	2005	05V151000
HARLEY DAVIDSON	FLSTCI	2002	05V151000
HARLEY DAVIDSON	FLSTCI	2003	05V151000
HARLEY DAVIDSON	FLSTCI	2004	05V151000
HARLEY DAVIDSON	FLSTCI	2005	05V151000
HARLEY DAVIDSON	FLSTF	2002	05V151000
HARLEY DAVIDSON	FLSTF	2003	05V151000
HARLEY DAVIDSON	FLSTF	2004	05V151000
HARLEY DAVIDSON	FLSTF	2005	05V151000
HARLEY DAVIDSON	FLSTFI	2002	05V151000
HARLEY DAVIDSON	FLSTFI	2003	05V151000
HARLEY DAVIDSON	FLSTFI	2004	05V151000
HARLEY DAVIDSON	FLSTFI	2005	05V151000
HARLEY DAVIDSON	FLSTN	2002	05V151000
HARLEY DAVIDSON	FLSTN	2005	05V151000
HARLEY DAVIDSON	FLSTNI	2005	05V151000
HARLEY DAVIDSON	FXDWGI	2004	05V430000
HARLEY DAVIDSON	ROAD KING	2004	04V465000
HARLEY DAVIDSON	SOFTAIL	2004	04V465000
HONDA	ACCORD	1999	05V025000
HONDA	ACCORD	2000	05V025000
HONDA	ACCORD	2001	05V025000
HONDA	ACCORD	2002	05V025000
HONDA	GL1800A	2002	05V010000
HONDA	GL1800A	2002	05V027000
HONDA	ODYSSEY	2005	05V039000
HONDA	ODYSSEY	2005	05V132000
HONDA	ODYSSEY	2005	05V344000
HONDA	PRELUDE	1997	05V025000
HONDA	PRELUDE	1998	05V025000
HONDA	PRELUDE	1999	05V025000
HONDA	PRELUDE	2000	05V025000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
HONDA	PRELUDE	2001	05V025000
HONDA	VFR800	2002	05V010000
HUMMER	H2	2004	05V043000
HUMMER	H2	2004	05V163000
HUMMER	H2	2005	05V043000
HUMMER	H2	2005	05V163000
HYUNDAI	ELANTRA	2004	05V395000
HYUNDAI	ELANTRA	2004	05V479000
INTERNATIONAL	4300	2006	05V297000
INTERNATIONAL	4400	2004	04V569000
INTERNATIONAL	4800	1999	03V415000
INTERNATIONAL	4800	2000	03V415000
INTERNATIONAL	7400	2002	05V188000
INTERNATIONAL	7400	2003	05V188000
INTERNATIONAL	7400	2005	04V569000
INTERNATIONAL	7400	2005	05V188000
INTERNATIONAL	7400	2006	05V188000
INTERNATIONAL	7500	2002	05V188000
INTERNATIONAL	7500	2003	05V188000
INTERNATIONAL	7500	2005	04V569000
INTERNATIONAL	7500	2005	05V188000
INTERNATIONAL	7500	2006	05V188000
INTERNATIONAL	7600	2003	05V188000
INTERNATIONAL	7600	2004	04V569000
INTERNATIONAL	7600	2004	05V188000
INTERNATIONAL	7600	2005	04V569000
INTERNATIONAL	7600	2005	05V188000
INTERNATIONAL	7600	2006	05V188000
INTERNATIONAL	9900I	2005	05V296000
JAGUAR	S–TYPE	2002	04V484000
JAGUAR	S–TYPE	2003	04V484000
JAGUAR	X–TYPE	2002	04V487000
JEEP	WRANGLER	2005	05V460000
KENWORTH	C500	2005	05V189000
KENWORTH	C500	2005	05V237000
KENWORTH	T300	2005	05V417000
KENWORTH	T300	2006	05V417000
KENWORTH	T600	2004	04V580000
KENWORTH	T600	2004	05V189000
KENWORTH	T800	2004	04V580000
KENWORTH	T800	2004	05V084000
KENWORTH	T800	2004	05V189000
KENWORTH	T800	2005	05V084000
KENWORTH	T800	2005	05V189000
KENWORTH	T800	2005	05V237000
KENWORTH	T800	2005	05V543000
KENWORTH	T800	2006	05V543000
KENWORTH	W900	2005	05V084000
KENWORTH	W900	2005	05V189000
KENWORTH	W900	2005	05V237000
KIA	RIO	2001	05V159000
KIA	SEDONA	2002	05V013000
KIA	SEDONA	2003	05V013000
KIA	SEDONA	2003	05V232000
KIA	SEDONA	2003	05V329000
KIA	SORENTO	2003	05V353000
LAND ROVER	FREELANDER	2002	04V347000
LAND ROVER	FREELANDER	2002	05V300000
LAND ROVER	FREELANDER	2004	04V347000
LAND ROVER	FREELANDER	2004	05V300000
LAND ROVER	RANGE ROVER	2006	05V502000
LEXUS	LX470	1998	04V434000
LEXUS	LX470	1999	04V434000
LEXUS	LX470	2000	04V434000
LEXUS	LX470	2002	04V434000
LINCOLN	NAVIGATOR	1998	05V388000
LINCOLN	NAVIGATOR	1999	05V388000
LINCOLN	NAVIGATOR	2000	05V017000
LINCOLN	NAVIGATOR	2000	05V388000
LINCOLN	NAVIGATOR	2001	05V388000
LINCOLN	NAVIGATOR	2002	05V388000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
LINCOLN	NAVIGATOR	2006	05V310000
LINCOLN	NAVIGATOR	2006	05V519000
LINCOLN	NAVIGATOR	2006	05V520000
LINCOLN	TOWNCAR	2005	05V518000
MAZDA	TRIBUTE	2001	04V605000
MAZDA	TRIBUTE	2002	04V583000
MAZDA	TRIBUTE	2002	04V605000
MERCEDES BENZ	G55	2005	05V378000
MERCURY	MARQUIS	1997	05V086000
MINI	COOPER	2002	05V470000
NATIONAL	ISLANDER	2006	05V196000
NISSAN	MURANO	2003	05V319000
OLDSMOBILE	ALERO	2003	04V528000
OLDSMOBILE	BRAVADA	2003	05V198000
OLDSMOBILE	SILHOUETTE	1997	04V597000
OLDSMOBILE	SILHOUETTE	1998	04V597000
OLDSMOBILE	SILHOUETTE	1999	04V597000
OLDSMOBILE	SILHOUETTE	2000	04V597000
OLDSMOBILE	SILHOUETTE	2001	04V597000
OLDSMOBILE	SILHOUETTE	2002	04V597000
OLDSMOBILE	SILHOUETTE	2003	04V597000
OLDSMOBILE	SILHOUETTE	2004	04V597000
PETERBILT	335	2005	05V417000
PETERBILT	335	2006	05V417000
PETERBILT	357	2004	05V189000
PETERBILT	357	2005	05V189000
PETERBILT	378	2005	05V189000
PETERBILT	378	2005	05V543000
PETERBILT	379	2005	05V189000
PETERBILT	387	2005	05V543000
PLYMOUTH	VOYAGER	2001	04V531000
PONTIAC	GRAND AM	2003	04V528000
PONTIAC	GRAND AM	2005	05V054000
PONTIAC	GRAND PRIX	2004	05V046000
PONTIAC	MONTANA	1997	04V597000
PONTIAC	MONTANA	1998	04V597000
PONTIAC	MONTANA	1999	04V597000
PONTIAC	MONTANA	2000	04V597000
PONTIAC	MONTANA	2001	04V597000
PONTIAC	MONTANA	2002	04V597000
PONTIAC	MONTANA	2003	04V597000
PONTIAC	MONTANA	2004	04V597000
PONTIAC	SUNFIRE	2003	04V524000
PONTIAC	TRANS SPORT	1999	04V597000
PONTIAC	TRANSPORT	1997	04V597000
PONTIAC	TRANSPORT	1998	04V597000
PORSCHE	CAYENNE	2004	04V593000
PORSCHE	CAYENNES	2003	04V593000
STERLING	ACTERRA	2003	05V126000
STERLING	ACTERRA	2004	05V125000
STERLING	ACTERRA	2004	05V126000
STERLING	ACTERRA	2005	05V125000
STERLING	CONDOR	2003	04V401000
STERLING	CONDOR	2003	04V453000
STERLING	LT9500	2004	04V590000
SUZUKI	GRAND VITARA	1999	05V452000
SUZUKI	GRAND VITARA	2000	05V452000
SUZUKI	GRAND VITARA	2002	05V452000
SUZUKI	GRAND VITARA	2005	05V452000
TOYOTA	4 RUNNER	1989	05V389000
TOYOTA	4 RUNNER	1990	05V389000
TOYOTA	4 RUNNER	1991	05V389000
TOYOTA	4 RUNNER	1992	05V389000
TOYOTA	4 RUNNER	1993	05V389000
TOYOTA	4 RUNNER	1994	05V389000
TOYOTA	4 RUNNER	1995	05V389000
TOYOTA	4 RUNNER	2001	05V225000
TOYOTA	4 RUNNER	2002	05V225000
TOYOTA	CAMRY	2004	04V595000
TOYOTA	CELICA	2000	04V566000
TOYOTA	CELICA	2001	04V566000

CALENDAR YEAR 2005 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	NHTSA recall No.
TOYOTA	SEQUOIA	2002	05V225000
TOYOTA	SEQUOIA	2003	05V225000
TOYOTA	SIENNA	2004	05V327000
TOYOTA	SIENNA	2005	05V327000
TOYOTA	T100	1996	05V389000
TOYOTA	TACOMA	2001	05V225000
TOYOTA	TACOMA	2002	05V225000
TOYOTA	TACOMA	2003	05V225000
TOYOTA	TUNDRA	2002	05V225000
TOYOTA	TUNDRA	2003	05V225000
TOYOTA	TUNDRA	2004	05V123000
TOYOTA	TUNDRA	2004	05V225000
TOYOTA	TUNDRA	2005	05V123000
TOYOTA	TUNDRA	2005	05V328000
VOLKSWAGEN	GOLF	1999	05V154000
VOLKSWAGEN	GOLF	2000	04V584000
VOLKSWAGEN	GOLF	2000	05V154000
VOLKSWAGEN	GOLF	2001	04V584000
VOLKSWAGEN	GOLF	2002	04V584000
VOLKSWAGEN	GOLF	2004	04V586000
VOLKSWAGEN	GTI	1999	05V154000
VOLKSWAGEN	GTI	2000	04V584000
VOLKSWAGEN	GTI	2000	05V154000
VOLKSWAGEN	JETTA	2000	04V584000
VOLKSWAGEN	JETTA	2001	04V584000
VOLKSWAGEN	JETTA	2002	04V584000
VOLKSWAGEN	JETTA	2004	04V586000
VOLVO	C70	1998	04V504000
VOLVO	C70	1999	04V504000
VOLVO	C70	2000	04V504000
VOLVO	S70	1998	04V504000
VOLVO	S70	1999	04V504000
VOLVO	S70	2000	04V504000
VOLVO	V70	1998	04V504000
VOLVO	V70	1999	04V504000
VOLVO	V70	2000	04V504000
VOLVO	V70XC	1999	04V504000
VOLVO	V70XC	2000	04V504000
VOLVO	VN	2000	04V457000
WINNEBAGO	VECTRA	2005	04V608000
YAMAHA	XVS11	2000	05V067000
YAMAHA	XVS11	2000	05V256000

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BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22904, Notice 1]

Denial of Petition for Compliance Investigation

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

ACTION: Denial of petition for compliance investigation submitted by Safety Analysis & Forensic Engineering.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162 by Safety Analysis and Forensic Engineering. The petition requested that the agency commence an investigation into whether certain Ford Explorer and Mercury Mountaineer vehicles are in compliance with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 216, ''Roof crush resistance.'' After review of the petition and other information submitted by the petitioner and the vehicle manufacturer, NHTSA has concluded that further expenditure of the agency's investigative resources on the issue raised in the petition does not appear warranted. The agency has accordingly denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Krauss, Office of Vehicle Safety Compliance, NHTSA (202) 366–5292.

SUPPLEMENTARY INFORMATION:

Introduction

In September 2005, Safety Analysis & Forensic Engineering (SAFE) petitioned NHTSA to conduct an investigation to determine if model year (MY) 1999–2001 4-door Ford Explorer vehicles are in compliance with the requirements of Federal Motor Vehicle Safety Standard No. 216, ''Roof crush resistance.'' In January 2006, SAFE extended the scope of its petition to include 1997–1998 Explorers and 1997–2001 Mercury Mountaineer vehicles. Based on a thorough review of all information submitted on this matter, the agency has decided to deny the petition.

Background

FMVSS No. 216 was promulgated in 1971 for the purpose of reducing deaths and injuries that are associated with the crushing of a vehicle roof into the occupant compartment during a rollover

crash. This safety standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a Gross Vehicle Weight Rating (GVWR) of 2,722 kilograms or less. The standard does not apply to school buses and convertibles. The standard states that when a force of 1.5 times the unloaded weight of the vehicle is applied to either the driver or passenger side of a vehicle roof by a large unyielding metal plate called a platen, the roof will not crush more than 127 millimeters (5 inches). The initial contact point of the platen is typically slightly rearward of the intersection of the A pillar and the roof. In engineering terms, a vehicle roof structure is required to develop a minimum resistive force of 1.5 times the vehicle's unloaded weight during the first 127 millimeters of roof crush. Therefore, the minimum strength-to-weight ratio (STWR) for a vehicle roof tested in this manner must be 1.5.

After reviewing the SAFE petition, NHTSA invited SAFE and Ford Motor Company (Ford) to provide any additional information they believed was germane to this petition. Both companies made presentations to the agency in January of 2006. Ford made an additional submission to the agency on January 24, 2006. All submissions from both parties may be found in Docket No. NHTSA–2005–22904, which can be accessed at *http://dms.dot.gov*.

There is no dispute that Ford based its certification to FMVSS No. 216 for the MY 1999–2001 4-door Explorer on five tests conducted on prototypes that were based on the MY 1995–1997 Explorer vehicles (to distinguish this from other relevant data, we will refer to these tests as Data Set 1). Ford uses the maximum possible unloaded vehicle weight (MUVW) that can be calculated for any production vehicle when determining the STWR of the roof structure for certification purposes. Ford stated that the MUVW for 1999 models was 4,700 lbs. For the 2000 to 2001 models, the MUVW was 4,600 lbs. Ford states the average STWR for the five certification tests was 1.69, with the lowest measured as 1.63. A MUVW of 4,700 lbs was used to calculate these numbers. SAFE points out that there was an eight percent variation in the resistive forces recorded for these five certification tests.

Ford conducted two development tests in 1999 using modified Explorers from the assembly line to determine if it could make a change in the way windshields were installed in the Explorer on the assembly line (Data Set 2). According to Ford, the purpose of this testing was to determine what effect using a maskless painting process may have on how the windshield would perform during a test of the strength of the roof structure. Based on the MUVW of 4,600 lbs, the STWRs for these tests were 1.51 and 1.53. SAFE notes that on one of the test reports the Ford engineer originally calculated the STWR using a MUVW of 4,700 lbs, which suggested a test failure. Ford later corrected the MUVW on the report.[1] Ford did not institute the proposed change in production and contends that these tests were not used for certifying the 1999, 2000, or 2001 models.

The last set of data (Data Set 3) presented by Ford was generated from three tests conducted for Ford by Exponent, Inc. (Exponent). These tests were conducted on used vehicles that had between 48,800 and 91,500 miles on the odometer. Two of the vehicles were from the 1999 production and one was from the 2000 production. The average STWR calculated (using an MUVW of 4,700 lbs) was 1.55 with a force variation of two percent. SAFE has discounted these tests because Ford did not conduct them at its own facility. In addition, SAFE believes that the test procedure used by Exponent was flawed. SAFE contends that the test vehicles were supported at both the vehicle frame and the sill, thus violating the wording of the standard that states, ''Place the sills or the chassis frame on a rigid horizontal surface * * *'' 49 CFR 571.216 S7.1. In support of its contention, SAFE refers to a photograph of Exponent's test set-up, which it contends indicates that the sills of the test vehicle were welded to the test fixture. Ford, in its January 24, 2006 submission to the agency, states that the sills were not welded to the test fixture. It further explains that jacks were used only to support the vehicle overhangs and did not provide an alternative load path for the FMVSS No. 216 applied forces. Therefore, Ford asserts that the Exponent test procedure is consistent with the procedure it uses to conduct FMVSS No. 216 testing.

SAFE analyzed the above three sets of test data and concluded that the margin of compliance of the 4-door Explorer decreased from the time Ford conducted its certification testing. Because SAFE discounted the tests conducted by Exponent, it compared only Data Set 1 with Data Set 2. SAFE applied the eight percent variance it calculated for the resistive force of the five certification tests (Data Set 1) to the average STWR Ford provided for the second set of data, i.e., the windshield installation tests. From this calculation SAFE projected that a number of production vehicles will be in noncompliance with FMVSS No. 216.

In an effort to determine why there may have been a decrease in the margin of compliance, SAFE performed tear-down studies on a number of Explorer roofs. SAFE did not find a significant change in the roof structure from 1996½ to 2001 MY productions. However, SAFE did find a minor change in the front door structure. Ford stated that at the time of the change both its supplier, Budd Company, and its designers relied on their collective experience with roof crush testing to conclude that this change would have little if any effect on compliance with FMVSS No. 216.

Based on the above test data sets, SAFE requested that NHTSA open an official compliance investigation. SAFE requested that NHTSA test a minimum of 10 vehicles that were produced at different assembly plants and have the largest number of options that add weight to the vehicles.

Analysis

The agency has reviewed all of the data submitted by both SAFE and Ford and has decided to deny the petition for the following reasons.

First, none of the data presented indicate any of the vehicles tested failed to meet the requirements of FMVSS No. 216. SAFE did not present any data indicating that any MY 1997–2001 Ford Explorer or Mercury Mountaineer vehicles failed FMVSS No. 216 compliance testing.

Second, SAFE asserts that a segment of the 1997–2001 Explorer/Mountaineer production will not meet the standard. This assertion is based primarily on SAFE's contention that there was a decrease in the margin of compliance after Ford conducted its certification testing. SAFE bases this contention on the difference between the compliance margin calculated for Ford's certification tests (Data Set 1) and the lower margin calculated for Ford's development tests, conducted on

[1] In its initial petition, SAFE placed great emphasis on this alleged test failure, even though it involved a vehicle modified in a manner (i.e., using a maskless paint process) that was not carried through for use in production vehicles. When the vehicle's actual MUVW (4,600 lbs) is used, there was no test failure. The record indicates that although the Ford employees conducting the test were informed of the vehicle's actual MUVW before the test, they performed calculations using a higher MUVW to determine whether the test results might be extended to a completely different vehicle with the higher MUVW on which Ford was considering using the same painting technique. After determining that the technique would not be feasible for the other vehicle, Ford personnel amended the test document to show the actual MUVW of the tested vehicle and the resultant calculations.

modified assembly line vehicles (Data Set 2). Extrapolating from the eight percent variation in the certification tests of Data Set 1 and the lower average safety margin in the tests of the modified vehicles comprising Data Set 2, SAFE assumed that the test results of DATA Set 2 were representative of how production vehicles would perform and that those at the lower end of the presumed eight percent range in test results would not comply with the standard.

NHTSA is unable to draw the same conclusion from the data presented. Statistics taken from a group of tests conducted on preproduction development vehicles on which production vehicles were based (Data Set 1) may not logically be extrapolated to the results of testing conducted on modified assembly line vehicles where the design change never went into production (Data Set 2). The test results concerning modified assembly line vehicles (Data Set 2) are not relevant to the potential compliance of production vehicles. The windshield modifications that Ford was considering when it modified and then tested these vehicles in 1999 never became part of production vehicles. Accordingly, one cannot assume, as SAFE does here, that developmental tests concerning a new process for windshield attachment, which was never adopted for production vehicles, are representative of likely test results for production vehicles. Moreover, the variation in test results for the three used production vehicles tested by Exponent (Data Set 3) was two percent. This indicates that production vehicles, even after years of use, produced lower test variation than the prototype vehicles.

Third, all of the STWR data presented by SAFE and Ford are based on maximum possible unloaded vehicle weights for the model years in question. Ford stated that the heaviest 11 percent of the MY 1999 production (for which the MUVW was 4,700 lbs.) was between 4,450 and 4,678 lbs. The heaviest 12 percent of the MY 2000 and 2001 production (for which the MUVW was 4,600 lbs.) was between 4,380 and 4,580 lbs. Considering these production weight numbers, there are very few production vehicles that approached the MUVW. Since the STWR is the ratio of the resistive force to the unloaded vehicle weight, as the unloaded vehicle weight decreases the STWR increases. Therefore, the vast majority of Ford's production vehicles appear to have a greater margin of safety with respect to meeting the requirements of FMVSS No. 216 than the margin described in data sets 1–3, all of which indicated compliance with the standard based on the MUVW.

Fourth, SAFE requests that NHTSA test ten vehicles, but the compliance test prescribed in FMVSS No. 216 is intended to be applied to new vehicles. At this late date, NHTSA cannot obtain new MY 1999 to 2001 vehicles. Due to limited agency resources, the agency selects certain new vehicle models when it conducts compliance testing and, for practical reasons, cannot test every new model annually. NHTSA did test two earlier model year Explorers (a 1994 and 1996) when they were new. These model years met the FMVSS No. 216 performance requirement. We are not aware of design changes that occurred after the model years that NHTSA tested that would have had a significant impact on the roof strength of the MY vehicles that are addressed by SAFE's petition.

Fifth, SAFE argues that Ford made a change in the door structure of the Explorer in 1997 that allegedly resulted in reduced roof strength. SAFE has not effectively substantiated either the reduced roof strength that it claims occurred or the causal role of the door structure change in the alleged reduction. Ford offered only the collective judgment of its staff and its supplier that such a change would have had little or no effect on roof strength. Having reviewed the information that both SAFE and Ford submitted concerning that change, we have no basis for concluding that the change had any negative effect on roof strength. In any event, the only actual tests (Data Set 3) of vehicles built after the date of that change, which involved vehicles that had been in use for several years, showed that the vehicles met the roof strength standard.

Finally, efficient allocation of the agency's enforcement resources is among the criteria NHTSA may consider when deciding whether to grant or deny a petition to initiate a compliance investigation. See 49 CFR 552.8. Having fully considered all information presented by SAFE and Ford, we do not believe that the investigation SAFE wants NHTSA to conduct would be likely to lead to an agency determination that the subject vehicles do not comply with FMVSS No. 216. We believe NHTSA's limited enforcement resources are better allocated to investigations that are more likely to reveal noncompliance.

Conclusion

In consideration of the above, this petition for a compliance investigation is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 24, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–14458 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2006–24872]

Guidelines for Impaired Driving Records Information Systems

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

ACTION: Final guidelines.

SUMMARY: This notice sets forth guidelines on the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles, as directed by Section 2007(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

DATES: These final guidelines are effective on August 30, 2006.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Ms. De Carlo Ciccel, Highway Safety Specialist, Impaired Driving Division, NTI–111, or Ms. Heidi Coleman, Chief, Impaired Driving Division, NTI–111, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1694. For legal issues: Ms. Nygina T. Mills, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

Annually, more than a million drivers are arrested for alcohol-impaired driving. While States bear the primary responsibility for enacting and enforcing impaired driving laws and for adjudicating and sanctioning offenses, they sometimes lack the most effective tools to manage their programs. A comprehensive data system containing records of impaired driving arrests and convictions would enable a State to make more effective traffic safety decisions. The ideal system should contain timely, accurate, complete, consistent, integrated, accessible and

secure information. The less timely citation data are, the less their utility. Citation data that are not accurate or complete (*e.g.*, misspelled name, incorrect charge) can result in dismissed cases or reduced charges and can complicate linkage to other traffic records system components such as driver license files. Citation data that are not consistent can lead to charges that vary by jurisdiction or by law enforcement agency. Data that are not accessible or that cannot be integrated or linked almost always require more time, effort and resources to process and complete, and can delay or interfere with the adjudication process. Data that are not secure can lead to system-wide failures and data corruption.

NHTSA's experience indicates that a successful *Impaired Driving Records Information System* requires significant efforts by a State to generate, transmit, store, update, link, manage, analyze, and report information on impaired driving offenders and citations. Such a system should include impaired driving-related information that is collected and managed by the system's stakeholders. Key system stakeholders include law enforcement agencies, the Department of Motor Vehicles (DMV), and the judicial system. A comprehensive electronic Impaired Driving Records Information System is a powerful tool to assist States in developing an effective system of deterrence for impaired driving.

In the agency's latest reauthorization, Congress recognized the need for States to employ more robust impaired driving data systems. Section 2007(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), directs NHTSA to ''issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.'' In response to that direction, the agency published a notice of proposed guidelines and invited public comment. The proposed guidelines were set forth in the form of a model system for impaired driving records, based on the results of NHTSA experience in this area. This experience suggests that important statistical and data elements should include data covering arrests, case prosecutions, court dispositions and sanctions, and that it is critical to provide for the linkage of such data and traffic records systems to appropriate jurisdictions and offices within the State.

NHTSA's Experience: Impaired Driving Data Systems

In 1997, NHTSA published ''Driving While Intoxicated Tracking Systems'' (DOT HS 808 520). This report laid the foundation for building a comprehensive tracking system for driving while intoxicated (DWI) offenses. An effective DWI Tracking System was defined as one that: (1) Effectively manages DWI information from arrest through sanction completion and/or license reinstatement; (2) adequately gauges DWI trends and the effectiveness of a wide range of education, information, legislation, and other countermeasures and targeted reduction programs; (3) provides key decision makers (law enforcement, DMV, prosecutors, judges, etc.) with adequate and timely information to allow equitable imposition of charges and penalties; and (4) reduces the administrative burden on system stakeholders and improves efficiency while increasing the punitive nature of State laws and processes. Specific DWI Tracking System types in use effectively by States include case management systems, statistical systems and hybrid systems.

The 1997 report recognized the importance of various key stakeholders to the success of the system. The judicial system was assumed to encompass the various parties involved in the prosecution and adjudication of impaired driving cases, including judges, prosecutors, public defenders, and, in some States, probation officials. Other identified key stakeholders included treatment agencies, departments of correction, departments of criminal justice, legislatures, advocacy groups, and the State Highway Safety Offices.

Since each State is unique in its governmental structure and strategies, the report concluded that a single DWI tracking system design that would meet the needs of all States could not be developed. However, the report provided a framework for an effective core system, described the key system characteristics, discussed the criticality of DWI tracking, and laid the foundation for developing an effective DWI Tracking System.

Since 1997, most States have worked to develop specific components of a DWI Tracking System, often with very little exchange or interaction between system components. Consequently, most States still lack a comprehensive system to identify, adjudicate, prosecute, and track incidences involving alcohol-impaired and/or other drug-impaired drivers.

In 2001, in collaboration with State and Federal agencies, NHTSA expanded the framework of a DWI Tracking System to a more comprehensive impaired driving records information system. This expanded system, known as the *Model Impaired Driving Records Information System*, enabled a State to perform the following functions:

- Appropriately charge and sentence offenders, based on their driving history;
- Manage impaired driving cases from arrest through the completion of court and administrative sanctions;
- Identify populations and trends, evaluate countermeasures and identify problematic components of the overall impaired driving control system;
- Provide stakeholders with adequate and timely information to fulfill their responsibilities; and
- Reduce administrative costs for system stakeholders and increase system efficiencies.

In 2002, NHTSA solicited participation in a *Model Impaired Driving Records Information System* that provided immediate electronic access to driver history and vehicle information, electronic collection of data, electronic transmission of data between key stakeholders, and on-line access to complete, accurate, and timely information on impaired driving cases. 67 FR 40381 (June 12, 2002). With this system, States could begin to use the model requirements and data elements as a collective resource and thereby curb the installation of costly and duplicative record systems. The system ideally provides full access to all key stakeholders and addresses each stakeholder's needs. The system also tracks each impaired driving offense and offender administratively and through the judicial system, from arrest through dismissal or sentence completion, and provides aggregate data (*e.g.*, number of arrests, convictions, blood alcohol concentration (BAC) distribution, and offender demographics) to better manage a State's impaired driving program.

States participating in this demonstration project include Alabama, Connecticut (added in 2004), Iowa, Nebraska, and Wisconsin. These States have implemented the use of real-time data to plan and better manage their impaired driving programs. NHTSA plans to make the results of these States' experiences available in 2007 to assist other States to improve impaired driving records information systems. The reports received to date from these sites indicate that using real-time data systems can not only be successfully

accomplished, but that various obstacles to implementation can be overcome.

Based on the agency's experience and the efforts described above, NHTSA has developed a framework for an effective data system containing records of impaired driving arrests and convictions. In response to the requirement in SAFETEA–LU to issue guidelines to assist the States in the types and formats of data to collect concerning impaired driving arrests and convictions, the agency published proposed guidelines on June 28, 2006 (71 FR 36877), in the form of a Model Impaired Driving Records Information System, and solicited comments from interested persons.

Comments

The agency received comments from the Governors Highway Safety Association (GHSA), the Virginia Department of Motor Vehicles (Virginia DMV), and the Center for Regulatory Effectiveness (CRE).

GHSA ''strongly concur[red]'' with NHTSA on the need for improved state DWI data and supported comprehensive DWI tracking systems in the states. While embracing the NHTSA model as an ''ideal system,'' GHSA asserted that States face significant institutional barriers and it would take ''millions of dollars and many years'' to achieve full implementation. As a result, GHSA stressed that the model system proposed by NHTSA represents a ''goal'' and should not be a mandate or a condition for future Federal highway safety grants.

In accordance with SAFETEA–LU, the model system sets forth guidelines on the types and formats of data States should collect concerning impaired driving arrests and convictions. The model system is not a mandate.

Virginia DMV urged NHTSA to include clear security and data privacy parameters in the guidelines to protect the privacy of individuals. Virginia DMV also asserted that the issuance of guidelines was premature given that NHTSA is not scheduled to release the results of its impaired driving records demonstration project until 2007. In this regard, Virginia DMV noted that the results of its own pilot program on impaired driving records, scheduled to begin in October of 2006, would be instructive in further refining the guidelines. Virginia DMV thought that its concerns could best be addressed using information stemming from the results of NHTSA's demonstration program and its own pilot program. Finally, Virginia DMV requested that grant funds be made available to the states to implement the guidelines and that States be provided ample lead time for implementation should the guidelines be changed to regulations.

NHTSA agrees with Virginia DMV that privacy and security of State information are important considerations. However, these considerations are beyond the scope of the guidelines, which are limited to the types and formats of impaired driving data states should collect. States should have their own processes in place to address privacy and security concerns for all data they may collect. NHTSA also agrees that the results of the demonstration project could serve to inform the guidelines. In fact, the guidelines reflect the practices used by the States in the demonstration project. However, the agency is unable to delay issuance of the guidelines until release of the demonstration project results as SAFETEA–LU directs that they be issued not later than 12 months after its enactment. Should the results of the demonstration project warrant it, the agency will update the guidelines. The making available of grant funds to implement the guidelines and the issuance of regulations are matters that are beyond the scope of this action. Any funding that might become available would be the subject of a separate announcement and the issuance of regulations would be guided by statute.

The CRE was ''perplexed that NHTSA failed to include in the **Federal Register** notice * * * a discussion of the guidelines' compliance with Departmental information quality standards and responsibilities.'' CRE recommended that NHTSA conduct a pre-dissemination review of the proposed guidelines to ensure that they comply with Department of Transportation and Office of Management and Budget information quality guidelines and include a discussion of the conclusions reached in the **Federal Register** along with the final guidelines. CRE also recommended that all future NHTSA proposed and final actions include a discussion of the agency's adherence to the DOT and OMB information quality guidelines.

The agency notes that CRE does not challenge the quality of the information contained in the guidelines, but instead suggests changes to our information review processes under the Data Quality Act. NHTSA adheres strictly to DOT and OMB guidelines for ensuring the ''quality, objectivity, utility and integrity'' of data disseminated by the agency. Before a proposed guideline, rule or other agency action is released by NHTSA, it is subjected to a rigorous pre-dissemination review involving various offices within NHTSA that possess extensive subject matter expertise. In the instant case, as we explained when we published the proposed guidelines and have restated in this document, these guidelines have grown out of almost a decade of experience and research and a demonstration project involving multiple States. We also solicited comment from the interested public. It should be observed that the agency is not releasing data to the public in these guidelines. Rather, in accordance with SAFETEA–LU, NHTSA is recommending the types and formats of impaired driving data that States should collect.

Neither the Data Quality Act nor the DOT or OMB guidelines require us to publish a discussion of our internal pre-dissemination review. Rather, these guidelines simply direct that such a review take place, and that it be conducted in a manner that ensures that the information intended for dissemination has the requisite level of quality, objectivity, utility, and integrity required under the Act. We are confident that the process described above satisfies these requirements, and that we need not publish any additional discussion on the subject.

Based on the comments received, we have made no changes to the proposed guidelines. Therefore, in accordance, with Section 2007(c) of SAFETEA–LU we are adopting, as final guidelines, the Model Impaired Driving Records System set forth below.

Model Impaired Driving Records Information System

Introduction

The *Model Impaired Driving Records Information System* supports several important functions. It should:

- Track each impaired driving offender from arrest through dismissal or sentence completion;
- Provide aggregate impaired driving data;
- Conform to national standards and system performance standards;
- Provide accurate, complete, timely, and reliable data; and
- Contain quality control and security features that prevent core and essential data elements and/or driving records from becoming corrupted or compromised.

States vary widely in their organizational structure. States vary, for example, in the structure of their court systems and their executive functions related to public safety, driver licensing, public health, substance abuse, and criminal justice. Also, there are substantial differences in State laws concerning impaired driving, access to

public records, acceptance of electronic signatures on charging documents, and many other areas. Therefore, some States may need to make adjustments to the model for conformance with their particular structures and systems.

Specific Features

The *Model Impaired Driving Records Information System* should have the following specific features:

- Statewide coverage (DMV, all courts adjudicating impaired driving cases, all law enforcement agencies);
- Electronic access by law enforcement officers and courts to current information on license history and status; vehicle registration status, applicable criminal history, and outstanding warrants;
- An electronic citation system that is used by officers at the roadside and/or at the police station and that supports the use of bar codes, magnetic striping, or other technologies to automatically capture driver license and registration information on the citation and other standard legal forms, such as an implied consent form;
- A citation tracking system that accepts electronic citation data (and other standard legal forms) from law enforcement agencies, provides real-time tracking and accountability from the distribution of citation forms to issuance by police officers, through the final court adjudication, and the imposition and completion of court and administrative sanctions, provides access by offender and by citation number or other unique identifier, and allows on-line access by stakeholders;
- Electronic transmission of data from law enforcement agencies and the courts to the driver license system to permit immediate and automatic imposition of administrative sanctions, if applicable, and recording of convictions on the driver license;
- Electronic reporting to courts and DMVs by probation, treatment, or correctional agencies, as applicable, with regard to compliance or non-compliance with court or administrative sanctions;
- Linkage of information from the incident/case-based tracking system and the offender-based DMV license, treatment, and probation systems to develop a complete record for each offender, including driver history;
- Timely access by all stakeholders, including the State Highway Safety Office, to periodic statistical reports needed to support agency operations and to manage the impaired driving control system, identify trends, and support problem identification, policy development, and evaluation of countermeasures;
- Flexibility to include additional data and technological innovations; and
- Conformity with national standards developed by, for example, the American Association of Motor Vehicle Administrators (AAMVA) and the National Crime Information Center (NCIC).

Core Data Definitions

The core set of data available in the *Model Impaired Driving Records Information System* includes data generated as a result of an impaired driving arrest and the movement of the case through the system as well as data obtained from existing databases or created by linking existing data elements. Specific data elements should conform to national standards developed by AAMVA and others. Subject to State and Federal laws and policies regarding access to data and privacy restrictions, the core data available to (but not necessarily accessed by) the courts, DMV, and law enforcement agencies are listed below.

The following data should be obtained from existing databases:

- Driver identifying information, including name, address, driver license number and State, date of birth, physical characteristics (race, gender, height, eye color, weight);
- Driver license class and endorsements, status (*e.g.*, suspended, hardship license, cancelled), restrictions;
- Vehicle license plate number and State of registration, status (*e.g.*, registered, impounded, stolen), Vehicle Identification Number (VIN), DOT motor carrier identification number for commercial vehicles;
- Relevant criminal history;
- Outstanding warrants and other administrative actions;
- In accordance with the State's policies for posting and retaining information on the driver record, offender's history of prior non-impaired driving traffic convictions and associated penalties, impaired driving convictions and/or pre-conviction administrative actions and associated penalties, crashes, current accumulated license penalty points, administrative license actions; and
- Outstanding citations or arrests.

The following data should be generated at the time of the impaired driving arrest and at subsequent points throughout the adjudication and sanctioning stages:

- Arrest/citation information:
  - Citation number(s).
  - Date.
  - Time of day.
  - Roadway location and jurisdiction.
  - Arresting office, Law Enforcement Agency (LEA) identifier.
  - Violation(s) charged.
  - Crash involvement, severity, number of passengers.
  - Alcohol test result: refusal, Blood Alcohol Concentration (BAC), missing.
  - Drug test result: refusal, drugs detected, missing.
  - Results of Standardized Field Sobriety Tests and other field tests, as applicable.
- Pre-conviction administrative license and vehicle penalties imposed
  - Type of sanction.
  - Date imposed.
  - Length of sanction.
- Prosecution/adjudication data
  - Court case identifier.
  - Date of arraignment.
  - Identifiers for court, judge, jurisdiction.
  - Date of disposition.
  - Completion or non-completion of pre-conviction or pre-sentence deferral program (*e.g.*, court defers sentencing or conviction pending offender's completion of alcohol treatment program and/or other conditions).
  - Final court disposition (*e.g.*, dismissed, acquitted, plea to reduced charge (specified), convicted of original charge after trial, diversion program, adjournment in contemplation of dismissal, pending).
  - Court penalties imposed, including length of jail sentence, house arrest, electronic home monitoring, plate impoundment, ignition interlock device; dollar amount of fines and fees; length and terms of probation; substance abuse assessment/treatment sentence; hours of community service; amount of restitution to victims; vehicle forfeiture; length of license revocation or suspension; other.
  - Probation report and/or pre-sentence assessment information, if available by law.
- Subsequent violations, including driving while suspended/revoked, during license suspension period and resulting penalties.
- Completion of treatment/assessment (start and finish dates).
- Completion/non-completion of court and/or administrative sanctions, including amounts of fines and fees collected; terms of jail time, license suspension or revocation, vehicle or plate impoundment/forfeiture, community service, ignition interlock; other.
- Penalties for failure to complete court and/or administrative sanctions or violations of probation, including license suspensions/revocations.

• Whether license was reinstated and if so, date of reinstatement.

Data Entry, Storage, and Transmission

Although treatment agencies and other stakeholders provide important data to the system, the timely collection and transmission of data by the courts, Law Enforcement Agencies (LEAs), and Departments of Motor Vehicles (DMVs) are of primary importance. Each of these agencies should generate and transmit data electronically. In States where data on alcohol and drug tests are collected and managed by a fourth agency, it is imperative that these data also are generated and transmitted electronically. Other types of data obtained from other agencies, such as treatment agencies, also should be transmitted electronically.

The software for generating court records and citations should have extensive edits and menu pull-downs to minimize data entry errors. When used correctly, the software should ensure that data entry is virtually error-free. The electronic citation software should provide for the automatic population of the citation form and any other related arrest forms with information from the driver license and vehicle registration. This may be accomplished through several mechanisms, including the use of bar codes or magnetic striping or by accessing the driver license file online from a mobile computer in the patrol vehicle or station. The court and DMV systems should have built-in audits that periodically check a sample of records for the timeliness of the receipt of the data and the accuracy and completeness of the records. Ideally, each component of the system should provide real-time, on-line access to stakeholders and real-time, immediate transmission of data. Electronic capture, retrieval, and data transmission provides for timeliness and consistency in data. Also, electronic system edits ensure more accurate and reliable data.

Law enforcement officers and courts should have immediate (or near-equivalent) access to current driver license and registration records and criminal history records. The immediate access to driver license and registration information may be accomplished in various ways, including the use of palm pilots or on-line access to the driver license file through a mobile computer in the vehicle or at the station. If allowed by State law and policy, officers and courts should be able to correct or update a limited number of specified fields in the driver record. For example, a driver's address may be incorrect on the driver license record because the driver changed residence but failed to notify DMV.

Specific Major Stakeholder Data Requirements

While various stakeholders are important to the success of the Model system, NHTSA's experience has shown that key system stakeholders include LEAs, DMVs and the courts.

Law Enforcement Agencies. The electronic issuance of citations and other standardized forms (*e.g.*, alcohol or drug test form) should occur at the point of arrest, either at the roadside or at the station, depending on local and State laws and policies. Immediately, or no later than 48 hours after the issuance of the citation, the citation record should be transmitted electronically to the courts and the DMV (if the State imposes pre-conviction administrative license or vehicle sanctions) and integrated into the court and DMV computer systems. The electronic transmission of data can occur in several ways, for example, by wireless transfer via low-energy waves of cellular/digital networks, by downloading the data to a disk and transmitting via the Internet from a desktop computer connected to a landline, or online from a mobile computer in the vehicle. The data may go directly to the courts or be routed through data centers located throughout a State.

The results of drug tests and alcohol tests, when based on a blood sample, will not be available at the time of the arrest and must be provided at a later date. An interface with unique identifiers allows for seamless electronic transfer of test results to the appropriate offender, which ultimately improves system efficiencies and significantly reduces errors.

Courts. Many, if not most, courts use case management software to track cases and support administrative functions (*e.g.*, scheduling court appearances and assigning cases). Traffic Court Case Management Systems Functional Requirement Standards are obtainable from the National Center for State Courts Technology Services at *http://www.ncsconline.org/D_Tech/standards/*. Electronic citation information transmitted by Law Enforcement Agencies (LEAs) may interface directly with a court database or be sent via an interim data warehouse or gateway to which data are sent and then retrieved by courts and other authorized parties (*e.g.*, prosecutors, defense attorneys). After any necessary translation of the record layout, the electronic citation becomes part of the court's electronic case record and the court's case management system LEAs, the DMV, prosecutors, and other key stakeholders should have online access to query the court system about the status of a particular case or a set of cases (*e.g.*, citations issued by an LEA in the past month). In States where only one violation is placed on a citation form, the system should allow for accessing all citations issued to an offender in a particular incident.

The information needed by the DMV (*e.g.*, notice of conviction or completion of arraignment, prompting administrative license or vehicle sanctions) should be transmitted electronically by the courts immediately, or no later than 48 hours after the action (*e.g.*, conviction or arraignment). This transmission may occur through a variety of mechanisms, for example, via the Internet with the DMV accessing a mailbox on a court Web site and downloading relevant files or via the Internet directly from the court to the DMV. Programming by the courts or the DMVs may be needed to translate court records into a form that can be integrated with DMV records.

DMV. Driver license and vehicle records that are easily understood should be available electronically to the courts, LEAs, and other authorized stakeholders. The driver license and vehicle registration systems should be adapted as necessary to receive information electronically from the courts and LEAs, if applicable. Data received from the courts or LEAs should be integrated into the DMV data bases immediately, or no later than 24 hours after receipt of data. The licensing and vehicle registration computer systems should be programmed so that administrative and court-ordered sanctions are triggered automatically when the information is received from the courts or LEAs.

Information needed by treatment agencies, probation offices, and other agencies involved in sanctioning offenders should be provided electronically by the DMV to the extent practicable. In turn, these agencies should report electronically to the DMV about the completion of sanction. The DMV also should develop protocols with the courts to ensure that information related to the failure to complete sanctions and corrections to court records identified by the DMV are transmitted back to the courts.

Statistical Report Capabilities

A *Model Impaired Driving Records Information System* enables organizational stakeholders, including the State Highway Safety Office, the State legislature, NHTSA, and others, to

obtain periodic and special statistical reports on impaired driving activities within the State. Standardized statistical reports should be periodically generated, and the stakeholders and other authorized system users should be able to obtain simple sets of statistical data on an ad hoc basis through a user-friendly protocol, to the extent that State laws permit. In States where some of the relevant records are sealed to protect personal privacy, the system should permit such records to be included in aggregate summaries.

States vary widely in their definitions of first and repeat impaired driving offenses, both in terms of the look-back period of years and in terms of the offenses that qualify as a prior offense. In some States, for example, a refusal to submit to the alcohol test would count as a prior offense. In generating statistics related to first and repeat offenses, data should be generated using the State's definition of a repeat offense.

Current and historical aggregated data should be available, and the data should be available on a statewide basis, by jurisdiction, or for specific courts or LEAs, as applicable. Aggregate numbers and rates (*e.g.*, alcohol test refusals per person arrested), as applicable, should be provided for the following first and subsequent offenses, to the extent that State laws permit:

- Impaired driving arrest events (including multiple-charge events) by charge;
- All types of final court dispositions, for example, conviction on original charge, conviction on reduced charge (specified), acquittal, dismissal, adjournment in contemplation of dismissal, pending failure to appear in court;
- Trials by charge and disposition;
- Location of arrests, *e.g.*, roadway segment, jurisdiction;
- Alcohol test refusals and BAC results for tests administered;
- Drug test refusals and results for tests administered;
- Age and gender of persons arrested and convicted;
- All types of court penalties imposed;
- All types of administrative penalties imposed by the DMV, for example, pre-conviction driver license suspension, pre-conviction license plate impoundment;
- Sentence or adjudication diversions/deferrals, if applicable;
- Referrals to treatment by first and repeat offender;
- Completion/non-completion of treatment;
- License reinstatements;
- Sentence completions/non-completions, for example, paid and unpaid fines, jail time served/not served, and community service completed/not completed;
- Average time from arrest to first court appearance, to conviction, and to sentencing statewide by charge;
- Outstanding warrants issued and other administrative actions; and
- Subsequent violations, including driving while suspended/revoked, and resulting penalties during license suspension period.

The generation of much of these data draws from and links information stored in various stakeholders' systems. Depending on a State's laws for charging violations, deriving a particular measure (*e.g.*, second offenders) may necessitate linking data from a case-based records system (*e.g.*, court system) with data from a driver-based records system (*e.g.*, DMV system). The priority for each of the three key stakeholders (LEAs, courts, DMV) is necessarily developing a data system to support its operations and responsibilities. Thus, it is unlikely that any of these stakeholders currently has or will develop a computer system with the capability to generate these kinds of linked data, unless this is a statutory responsibility of the organization.

Data Warehouse

What will typically be required is a data warehouse, or its equivalent, with a database drawing from the various stakeholder data systems, with the capability to link these data and generate standardized periodic statistical reports, and with user-friendly access to stakeholders. A single agency should have the responsibility for developing and maintaining this data warehouse, based on the mutual agreement of the key stakeholders. It may be one of the key stakeholders—most likely the DMV—or it may be another organization, such as the highway safety office, a university, a legislative research division, or a criminal justice organization. Each stakeholder should have a secure means of access to the information, for example, through a secure ''mailbox.'' The centralized data repository may be a single database, procedures for assimilating data, or a networked distributed database with access gateways.

The data warehouse does not replace the need for each stakeholder to maintain its own data records system. Nor does it eliminate the need for each stakeholder's system to be accessible on-line for basic queries by other stakeholders, since only selected data would be extracted from each stakeholder's system. In addition, for the data warehouse function to operate most effectively, it should be viewed as serving an end in itself (that is, the generation of statistical information cutting across agencies and across the different stages of the impaired driving process), rather than as an adjunct to a stakeholder system designed for a different, albeit related, purpose.

Guidelines for Implementation

States should assess their own circumstances as they conform their DWI tracking systems to the Model System. These circumstances include the complexity of the State's impaired driving law, the amount and types of resources needed to purchase hardware and software and to obtain programming support, the telecommunications infrastructure in the State to support roadside access to DMV driver records and to move data electronically among stakeholders, the computer network for the transmission of data among stakeholders, the degree of uniformity with regard to procedures and policies within organizations and jurisdictions, and intra-organizational and inter-organizational issues such as territorial concerns, poorly defined roles and responsibilities, and lack of agreement on priorities, problems, or solutions within the State.

States may need to address particular obstacles or accommodate certain critical factors in conforming to the model system. For example, depending on geography and size, the impaired driving stakeholders may not have the ability or the resources to upgrade an inadequate telecommunications infrastructure. The selected system must be capable of functioning within this environment. In addition to problematic telecommunications infrastructure, a State's ability to implement improvements to existing system components is hampered by complicated impaired driving laws (*e.g.*, tiered BAC systems, different levels of offenses adjudicated by different courts, complex mixes of administrative and court sanctions), a non-unified court system, the lack of a uniform traffic citation, paper-based and antiquated mainframe systems within the stakeholder agencies, and budget constraints.

In order to attempt full conformity with the Model System, States should undertake the following steps:

- Under the auspices of the State's Traffic Records Coordinating Committee, form a subcommittee or task force charged with overseeing the development and implementation of the system, including the courts (judges, prosecutors, and probation, if

applicable), the DMV, the State police and local LEA representatives, treatment, the highway safety office, and other important stakeholders;

• Designate a single lead agency for developing and implementing the system;

• Establish a mechanism for working with the State's information and technology offices to plan and implement the system, including writing software and hardware specifications, selecting vendors, etc.;

• Develop a shared understanding of stakeholders' roles and responsibilities;

• Develop a detailed impaired driving critical path. This critical path describes the step-by-step procedures related to an impaired driving offense, beginning with the citation, continuing through adjudication (administrative and judicial), and ending when the disposition is posted to the driver file (see diagram below).

• Conduct a detailed assessment of current systems to collect, manage, and analyze impaired driving data, in comparison with the model system. (An appropriate assessment of the current systems in comparison with the model system should inventory the current stock of hardware and software to identify the needs of courts, LEAs, the DMV, and other key stakeholders, relate the current systems to the detailed impaired driving critical path, identify deficiencies and steps needed to conform to the specific features noted in the ''*Specific Features of the Model System*'' section of these guidelines, examine the compatibility of existing record formats, processes, hardware, software, etc., and evaluate the State's compliance with national standards, for example, standards for electronically readable driver licenses);

• Standardize processes, procedures, forms, terminology, and data elements among stakeholders and jurisdictions;

• Develop a detailed, step-by-step, long-range plan (including funding levels) for implementing and maintaining the resulting system, training personnel in affected agencies, system upgrades, and obtaining buy-in from the primary stakeholders;

• Develop a formal interagency cooperative agreement to implement the plan, detailing the responsibilities of the agencies and potential sources of short-term and long-term funding;

• Identify statutory, regulatory, or procedural changes needed to implement the system; consider simplification of regulations or laws;

• Establish protocols for authorizing system users and procedures to protect personal privacy rights and the security of the system;

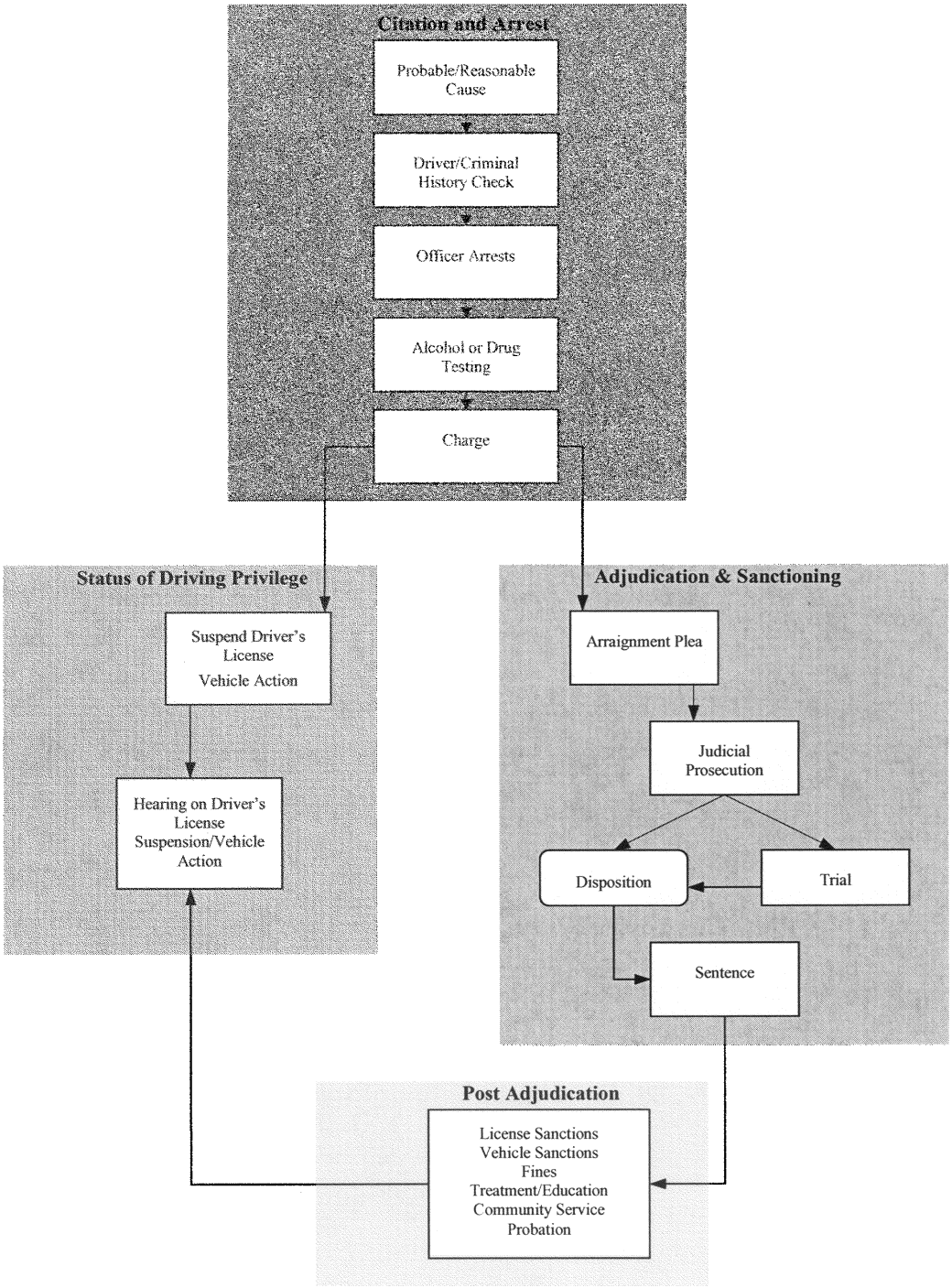
• Identify sources of funding; consider the use of dedicated fees or fines;

• Consider working with other States to take advantage of economies of scale and to minimize duplicative efforts; and

• Formulate a plan to ''sell'' the importance of the system to the public, advocacy groups, and State policymakers and enlist their support for implementation of improved impaired driving records information system components and related systems.

BILLING CODE 4910–59–P

Example of an Impaired Driving Critical Path [1]



Issued on: August 25, 2006.

Marilena Amoni,

Associate Administrator for Research and Program Development.

[FR Doc. E6–14463 Filed 8–29–06; 8:45 am]

BILLING CODE 4910–59–C

[1] Based on ''DWI Tracking System'' (NHTSA 1997).

DEPARTMENT OF THE TREASURY

Departmental Offices; 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 burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Monetary and Financial Policy within the Department of the Treasury is soliciting comments concerning Extension of Foreign Currency Form FC–1 (OMB No. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, Form FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and Form FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before October 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Timothy D. DuLaney, Office of International Monetary and Financial Policy, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. DuLaney by e-mail (*Tim.Dulaney@do.treas.gov*), FAX (202–622–2021) or telephone (202–622–2052).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Federal Reserve Bank of New York's Web site, in the U.S. Department of the Treasury section of the webpage for Regulatory Reports Forms and Instructions at: *http://www.ny.frb.org/bankinfo/regrept/regrept.html*. Requests for additional information should be directed to Mr. DuLaney.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Control Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Control Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Control Number: 1505–0014.

Abstract: The filing of Foreign Currency Forms FC–1, FC–2, and FC–3 is required by law (31 U.S.C. 5315, 31 CFR part 128, subpart C), which directs the Secretary of the Treasury to prescribe regulations requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The forms collect data on the foreign exchange spot, forward, futures, and options markets from all significant market participants.

Current Actions: No changes to the current forms FC–1, FC–2 and FC–3 and instructions are being proposed.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 24 respondents.

Foreign Currency Form FC–2: 24 respondents.

Foreign Currency Form FC–3: 44 respondents.

Estimated Average Time Per Respondent:

Foreign Currency Form FC–1: One (1) hour per respondent per response.

Foreign Currency Form FC–2: Four (4) hours per respondent per response.

Foreign Currency Form FC–3: Eight (8) hours per respondent per response.

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 1,248 hours, based on 52 reporting periods per years.

Foreign Currency Form FC–2: 1,152 hours, based on 12 reporting period per year.

Foreign Currency Form FC–3: 1,408 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Foreign Currency Forms FC–1, FC–2, and FC–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimates of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and /or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Timothy D. DuLaney,

Office of International Monetary and Financial Policy, U.S. Department of the Treasury.

[FR Doc. E6–14347 Filed 8–29–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 24, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 29, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1699.

Type of Review: Extension.

Title: REG–103805–99 (Final) Agent for Consolidated Group.

Description: The information is needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default substitute agent, pursuant to Trea. Reg. Sec. 1.1502–77(d). The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 200 hours.

OMB Number: 1545–0991.

Type of Review: Extension.

Title: Application to Participate in the IRS e-file Program.

Form: 8633.

Description: Form 8633 is used by tax preparers, electronic return collectors,

software firms, service bureaus and electronic transmitters, as an application to participate in the electronic filing program covering individual income tax returns.

Respondents: Business and other for-profit institutions.

Estimated Total Burden Hours: 50,000 hours.

OMB Number: 1545–1538.

Type of Review: Extension.

Title: Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

Description: This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 3,750 hours.

OMB Number: 1545–0892.

Type of Review: Extension.

Title: Report of Cash Payment Over $10,000 Received in a Trade or Business.

Form: 8300.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transaction must report be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 87,757 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–14467 Filed 8–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–64–93]

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, INTL–64–93 (TD 8611). Conduit Arrangements Regulations (§§ 1.881–4 and 1.6038A–3).

DATES: Written comments should be received on or before October 30, 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 regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Conduit Arrangements Regulations.

OMB Number: 1545–1440.

Regulation Project Number: INTL–64–93.

Abstract: This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents and foreign investors who engage in multi-party financing arrangements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all 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 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–14419 Filed 8–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for September 13–15, 2006, in the Ballroom of the Beacon Hotel, 1615 Rhode Island Avenue, NW., Washington, DC. The meeting will begin 8:30 a.m. each day. on September 13, the meeting will end at 5 p.m., on September 14 at 4:30 p.m., and on September 15 at 12 noon. the meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for September 13 will include updates on the progress of the studies being conducted by the Institute of Medicine (IOM) and the Center for Naval Analyses (CNA). CNA will also present a report of its review of lump sum payments as an option for disability compensation. There will be a presentation by the Veterans Health Administration on environmental and deployment health issues related to presumption of service connection and an overview by Commission staff of the Bradley Commission report.

The agenda for September 14 will include a briefing on the Army's Battle Mind Training program and discussions of the 2006 Older Americans Report and the aging veteran population, as well as initial draft issue papers by Commission staff. Commissioners Cassiday and McGinn will provide a summary of their regional team site visits to the Pacific Northwest and New England. There will also be time set aside on Thursday afternoon, September 14, for public comments.

On September 15, the Commission will receive an update on the VA–DoD Information Technology (IT) initiatives in various stages of development or implementation to foster interoperability between the two agencies' health IT systems. Certification and training for VA Compensation and Pension examiners and the use of templates for these exams will also be addressed.

Interested persons may attend and present oral statements to the Commission on Thursday, September 14. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Commission prior to the meeting or at any time, by e-mail to *veterans@vetscommission.intranets.com* or by mail to Mr. Ray Wilburn, Executive Director, Veteran's Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: August 23, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–7219 Filed 8–29–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 12–13, 2006, at the Omni William Penn Hotel, Pittsburgh, Pennsylvania. The sessions will begin at 8:30 a.m. each day and end at 5 p.m. on October 12 and at 12 noon on October 13. The meeting is open to the public.

The NAC consists of 63 national organizations and advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of 19 representatives from the NAC member organizations and acts as the NAC governing body during the period between NAC annual meetings.

On October 12, agenda topics will include NAC goals and objectives, minutes of the May 2006 meeting, Veterans Health Administration update, VAVS update of the Voluntary Service program's progress, concerns since the May 2006 NAC annual meeting, Parke Board update, evaluations of the May 2006 annual meeting and plans for 2007 NAC annual meeting, to include workshops and plenary sessions.

On October 13, agenda topics will include 2008 NAC annual meeting planning, recommendations from May 2006 NAC annual meeting, subcommittee reports, standard operating procedure revisions, new business and Executive Committee appointments.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Designated Federal Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Balun can be contacted by phone at (202) 273–8952.

Dated: August 23, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–7222 Filed 8–29–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
August 30, 2006

Part II

Department of Housing and Urban Development

Waivers Granted to and Alternative Requirements for the State of Florida's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–06]

Waivers Granted to and Alternative Requirements for the State of Florida's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This Notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Florida for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Wilma in 2005. HUD previously published an allocation and application notice (71 FR 7666, published February 13, 2006) applicable to this grant and four others under the same appropriation. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Florida also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* August 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriates $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Florida received an allocation of $82,904,000 from this appropriation. The 2006 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provides that the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds granted must benefit primarily person of low and moderate income unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Florida.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Florida grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This *Descriptions* section also highlights some of the statutory items and alternative requirements.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Florida. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the Florida disasters eligible under this notice.

General planning activities use entitlement presumption. The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore the Department is removing the eligibility requirement that CDBG disaster-recovery-assisted planning only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act

must comply with the State CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow the impacted communities to rebuild their employment bases.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act, as amended, specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD is providing a limited waiver of the relocation requirements. HUD will work with the state to provide additional waivers if the grantee moves forward to fund a flood buyouts program with both HUD and FEMA funds and requires the waivers to develop a workable program design.

HUD is waiving the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes the effects of Hurricanes Katrina and Wilma had on the local housing stock, population, infrastructure, and local economies. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage communities from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe.

HUD is also waiving the relocation benefits requirements contained in Section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by Federal projects.

Timely Distribution of Funds

The State CDBG program regulations regarding timely expenditure of funds are at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Florida to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income alternative requirement*. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they specify that a state must allow a local government to retain program income in certain circumstances. The following alternative requirement applies instead.

(a) Program income. (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

2. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100% of the downpayment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. *Planning requirements.* For CDBG disaster recovery assisted planning activities that meet the eligibility requirements of the entitlement rule at 24 CFR 570.205 and that will guide recovery in accordance with the appropriations act, the State CDBG program rules at 24 CFR 570483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

4. *Waiver and modification of the anti-pirating clause.* 42 U.S.C 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina or Wilma and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

5. *Waiver of one-for-one replacement of units damaged by disaster.* 42 U.S.C. 5304(d)(2) and (d)(3) are waived to remove the one-for-one replacement requirements for occupied and vacant occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing, and 24 CFR 42.350 is waived to the extent that it differs from the regulations contained in 49 CFR part 24. These requirements are waived provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced person will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

6. *Waiver of State CDBG requirement for timely expenditure of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

7. *Notes on flood buyouts:*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor

exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d. below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide Notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(b) the property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

e. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, etc.). The term ''flood disaster area''' is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

8. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Dated: August 23, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E6–14349 Filed 8–29–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
August 30, 2006

Part III

Department of the Interior

Office of Surface Mining and Enforcement

30 CFR Parts 816 and 817
Topsoil Redistribution and Revegetation Success Standards; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

RIN 1029–AC02

30 CFR Parts 816 and 817

Topsoil Redistribution and Revegetation Success Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are finalizing minor changes to our regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. These revisions govern topsoil redistribution and revegetation success standards and will: Encourage species diversity on reclaimed lands by allowing replacement of soil in variable thicknesses; provide more flexibility to States in using new vegetative success standards and sampling techniques by removing the current requirement that such changes be included in the approved regulatory program; define success standards for lands with an undeveloped land postmining land use; remove shelter belts from the list of postmining land uses subject to success standards; provide more flexibility to operators when they demonstrate compliance with time-in-place requirements by allowing them to consider all trees and shrubs in place at bond release, including volunteer trees and shrubs, and not requiring them to verify the length of time that individual trees and shrubs have been in place—this change will remove a significant impediment to reforestation of mined lands; and make the timing of revegetation success measurements in areas receiving 26 inches of annual precipitation or less consistent with those in areas receiving more than 26 inches of annual precipitation.

DATES: *Effective Date:* September 29, 2006.

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SUPPLEMENTARY INFORMATION:

I. Background Information on the Rulemaking
II. Discussion of the Revisions and Our Response to the Comments Submitted
III. Procedural Matters and Required Determinations for This Rule

I. Background Information on the Rulemaking

Why are we revising our regulations?

On March 17, 2005, we published proposed revisions to our regulations that govern portions of the performance standards dealing with topsoil redistribution and evaluation of revegetation success. 70 FR 13076. The revisions contained in this final rule are the product of several outreach efforts by OSM to review and assess its revegetation regulations at §§ 816.111 through .116 and §§ 817.111 through .116. The first outreach effort occurred in 1999. As part of this revegetation initiative, we published a **Federal Register** notice on May 17, 1999 (64 FR 26773), announcing public meetings and soliciting comments, concerns, and new ideas regarding the regulatory performance standards that determine revegetation success. In the notice, we also announced the availability of an OSM concept paper that reviewed various longstanding revegetation issues. We held ten public meetings around the country between May 27 and August 25, 1999. In the spring of 2003, as a follow-up to the 1999 revegetation initiative, we conducted a survey of State regulatory authorities. This survey explored whether the statistical and/or production requirements of the current revegetation regulations at § 816.116 and § 817.116 adversely affect the establishment of a diverse plant community; whether there is a continuing need for inclusion of success standards and sampling techniques in a State's approved program; and whether there is a need for success standards for undeveloped postmining land.

In addition to the revegetation initiative and survey, we also established a reforestation outreach initiative that began with three workshops held between January 1999 and May 2002 involving Federal and State regulatory personnel, industry representatives, and landowners. As part of this second initiative, we raised the question whether specific OSM regulations act as a disincentive to the choice of forestry as a postmining land use.

Largely as a result of these revegetation and reforestation initiatives and the survey, we identified five minor revisions that we needed to make to the existing regulations. This rule revises the Federal regulations governing the topsoil redistribution standards at § 816.22(d)(1) and § 817.22(d)(1); the success standards and sampling techniques requirements at § 816.116(a)(1) and § 816.117(a)(1); the land use categories subject to the success standards at § 816.116(b)(3) and § 817.116(b)(3); the revegetation success standards for trees and shrubs at § 816.116(b)(3)(ii) and § 817.116(b)(3)(ii); and the timing of revegetation success measurements at § 816.116(c)(3)(i) and (ii) and § 817.116(c)(3)(i) and (ii).

These revisions will, respectively, encourage species diversity on reclaimed lands by allowing replacement of soil in variable thicknesses; provide more flexibility to States in using new vegetative success standards and sampling techniques by removing the current requirement that such changes be included in the approved regulatory program; define success standards for lands with an undeveloped land postmining land use; remove shelter belts from the list of postmining land uses subject to success standards; provide more flexibility to operators when they demonstrate compliance with time-in-place requirements by allowing them to consider all trees and shrubs in place at bond release, including volunteer trees and shrubs, and not requiring them to verify the length of time that individual trees and shrubs have been in place—this change will remove a significant impediment to reforestation of mined lands; and make the timing of revegetation success measurements in areas receiving 26 inches of annual precipitation or less consistent with those in areas receiving more than 26 inches of annual precipitation. Since the soil redistribution and revegetation success standards are identical for surface and underground mining activities, this preamble will discuss our revisions to part 816 with the understanding that the discussion also applies to our revisions to part 817.

In response to the **Federal Register** notice of our 2005 proposed rule, we received a total of 34 comments. We discuss the comments and our responses to those comments below. No one requested a public hearing.

II. Discussion of the Revisions and Our Response to the Comments Submitted

1. Section 816.22(d)(1)(i): Topsoil Redistribution

What are the revisions to § 816.22(d)(1)(i)?

In order to improve the potential for establishing diverse plant communities consistent with the specific revegetation goals for an approved postmining land use, we are adopting, as generally proposed and further revised in response to comments received, topsoil redistribution provisions at § 816.22(d)(1)(i) that specify the manner

in which topsoil material removed under § 816.22(a) or (b) must be redistributed. Final § 816.22(d)(1)(i) will read as follows, with new language in italics:

(d) Redistribution. (1) Topsoil materials *and topsoil substitutes and supplements* removed under paragraphs (a) *and (b)* of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness *when* consistent with the approved postmining land use, contours, and surface-water drainage systems. *Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;*

Under the prior topsoil redistribution regulations at § 816.22(d)(1)(i), topsoil must be redistributed in a manner that ''achieves an approximately uniform, stable thickness consistent with the approved postmining land use * * *.'' This requirement that topsoil be redistributed (or ''replaced'') to an approximately uniform thickness has proven to be particularly appropriate when the approved postmining land uses are, for example, commercial forestry or cropland, both of which may involve a single species of vegetative cover in a managed agricultural environment. However, when the approved postmining land uses are wildlife habitat or grazing land that require satisfaction of specified vegetative diversity standards for bond release, the requirement in § 816.22(d)(1)(i) that topsoil be replaced to an approximately uniform thickness may often work against the achievement of those vegetative diversity standards. This is because a plant community that will sustain itself without constant management input is, to a considerable degree, a function of the physical and chemical characteristics of the soil upon which it is growing. In turn, variable topsoil depth is one of the several physical characteristics that operators can use to encourage the desired species diversity.

As discussed in the preamble to the proposed rule, when we first promulgated our topsoil regulations over 20 years ago, we noted that two commenters had objected to the proposed uniform thickness requirement as being a design standard, not a performance standard. 48 FR 22092, May 16, 1983. These commenters warned that the rule's uniform soil thickness requirement could lead to a monoculture vegetative community rather than a diverse native species community. We did not accept this comment, responding that topsoil thickness is but one of several factors affecting plant growth and species diversification.

More recently, in response to our 1999 revegetation outreach effort, commenters again questioned the appropriateness of the § 816.22(d)(1)(i) provision, which they interpreted as requiring that topsoil always be redistributed to a uniform thickness. These commenters stated that uniform soil thickness tends to promote a limited number of species in the vegetative cover while variable soil thicknesses tend to promote a more diverse vegetative community. The truth of this proposition has been born out by the experience of OSM agronomists and is consistent with well-established principles of soil-plant relationships. As proposed, we have revised our regulations at § 816.22(d)(1)(i) by adding a sentence that expressly allows soil thickness to be varied to the extent such variations help to meet the specific revegetation goals identified in the permit. Also as proposed, we have inserted the word ''when'' between the words ''thickness'' and ''consistent'' in the existing language of § 816.22(d)(1)(i). This insertion should make clear that the uniform soil thickness provision is a function of the approved postmining land use, contours, and surface water drainage systems, and is not, in itself, an inflexible requirement.

While the prior uniform topsoil redistribution standard of § 816.22(d)(1)(i) has generally worked quite well, the new revisions to that standard are intended to provide the operator with another tool for encouraging the development of the diverse plant communities required of specific postmining land uses. For example, if the designated postmining land use is fish and wildlife habitat, and the desired plant communities are a mixture of grasslands with interspersed shrub and tree areas for wildlife cover, then the permit could describe the use of variable topsoil thickness to ensure the establishment of grasses on thicker soils and trees and shrubs on thinner soils. The fact that the permit applicant must clearly set forth the justification for any non-uniform redistribution of topsoil should largely protect against potential abuse. This revised rule will not affect existing topsoil salvage requirements.

In response to comments, we have further revised § 816.22(d)(1) to provide that topsoil materials *and topsoil substitutes and supplements* removed under paragraphs (a) *and (b)* must be redistributed in a manner that meets the requirements of subparagraphs (i)-(iii). (Emphasis added). This last revision should make clear that, under appropriate circumstances, the variable thickness revision of § 816.116(d)(1)(i) applies to topsoil supplements and substitutes already allowed under § 816.22(a) and (b).

What were the comments submitted on our proposed revisions to § 816.22(d)(1)(i)?

Seventeen commenters supported our proposed revision to the topsoil redistribution requirements of § 816.22(d)(1)(i). Their comments focused on the potential to be gained from varying topsoil thickness in establishing diverse plant communities. The commenters noted that research supports our contention that topsoil thickness affects the types, number, and densities of plants established in a particular area. These commenters also generally supported our position that the use of variable topsoil thickness to meet specific revegetation goals identified in the permit will assist operators in establishing more diverse plant communities on areas where such diversity is appropriate to meet the postmining land use.

Four commenters proposed an additional revision to § 816.22(d)(1). They suggested that we further amend § 816.22(d)(1) to apply to topsoil and topsoil supplements and substitutes removed under paragraphs § 816.22 (a) and (b) of this section. The commenters indicated that the revision that we proposed inappropriately applies only to topsoil materials as defined at § 701.5, which states that ''[t]opsoil means the A and E soil horizon layers of the four master soil horizons.'' The commenters saw this as a problem because western coal mines are often located in areas where the native soils are poorly developed. At many of these mines, the A and E horizons are absent or insufficient in thickness to provide sufficient material for reclamation. Consequently, to meet their reclamation goals, operators must rely on the use of suitable unconsolidated materials immediately below the topsoil and on the use of selected overburden as topsoil supplements and/or substitutes. The commenters further noted that in other situations operators use very specific topsoil substitutes to establish specific or unique plant communities. For example, ongoing revegetation efforts have shown that substitute materials with high rock fragment content are best for reestablishing woody species in parts of the West. Accordingly, the commenters argued that we needed to broaden our proposed revision to § 816.22(d)(1) to expressly allow for removed material, be it topsoil, topsoil supplements, or topsoil substitutes, to

be replaced in variable thicknesses to meet specific revegetation goals. According to commenters this change would allow western surface coal mine operators to share in the benefits that our proposed rule was intended to achieve.

We believe that these commenters have raised a valid concern about the applicability of § 816.22(d)(1) to the replacement of topsoil supplements or to substitutes currently allowed under § 816.22(b). Many approved reclamation plans throughout the country already allow the use of topsoil supplements or substitutes. Regulatory authorities often permit use of such supplements or substitutes where there is insufficient topsoil, defined as A and E horizon material, to ensure the prescribed revegetation success. In other cases, they have approved topsoil substitutes when applicants have demonstrated that the existing topsoil is less suitable as plant growth material for the desired plant community than available subsoil or spoil material. For many years we have interpreted § 816.22(d)(1) as applying to both topsoil material removed under § 816.22(a) and to topsoil supplements or substitutes removed under § 816.22(b). Pursuant to this interpretation, once operators identify and remove approved topsoil supplements or substitutes, they may treat this material as topsoil material for the purposes of storage and redistribution. However, to eliminate any potential confusion as to whether, under appropriate circumstances, the variable thickness revision of § 816.22(d)(1)(i) applies to topsoil supplements and substitutes already allowed under § 816.22(a) and (b), we are accepting the comment and revising § 816.22(d)(1) as the commenters suggested. Accordingly, as set forth above, final § 816.22(d)(1) will provide that ''(1) Topsoil materials *and topsoil substitutes and supplements* removed under paragraph*s* (a) *and (b)* of this section shall be redistributed in a manner that—'' (Emphasis added). Hereafter, references to variable topsoil replacement also includes variable replacement of topsoil substitutes and supplements.

Two commenters suggested eliminating from § 816.22 (a) the requirement to remove, *i.e.*, salvage all topsoil. These commenters contend that, based on our proposal to allow replacement of topsoil at variable depths, we should be flexible and, at least in certain circumstances, also allow operators not to remove and replace all ''available'' topsoil. They argued that to require removal of all available topsoil would potentially defeat the purpose in the proposed rule of allowing shallower topsoil depths. In addition, the commenters pointed out that, according to mine reclamation professionals, shallower topsoil depths increase plant community diversity and woody stem density, while deeper than average topsoil depths (that would compensate for the areas where topsoil is applied more shallowly than the uniform average) only encourage aggressive grass and forb species at the expense of diversity and woody stem density.

While the commenters are correct that shallower soils can increase plant diversity and woody stem density, we are not revising the regulations as they proposed. The existing regulations at § 816.22(a) will continue to require the removal of all topsoil, defined elsewhere as A and E horizon material. For several reasons we do not believe that these regulations pose the problem suggested by the commenters. Most importantly, section 515(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), clearly requires the removal and replacement of all suitable topsoil. Furthermore, natural landscapes usually include areas with deep soils as well as shallower soils. This in turn results in multiple distinct plant communities across the landscape. When we require uniform soil thickness for reclamation, the result may be a single plant community but little plant community variability across the landscape. Conversely, when we require reclamation that includes areas with deep soils as well as shallower soils, the result is more likely the establishment of multiple diverse plant communities, including those that prefer deeper soils as well as those that prefer shallower soils. The purpose of the rule is not, as commenters characterize, to allow for shallower topsoil depths throughout the reclamation area. Instead, the rule requires removal of all topsoil to allow development of reclamation and revegetation plans that can maximize the use of that topsoil through the placement of variable topsoil depths and the reconstruction of a much more diverse landscape similar to that which may have existed prior to mining.

One commenter indicated that, if we allow variation in soil thickness (specifically reductions in soil thickness), we must also require the operator to demonstrate that an equal or greater chance for sustaining vegetation success will result. In addition, the commenter stated that the operator should have to demonstrate that the reconstructed soil has a root zone of sufficient depth to support the approved postmining land use.

We generally agree with this comment but do not believe that any change in the revised regulation is necessary to ensure the desired variation of soil thickness. The revised language of § 816.22(d)(1)(i) allows operators to vary soil thickness to the extent necessary to meet the specific revegetation goals identified in the permit. In turn, these revegetation goals should support the approved postmining land use. The State and the public will have the opportunity to review the permit prior to approval and determine whether the permittee has justified the need for variable topsoil thicknesses in order to achieve the identified revegetation goals. If the permittee has failed to do so, the State can disapprove the use of variable topsoil thicknesses or require additional information to justify departure from the normal practice. On this basis, we do not believe that the demonstration proposed by the commenter is necessary.

One commenter opposed our proposed revision to the topsoil redistribution requirements of § 816.22(d)(1)(i). Instead of replacing all the soil that was lost to strip-mining, the commenter alleged that, under revised § 816.116(d)(1)(i), coal companies could replace only some of the removed soil. The commenter opposed the change to § 816.22(d)(1)(i) because, according to him, it could ''let coal companies do even less to bring the land they've mined back to its original condition.''

This commenter seems to have misunderstood our proposal. It does not scrap the current standard. As before, the revised regulation will require operators to remove all topsoil from areas that are to be disturbed by mining. After mining, they must redistribute all removed topsoil on areas disturbed by mining. The proposed and final rules merely allow operators whose reclamation plan and postmining land use require the establishment of diverse plant communities as part of specific revegetation goals identified in the permit to redistribute topsoil at variable thicknesses rather than at approximate uniform thickness. For the reasons stated above, we believe that the revision to § 816.22(d)(1)(i) will result in improved and more diverse reclamation.

Another commenter observed that the proposed revision to § 816.22(d)(1)(i) will require better planning on the part of companies at the permitting stage, and that they must complete all vegetation planning prior to completion of rough grading and prior to topsoil replacement. The commenter, however, expressed concern that those who

thought that the proposal would make reforestation more successful may be disappointed.

We strongly agree that allowing variable topsoil thickness under the new provisions of § 816.22(d)(1)(i) will require appropriate planning by operators. As expressly stated in final § 816.22(d)(1)(i), operators can vary soil thickness only if they justify this variation based on specific revegetation goals identified in the permit. The permit would necessarily have to include a discussion of plans for variable topsoil thickness. Furthermore, an approved permit would have to be in place prior to implementation of any plan for regrading, topsoil redistribution, or revegetation. While there can be no guarantee as to how much the revision to § 816.22(d)(1)(i) will actually increase reforestation of reclaimed areas, we reasonably believe that the revision should encourage reforestation and species diversity.

Another commenter suggested that we should broaden the proposed revision to § 816.22(d)(1)(i) to allow variable replacement thicknesses for (1) suitable unconsolidated materials located immediately below the topsoil, and (2) selected overburden used as topsoil supplements and/or substitutes when the use of such materials would help to meet the reclamation goals identified in the permit. In the course of its own reclamation activities this commenter had found that selected overburden materials, including scoria of suitable fragment size range, are vitally important to creating diverse vegetation types such as open scrub, and highly conducive to establishing several shrub species in the genus *Artemisia*.

With regard to the commenter's first suggestion, we note that § 816.102(f) already addresses the thickness of the suitable unconsolidated material that is replaced below the topsoil. The regulation expressly requires that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining must either be adequately covered with nontoxic and noncombustible material, or treated, to control the impact of the materials on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Section 816.102(f) does not specify the thickness of the layer of nontoxic material that must cover acid- and toxic-forming materials. The regulation thus permits variable redistribution thicknesses of suitable unconsolidated material that is found below the topsoil. As to the commenter's second proposal, we have already stated that § 816.22(d)(1)(i) properly applies to topsoil supplements and substitutes and have revised the regulation to clarify this point. Accordingly, final § 816.22(d)(1) will apply to both topsoil removed under § 816.22(a) and topsoil supplements and substitutes used in accordance with § 816.22(b).

Another commenter indicated that the proposed revision to § 816.22(d)(1)(i) allowing for variable soil thickness was unnecessary for achievement of our stated purpose of encouraging greater plant diversity. This commenter asserted that the existing rules afford operators the flexibility to vary soil thicknesses in appropriate cases. The commenter stated that reclamation plans within a single permit area can be, and have been designed to accommodate the needs of croplands, grasslands, and woodland plants by varying soil thicknesses in the areas where each vegetation type will be planted. According to the commenter, several other factors have far more influence upon the diversity of the post-mining vegetative communities than do variable soil thicknesses. These factors include the particular vegetation that is to be planted after mining, the quality of the soil replaced, and the degree to which soil compaction is prevented. The commenter continued that the current regulation at § 816.22(d)(1)(i) requiring the replacement of an approximately uniform thickness of topsoil provides for the protection, use, and productivity of soil resources in a way that should restore the capability of the land to support a wide variety of vegetation types and land uses. In support of our retaining the longstanding provisions of § 816.22(d)(1), the commenter emphasized that the segregation and replacement of topsoil over entire reclaimed areas has been successful over the fifty-seven years of regulating the restoration of mined lands. This commenter further noted that the proposed revision to § 816.22(d)(1)(i) would not provide minimum thickness requirements for topsoil redistribution. The commenter cautioned that, while variable topsoil thickness may improve attainment of certain land use types, too thin a layer of topsoil could prove counterproductive to the attainment of ground cover, erosion protection, water quality protection, and restoration of productive capability of the land. The commenter concluded, therefore, that any provision allowing replacement of variable topsoil or topsoil-substitute thicknesses should also provide for a minimum topsoil or soil-substitute thickness. This commenter also indicated that his experience is not consistent with the statement in our preamble that ''[t]he fact that a permit applicant must clearly set forth the justification for any non-uniform redistribution of topsoil should largely protect against potential abuse.'' According to the commenter, it would be easier for a regulatory authority to sustain challenges to a finding of non-compliance with a specific performance standard, *e.g.*, that operators must redistribute topsoil in an uniform thickness, than to sustain challenges to a finding that the operator has not adequately set forth the justification for non-uniform thicknesses.

We disagree with these comments and concerns. Most importantly, we do not consider that the revision to § 816.116(d)(1)(i) represents a reduction of the regulatory standards. As discussed in the preamble to our proposed rule and as reflected in the express language of that rule, we intend to allow variable topsoil thicknesses when necessary to further the specific revegetation goals identified in the permit. The fact that the permit application must clearly set forth the justification for variable topsoil thicknesses reasonably protects against potential abuse. If the regulatory authority finds that redistribution of topsoil in variable thicknesses is not necessary to meet the specific revegetation goals identified in the permit application, then the authority need not approve that aspect of the application. If, however, the regulatory authority finds that variable topsoil thicknesses is desirable, the permit application should specify the amount of variability allowable and the minimum acceptable topsoil thickness. Contrary to the commenter's experience, research in the West on the impact of topsoil depth on plant diversity has shown that plant diversity can be improved with redistribution of variable topsoil thicknesses. *Long-Term Plant Community Development In Response to Topsoil Replacement Depth On Mined Land In Wyoming,* C.K. Bowen, G. Schuman, and R.A. Olson, American Society of Mining and Reclamation, 2005. *Long-Term Effects of Cover Soil Depth On Plant Community Development for Reclaimed Mined Lands in New Mexico,* B. Buchanan, M. Owens, J. Mexal, T. Ramsey, and B. Musslewhite, American Society of Mining and Reclamation, 2005.

The same commenter also expressed concern both about the effect that proposed § 816.22(d)(1)(i) would have on the restoration of premine land

capability and the negative effect that the revised regulation would have on one of the basic missions of SMCRA-assuring that required reclamation accounts for the capability of the land prior to any mining to support a variety of uses. Simply stated, the commenter urged us not to stress vegetation diversity at the expense of the underlying land capabilities. The commenter also indicated that, in those areas of the country where valuable topsoil resources exist, regulatory authorities must take into account soil rooting zone reconstruction for the proper utilization of those soil resources. This reconstruction should be done in a way that would provide not only for tree productivity but also for use of the soil resources in a manner that would maximize the post-mining capability of the land. Furthermore, the commenter stated that it is not necessary to relocate, modify distribution, or eliminate topsoil resources in order to ''encourage'' reforestation as a postmining land use. The commenter concluded by characterizing our stated basis for revising § 816.22(d)(1)(i) as ignoring ''the essential nature and role of topsoil resources in land use capability and suitability to support a variety of uses.''

We agree with the commenter that topsoil resources must be protected. The regulations at § 816.22(a) and (d) continue to require that all topsoil must be removed and that all removed topsoil must be redistributed. The revised regulation at § 816.22(d)(1)(i) simply provides the opportunity to allow redistribution of topsoil at variable thickness when such redistribution is appropriate to meet the revegetation goals identified in the permit's approved postmining land use plan. Under the existing regulations in § 816.22(e), a regulatory authority can also require removal and redistribution of subsoil, if necessary, to comply with the revegetation requirement of the regulations. The proposed and final rules do not, therefore, ignore or negate the existing land use provisions of § 816.133(a), which require that all disturbed areas be restored in a timely manner to conditions that are capable of supporting the uses they were capable of supporting before mining, or higher or better uses. Under these rules, if the regulatory authority determines that the proposed redistribution of topsoil in varying thicknesses would adversely affect the restoration of the land use capability of an area, then the regulatory authority need not sanction such redistribution.

Another commenter noted that the revised regulation, which allows soil thickness to be varied to the extent that such variation encourages the specific revegetation goals identified in the permit, needs to include a modification and verification provision that would assure that variation is not a *post hoc* effort by the operator to avoid proper redistribution of topsoil. The commenter also stated that the rule must clarify that operators may not vary topsoil and subsoil redistribution in those instances where removal and reconstruction of soils is necessary to restore mined farmland. The commenter next argued that the rule's standard for justifying variation in topsoil replacement thickness should be more precise and measurable than merely providing that the variation ''help meet'' the specific revegetation goals identified in the permit. In this regard, the commenter stated that the permit should define the amount of variability in topsoil thickness and the chemical quality of the topsoil necessary to meet identified revegetation goals. Where uniform thickness is not to be the standard, the topsoil and subsoil redistribution plan should also provide appropriate literature citations supporting the proposition that the variation of soil thicknesses is consistent with, and necessary for, the success of particular species. Finally, this commenter asserted that, regardless of whether the soil thickness is intended to be relatively uniform or varied to support a particular species or mixture of vegetative cover on the reclaimed land, the State regulatory authority or OSM, acting under a Federal Program, should require the operator to demonstrate compliance with the soil redistribution requirements of § 816.22(d)(1)(i). Furthermore, the State regulatory authority or OSM should take sufficient soil thickness measurements to support a finding of compliance.

We believe that the current and revised regulations at § 816.22(d)(1)(i) adequately address the concerns underlying these comments. The new provisions of § 816.22(d)(1)(i) that soil thickness may be varied to the extent that such variations help meet the specific revegetation goals identified in the permit clearly implies the need for the operator to document how topsoil will be redistributed prior to such redistribution. This necessary documentation should ensure that the redistribution of topsoil at varied thicknesses is not a *post hoc* effort to avoid proper redistribution. For example, if the approved postmining land use is cropland, then redistribution of topsoil at varied thicknesses would not be appropriate and operators should redistribute the topsoil in an approximately uniform thickness as is presently required. However, if the approved revegetation goals would best be met by varying topsoil thicknesses, then the operator must propose and the regulatory authority must approve these variations. While we believe that authoritative literature and/or test plots are appropriate sources of information for setting sideboards on the variation in topsoil thickness, we leave to the discretion of the regulatory authority whether to require inclusion of such literature or test plot data in the permit. Evaluation of the thickness of redistributed topsoil based on permit specifications can be done either as part of the ongoing inspection process or based on data submitted by the operator. In this regard, we anticipate that the regulatory authority will evaluate the redistribution of topsoil in varying thickness in the same manner that it currently evaluates the redistribution of topsoil in an approximately uniform thickness under prior § 816.22(d)(1)(i).

2. Section 816.116(a)(1): Federal Approval of Revegetation Success Standards

What are the revisions to § 816.116(a)(1)?

We have revised § 816.116(a)(1) to eliminate the requirement that revegetation success standards and statistically valid sampling techniques be included in the approved regulatory program (hereinafter ''the approved program requirement''). The revised regulation continues to require that standards for success and sampling techniques for measuring success must be selected by the regulatory authority. Our proposed elimination of the approved program requirement was described in our 2005 **Federal Register** notice. As a result of comments received and discussed below, we are also adding a provision to § 816.116(a)(1) to clarify that the standards and techniques selected by the regulatory authority shall be described in writing and made available to the public. Later in this document we describe several acceptable means for making the standards and techniques available to the public. Final § 816.116(a)(1) will read as follows, with new language in italics:

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, *described in writing, and made available to the public.*

Why are we changing our policy regarding review of State Program changes in success standards and sampling techniques?

As explained in more detail below, the requirement that State regulatory authorities include the initial or amended success standards and sampling techniques for revegetation as part of their approved program imposes a significant and unnecessary burden both on State regulatory authorities and OSM. Our regulations at § 816.116(a)(2) and (b), which will remain in effect, already specify minimum criteria for success standards and sampling techniques, and those criteria will ensure the achievement of SMCRA's goal of establishing a diverse, permanent, and effective vegetative cover. Section 816.116(a)(2) provides that the sampling techniques must use a 90-percent confidence interval (also known as a one-sided test with a 0.10 alpha error), which was discussed in the preamble to the proposed rule, and that the ground cover, production, or stocking must meet 90-percent of the success standard. Section 816.116(b) provides additional guidelines for particular types of ecosystems and post-mining land uses. These key nationwide minimum protections will remain in the regulations as amended, and all approved State programs must maintain counterparts to them.

In our judgment, it is not a good use of State and Federal resources to continue requiring State and OSM revegetation experts to spend valuable time on preparing or assessing new State program amendment proposals every time it is necessary to revise or improve revegetation success standards. A number of considerations support this conclusion. First, the amount of time and resources required to go through the State program amendment process is significant and we think discourages updating the success standards and sampling techniques. Our processing of program amendments takes an average of about four and a half months, ranging from two and a half to seven months, but one recent amendment took twenty months from proposal to final approval. The time and resources spent on the program amendment process, moreover, are in addition to those the States must devote to preparing proposed program amendments and to responding to any of our inquiries. Although we lack complete data on how great a burden this regulatory requirement imposes on the States, the example of North Dakota, which follows, shows that the cumulative costs in time and talent can be quite large. The present component of the North Dakota State program for revegetation success standards and sampling techniques is now more than 100 pages long. North Dakota has repeatedly had to submit proposed amendments for our approval not only for substantive changes in standards but even for minor wording changes, such as the change in the name of a U.S. Department of Agriculture bureau from the ''Soil Conservation Service'' to the ''Natural Resources Conservation Service.'' On this basis alone, we think that the current requirement may well be discouraging State regulatory authorities from developing or implementing the latest, most appropriate science and technologies. 70 FR 13076, March 17, 2005. This apparent obstacle to the timely development of new science and technologies also runs counter to one of the main concerns behind our 1983 rulemaking: That the States needed significant flexibility to tailor standards and sampling techniques to local conditions. *See* 47 FR 40140, September 2. We continue to want to encourage responsible innovation in this area. As we mentioned in the preamble to our 2005 proposed rule, we have been working with western States to develop new success standard resources, innovative statistical tools, and techniques using computers and satellite-based remote sensing technologies to better evaluate conditions of vegetative diversity and cover than is possible using traditional sampling methods, particularly in locations with naturally sparse vegetation. In the Appalachian Region, our agency is working with scholars and the State of West Virginia on the use of the plate method for evaluating herbaceous productivity on reclaimed lands. We believe that removal of the requirement in § 816.116(a)(1) for including these standards and techniques in the approved program will eliminate an unnecessary obstacle to appropriate and timely technological innovation.

Second, we recognize that, since the basic framework of the existing rule was first promulgated in 1983, the vast majority of State regulatory programs have matured. Our experience with the State regulatory authorities over the years has shown that they now have sufficient expertise to devise or modify their success standards and sampling techniques to incorporate new scientific, technological, or other information in a manner that assures proper revegetation of disturbed areas. In most instances, we have not had to engage in substantial re-writing of changes to State revegetation success standards or sampling techniques during the Federal approval process. However, even though we will no longer be approving State program amendments on those issues, our revegetation experts will remain available to consult with the State regulatory authorities on issues including success standards and sampling techniques. Thus, our agency is not withdrawing resources that have been beneficial to the States as they pursue SMCRA's goal of successful revegetation.

Third, and perhaps most importantly, the removal of the approved program requirement from § 816.116(a)(1) leaves no regulatory void. As previously noted, the nationwide minimum requirements for revegetation success and sampling techniques will continue to apply to the State regulatory authorities and indirectly to the permits that those regulatory authorities issue. Thus, the revision to § 816.116(a)(1) will not cause greater divergence among the States that are already required to meet the minimum nationwide requirements of § 816.116(a)(2) and (b). Even in those States that by State law are not allowed to be more stringent than OSM's regulations, the minimum nationwide requirements of § 816.116(a)(2) and (b) continue to apply. While complying with those nationwide requirements, the State regulatory authorities will, under revised § 816.116(a)(1), also be able to respond to new or localized scientific, technical, and land use information in a timelier manner, without awaiting the formal process of OSM approval. Furthermore, there are avenues besides our approval of success standards and sampling techniques by which the public and we may assure compliance by the State regulatory authorities with nationwide revegetation requirements. The success standards and sampling techniques will have to be included in each permit issued by the State regulatory authorities. Thus, contrary to the assertions of one commenter, the removal of this requirement will not lead to compromises in the effective implementation of SMCRA's goal of proper revegetation. In addition, ''any person with an interest which is or may be adversely affected may request a hearing'' on any permit issued by a State regulatory authority. § 775.11(a). When a permittee applies for final bond release, the surface owner must be notified and given an opportunity to participate in the bond-release inspection. § 800.40(b)(1). Before final bond release, any person with a valid legal interest may file objections and

request a public hearing. § 800.40(f). The State's regulatory program must also provide for administrative hearings and judicial review. §§ 775.12(b) and 775.13(b). In addition, if, in conducting an oversight inspection, we were to find a surface coal mining operation in violation of the nationwide minimum requirements, we would take appropriate action. *See* § 842.11(a)(1), (b)(1)(iii)(A). If the State appears to be including success standards and sampling techniques in its permits that are not in compliance with the nationwide minimum requirements of § 816.116(a)(2) and (b), we can initiate proceedings that could ultimately lead to substitution of direct Federal enforcement of the revegetation requirements, or withdrawal of the Secretary's approval of the State program in whole or in part. § 733.12(a), (g). Thus, the public's interest in proper revegetation remains protected, and the State regulatory authorities have incentive to keep their success standards and sampling techniques in compliance with the nationwide minimum requirements that have applied since 1983.

A final reason for removing the requirement that revegetation success standards and sampling techniques be included in the approved program is that this requirement is inconsistent with the approach we have taken in other areas. States do not have to include in their approved programs all of the specific techniques and standards they use to assess whether other SMCRA requirements have been met. *See* § 780.22 (requiring submission of the geologic data and overburden characteristics), § 780.21(d) (requiring assessment of the probable hydrologic consequences of mining), and § 780.21(g) (requiring a cumulative hydrologic impact assessment showing, *inter alia*, that the operation has been designed to prevent material damage to the hydrologic balance outside the permit area but not defining the term ''material damage''). Instead, the regulatory authorities, both States and OSM, have effectively addressed the standards to be used in these determinations or submissions by developing guidance documents that are not required to be in the approved regulatory programs. Moreover, we do not impose the requirement to promulgate success standards and sampling techniques upon ourselves when we act as a regulatory authority. None of the three Federal programs with active mining include specific vegetation sampling techniques. The Federal program for the State of Washington and the Federal program for Indian lands do not include specific revegetation success standards; the only Federal program with active mining that includes such requirements is the regulatory program for Tennessee. §§ 942.816(f) and 942.817(e). We have no compelling justification for continuing such an inconsistent approach, particularly since there is no reason to believe that the different requirements of State and Federal programs have resulted in significant divergence of the actual success standards or sampling techniques in use, or in the actual success of revegetation on mined sites. There is thus no principled reason to believe that the States cannot effectively implement revegetation success standards and sampling techniques without having to go through the formal promulgation process imposed by the prior approved program requirement of § 816.116(a)(1).

What were the comments submitted on our proposed revisions to § 816.116(a)(1)?

In response to our proposed rule, we received comments from 16 commenters supporting removal of the approved program requirement from § 816.116(a)(1). Of the 16 commenters, five were State regulatory authorities, one was a State coal association, six were coal companies, and four were industry associations. In general, these commenters based their support on the reduced regulatory burden they affirmed would result from eliminating the (a)(1) requirement. They also stated that the proposal would result in increased flexibility and improve their ability to make use of potential new technologies that may become available. Specific comments stated that the current process provides little incentive to continue or expand research into new and innovative methods, often results in unnecessary delays in State implementation of changes to these policies that are based on a State's professional judgment, and flies in the face of State primacy. These commenters stated that the revised regulation will better enable States to stay abreast of technological advances and to tailor success standards to local conditions, will allow use of alternative parameters for revegetation success, such as measurement of a site index, without submitting program amendments. Furthermore, the revised regulations will still support strict revegetation standards while allowing States to respond to improvements in sampling methodologies and technological advances.

We agree with these commenters and are proceeding with the rulemaking as proposed. The revised regulation will give the States the flexibility they need to implement new technologies without having to go through the Federal rulemaking process of amending their approved programs. As discussed above, we are also adding a provision to § 816.116(a)(1) to clarify that the standards and techniques selected by the regulatory authority must be described in writing and made available to the public. This last provision will ensure that all interested parties can readily find out all the options available in their jurisdiction for evaluating revegetation success.

Four of the commenters that supported the proposed revision to § 816.116(a)(1) noted that the revision, and the regulation as a whole, does not reflect that standards of success and statistically valid sampling techniques for measuring success are actually developed jointly by the permit applicant and regulatory authority and incorporated as part of the reclamation plan approved as part of the permit. These commenters indicated that normally the operator proposes such standards and sampling techniques prior to conducting baseline vegetation studies. The commenters agreed that this is appropriate, as the operator is most familiar both with the plant communities that will be affected by the operation and with the sampling methods needed to accurately describe and measure these plant communities. The commenters indicated that the standards and sampling techniques will become subject to evaluation in the permitting process and will be ultimately codified in the permit or letters of concurrence from regulatory authorities. The commenters further noted that through this process sampling methods and success standards are not ''selected'' unilaterally by the regulatory authority. Accordingly, the commenters suggested that preamble language of the § 816.116(a)(1) revision be improved by emphasizing the current process by which a number of the State regulatory authorities and their permittees jointly develop success standards and sampling techniques.

We are retaining the current requirement of § 816.116(a)(1) that the regulatory authority select revegetation success standards and statistically valid sampling techniques. The selected success standards and sampling techniques will be put in writing and be available to the public and, as before, will be used by operators in developing their permit applications. The manner

in which a regulatory authority goes about selecting the success standards and statistically valid sampling techniques that it will allow operators to use in evaluating revegetation success is up to the regulatory authority. That authority can, as suggested by the commenters, select the success standards and sampling techniques in consultation with operators and/or with assistance from academia. However, selected success standards and sampling techniques must meet the requirements of § 816.116(a)(2) and (b) and they must be put in writing and made available to the public. It is from these identified success standards and sampling techniques that the operators must choose the specific standards and techniques included in their individual permit applications. This procedure will ensure no less consistent revegetation success evaluations than that afforded under the prior rule.

We received comments from five commenters opposed to the proposed revision deleting the approved program requirement from § 816.116(a)(1). A large percentage of these comments focused on the absence of any provision in the proposed rule that would provide for public review of the success standards and sampling techniques selected by the regulatory authority. More specifically, these comments raised concerns about loss of public review; lack of enforceable success standards; inability of the public to review permits if the success standards and sampling techniques are not part of the approved program; and potential conflict among States, operators, and landowners over acceptable standards and sampling techniques. Other commenter concerns focused on the lack of support for changing a regulation that had been in place since 1983 and the inability of Federal oversight to prevent problems. These commenters also stated that the burden of OSM's lengthy timeframes for processing State amendments is self-imposed, that flexibility already exists within the Federal regulations for States to develop success standards and sampling techniques to fit local conditions, that inconsistent application of success standards and sampling techniques will occur, and that the current process does not stifle evaluation or utilization of new technologies. The specific comments received and our responses are discussed below.

All five of the commenters opposing removal of the approved program requirement from § 816.116(a)(1) expressed concern with the loss of public review of selected success standards and statistically valid sampling techniques if the standards and techniques were no longer included in the State approved program. These commenters declared that the removal of success standards and sampling techniques from the State approved programs would result in information not being available to the public. One of the commenters asserted that OSM, by adopting this change, was taking the attitude that the only parties at interest in these matters were the companies and the States. This commenter claimed that success standards for reclamation are an extremely important source of public information and that, under the proposed rule, it would be more difficult for the public to find the success standards approved for a given permit. The commenter indicated that the inclusion of important matters in ''internal guidance documents'' and ''technical standards'' alone is not satisfactory. The commenter further questioned how, under the proposed rule, the public would know if there was any internal consistency within and between States as to selected success standards or sampling techniques. Finally, the commenter asserted that under the proposed rule, as under the provisions for public review during permitting at § 773.6(a) and (b)(2), and as under the provisions for public involvement in bond release at § 800.40(b)(1) and (f), OSM and the States seemingly want the public to find the problems that OSM and the States have missed. The commenter concluded that it would be hard for the public to find these problems if the success standards and sampling techniques are not in the State regulations.

Two of these commenters further noted that removal of the approved program requirement from § 816.116(a)(1) eliminates the ability of the public to comment on the success standards and sampling techniques proposed by the States for inclusion in their approved programs.

In partial response to these commenters' concerns, we are adding the express requirement in final § 816.116(a)(1) that the standards and techniques selected by the States be in writing and made available to the public. We did not include this requirement in the 2005 proposed rule. Under the prior version of § 816.116(a)(1), States were required to include selected standards and techniques in their approved programs but were not required to include them in the rules of their approved programs. Rather, States had the option of including them in any element of their approved programs including guidelines, technical procedures, policy materials, etc. States will continue to have the option of including selected success standards and sampling techniques in the same range of formats, but must ensure their public availability. For example, States could make this information available to the public at places where other documents such as permit applications are also made available for public review. Or the States could further make it available to all interested parties either by mail or through the agency's web site. As before, States will continue to have the option of including selected standards and techniques in their approved program regulations. Whatever the formats chosen by the States, final § 816.116(a)(1) ensures the public access to and, therefore, the ability to review the selected standards and techniques. Furthermore, there will continue to be ample opportunity on a permit-specific basis for public review of the proposed use of selected standards and sampling techniques both during the permitting process as well as at bond release. Because § 780.18(b)(5) requires each permit application to identify its proposed success standards and sampling techniques, this information is also available for public review. Parties who have an interest that may be adversely affected by a decision on the application may further comment on these standards and sampling techniques under § 773.6(a) and (b)(2). These provisions ensure that the public will continue to have the ability to review the success standards and sampling techniques for every mine before operations begin. In addition, any persons with valid legal interests can also object to bond release under § 800.40(f) should they believe the operator has not used the approved success standard or not followed the approved sampling techniques.

Three of the five commenters opposing removal of the approved program requirement from § 816.116(a)(1) warned against the disputes that they asserted would inevitably arise between States and permit applicants/operators and between operators and landowners over what constitutes appropriate success standards and/or sampling techniques. The first of these three commenters admitted that the proposed revision would provide flexibility to State programs and would allow both States and operators to take advantage of new technology, sample methods, and statistics. This commenter also conceded that the approved program requirement of § 816.116(a)(1) was unnecessarily burdensome in terms of

the time and resources required by the State program amendment process and that this burden discourages updating revegetation standards. Nonetheless, this commenter asserted that any flexibility gained by the proposed revision to 816.116(a)(1) would not offset the endless disputes that would inevitably arise between States and permit applicants over what constitute acceptable methods and statistics.

While we believe that this commenter overstates the potential for disputes between States and permit applicants under proposed § 816.116(a)(1), final § 816.116(a)(1) expressly requires that all State-selected standards and techniques be in writing and made available to the public. This new provision should minimize disputes between a State and applicants over the range of success standards and sampling techniques available within that State. As under the prior rule, the permit applicant will be able to choose only from among available success standards and sampling techniques previously selected by the State. As under the prior rule, moreover, an applicant's proposed use of a selected standard or technique will be subject to State approval. Importantly, the potential for disputes between the regulatory authority and permit applicant should not be any greater than under the prior rule.

Two of the five commenters expressed additional concerns over the potential conflict that might arise between landowners and operators as a result of the proposed revision to § 816.116(a)(1). One of these two commenters also declared that the deletion of the approved program requirement would potentially place the landowner and operator in conflict at the time of bond release due to the use of measurement standards that lack a robust scientific basis.

We do not believe that the deletion of the approved program requirement from § 816.116(a)(1) will materially raise the potential for conflict between the landowner and operator at the time of bond release. As stated earlier, the provisions of § 816.116(a)(2) and (b) will continue to establish clear criteria and requirements for the success standards and sampling techniques that may be selected by the States under § 816.116(a)(1). All approved programs have counterparts to § 816.116(a)(2) and (b). Accordingly, the success standards and statistically valid sampling techniques selected by a State under final § 816.116(a)(1) will, for the purposes of establishing revegetation success at bond release, have the same robust scientific basis as the standards and techniques selected by the State under the prior rule.

One of the commenters opposing removal of the approved program requirement from § 816.116(a)(1) suggested that, without including success standards and measuring techniques in the approved State program, operators may simply choose not to comply with selected standards and techniques.

With regard to this concern, we note that all State approved programs have counterparts to § 780.18(b)(5) requiring that applications for a permit contain a plan for revegetation, including measures to determine the success of revegetation. Once approved by the regulatory authority, these and all other permit terms are binding and enforceable.

Still another commenter asserted that the reasons given by us for this removal do not support abrupt departure from more than two decades of regulatory policy.

We disagree. The reasons provided in both this and the proposed rulemaking more than adequately support the revision. It is our agency's continuing policy to examine existing regulations and to make changes that reduce the burden on State regulatory authorities, OSM, the industry, or the public while assuring the achievement of SMCRA's purposes and requirements. The current regulatory change is intended to reduce the burden on regulatory authorities and OSM without hindering the achievement of the SMCRA requirement that coal mining and reclamation operations establish a diverse, permanent, and effective vegetative cover on all affected lands. 30 U.S.C. 1265(b)(19) and 1266(b)(6). This provision says nothing about success standards, sampling techniques, or whether those details must be in a State program.

In our 1983 rulemaking we allowed use of only those revegetation success standards and measurement techniques that have been incorporated into the approved program. *See* 48 FR 40160, September 2. An agency's rules once adopted are, however, not frozen in place. An agency may alter its rules in light of its accumulated experience in administering them when it determines that a different approach would better implement the statutory scheme. As discussed above, our experience over the last twenty years indicates that the approved program requirement poses an unnecessary obstacle to technological innovation and adoption of new standards and sampling techniques. State programs have matured and can be relied upon to meet the requirements of SMCRA in light of the nationwide minimum requirements at § 816.116(a)(2) and (b) that will remain in place and will serve as a regulatory floor. Moreover, the Fourth Circuit has admonished us that, ''in contrast to other 'cooperative federalism' statutes, SMCRA exhibits extraordinary deference to the States.'' *See Bragg* v. *West Va. Coal Ass'n*, 248 F.3d 275, 293 (4th Cir. 2001). Thus, even if it might be permissible for us to continue to require that revegetation success standards and sampling techniques be approved as part of the State regulatory program, it is nonetheless reasonable and appropriate for us to allow the States to make changes to those details without our involvement, as long as each State meets and implements the minimum nationwide standards.

Three of the five commenters opposing the proposed rule took issue with the statement in our 2005 preamble that the ''relatively cumbersome'' nature of the State program amendment process may discourage States from utilizing ongoing research findings and technological advances to adopt new and improved success standards and sampling techniques. The first of these commenters admitted that its own regulatory review process is cumbersome, but stated that that is because, in many cases, OSM is trying to ''dodge a political bullet,'' rather than working in a more expeditious manner. The second commenter indicated that the fact that the State program amendment process is cumbersome is the result of OSM's decision not to more timely process State program changes. The same commenter noted that there is nothing inherently cumbersome or slow about the State program amendment process. The commenter also stated that OSM should be able to timely review and approve a properly documented State program amendment without hampering State innovation. In closing, this commenter asserted that the ''cumbersome'' nature of the current State program amendment process is a result of Federal agency practice, since the commenter saw nothing inherent in that process that requires the sort of delay that has attended OSM's review of program amendments. The third commenter stated that maintaining the current State program provisions would not stifle evaluation or utilization of new techniques. This commenter suggested that, as an alternative to eliminating the requirement that success standards and sampling techniques be included in the approved program, OSM should rather streamline its own program amendment review process so

as to assure that when proposed program amendments are supported by technological advances, they are processed and approved in an expedited fashion.

We strongly disagree with the general conclusion of these comments that any delay in the State program amendment process is attributable to our failure to timely process State program amendments. We recognize that we can make incremental improvements to speed the processing of State program amendments at the Federal level. However, the requirement that we approve amendments to these programs requires steps that are inherently time consuming. Also, a State may be required to go through its own rulemaking process before proposing amendments to its approved program under § 732.17. This State rulemaking process can also be very time consuming and is a practice over which we have no control. Accordingly, the deletion of the approved program requirement from § 816.116(a)(1) should enable States to more quickly adopt improved success standards and sampling techniques.

Three of the five commenters opposing the proposed rule asserted that the proposed deletion of the approved program requirement from § 816.116(a)(1) would undermine the core requirement in the Act that the Secretary establish a comprehensive set of minimum Federal standards for approved programs. Commenters also alleged that continued OSM prior review and approval of selected standards and sampling techniques was needed to assure a level playing field among States.

We do not believe these concerns are well-founded. The change to final § 816.116(a)(1) does not delete any statutorily-prescribed minimum standards. Section 101(f) of SMCRA provides that ''because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States.'' 30 U.S.C. 1201(f). In turn, section 515(b)(19) of SMCRA expressly provides that a State's performance standards shall require surface coal mining and reclamation operations as a minimum to ''establish on the reg[ra]ded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area * * *.'' 30 U.S.C. 1265(b)(19).

In implementing these two statutory provisions, both our prior rule as well as our proposed and final rules at § 816.116(a)(1) require States to select revegetation success standards and sampling techniques subject to the general conditions of § 816.116(a)(2) and (b). In turn, § 816.116(a)(2) specifically requires that State-selected sampling techniques for measuring success use a 90-percent statistical confidence interval and § 816.116(a)(2) and (b) require that State-selected success standards accord with the vegetative cover or crop production of appropriate reference areas.

We see nothing in these statutory and regulatory authorities to support commenters' assertion that OSM's prior review of selected standards and techniques was needed to assure a level playing field among States. State compliance with the criteria of § 816.116(a)(2) and (b) will, however, continue to ensure that a relatively level playing field exists among States. None of the revisions in final § 816.116(a)(1) will jeopardize State compliance with the criteria of § 816.116(a)(2) and (b).

Two commenters expressed concern about the negative effect that the proposed rule would have on the adequacy of reclamation required for bond release. The first of these commenters warned that, if States are no longer obligated to identify and defend their choice of objective standards for determining revegetation success, those States might adopt standards that are not based on good science in order to facilitate bond release. The second of these commenters declared that the proposed rule would allow operators to apply whatever standards they desired and that lands that did not meet the longstanding reclamation requirements of the Act would be released from their reclamation bond.

In partial response to these concerns, the final rule requires that success standards and sampling techniques selected by the States be in writing and made available to the public. As previously noted, this requirement should substantially relieve commenters' concerns that operators could apply whatever standard they desire and should also allay much of commenters' fears as to inconsistent standards among individual States. As set forth in our 2005 proposed rule (70 FR 13076, 13081), we continue to believe that the criteria enunciated in § 816.116(a)(2) and (b) will preclude States from selecting inadequate success standards or sampling techniques for which there is no sound scientific basis. For the same reasons, we continue to believe that appropriate reclamation will, as before, be required for bond release. The bond release and oversight protection provided at §§ 800.40(b)(1) and 733.12(a)(1) should also, as under the prior rule, further guard against faulty bond release. With the same general protections in place as before, final § 816.116(a)(1) will merely allow a State program to employ the latest and most appropriate standards and sampling techniques without first having to go through the time-consuming process of adding them to its approved regulatory program.

One commenter also asserted that, if every permit had its own revegetation standards and measurement techniques, it would be extremely difficult for even the most dedicated State regulator to keep track of the approved success standards and sampling techniques and to use them for evaluating revegetation success.

The new requirement of final § 816.116(a)(1) that the success standards and sampling techniques selected by the regulatory authority be in writing and be made available to the public should ensure that the number of new standards and sampling techniques that the State regulator must keep track of and use remain at a reasonably manageable number.

Two commenters alleged that our oversight of State programs would not be adequate to catch problems with success standards and sampling techniques. The first of these commenters challenged our statement in the 2005 preamble that the oversight process would directly address any major deficiency identified in the revegetation success standards and/or sampling techniques used by a State. The second of these commenters questioned whether OSM would be familiar enough with all the differences between possible success standards and sampling techniques to be able to determine which one was deficient.

We disagree with these concerns as to our oversight authority and capacity to identify and address major deficiencies in the success standards and/or sampling techniques selected by the States. The revision to final § 816.116(a)(1) does not restrict or in any way impair our continuing authority under § 733.12(a)(1) to annually evaluate the administration of individual approved programs. These evaluations address programmatic problems and are conducted in accordance with longstanding agency policies that focus on the on-the-ground

results of reclamation and revegetation activities. From our past experience, we are confident that there are sufficient numbers of knowledgeable OSM personnel, including inspectors, committed to evaluating each State's reclamation performance. If our field reviews identify problems with inappropriate State evaluations of revegetation success, we will then review the permits in question to determine whether the correct success standards and sampling techniques were used in those evaluations. This review could, if appropriate, also address whether the success standards and sampling techniques complied with the State counterparts to § 816.116(a)(2) and (b). If we find that they are not in compliance, then we will work with the State to correct deficiencies, ensuring that all success standards and sampling techniques comply with program requirements.

Three of the five commenters opposing the proposed rule also disagreed with our assertion that the approved program requirement of § 816.116(a)(1) in the previous regulation discourages the use of new technologies. One of these commenters stated that our call for use of the latest sampling techniques was inappropriate. This commenter indicated that we should instead seek the most accurate and reliable sampling techniques rather than the ''latest thing'' in new sampling techniques, which might not be the best for the particular circumstance. The commenter further indicated that we should provide a backstop against fads that can sweep a scientific community. The commenter questioned our agency's concern to have the ''latest thing'' in sampling techniques available when we showed so little interest in the latest scientific ''thing'' in blasting. The commenter observed that, according to our explanation for eliminating the approved program requirement of paragraph (a)(1), OSM and some of the States were experimenting with new, potentially useful methods, but that it would take time to determine their reliability. The commenter warned that, until we made that determination, we should not dump proven practices in favor of the latest technology.

We disagree with these concerns. The Federal regulations at § 816.116(a)(2) and their State counterparts clearly require that all statistically valid sampling techniques must use a 90-percent confidence interval. This requirement will ensure that, regardless of the individual technique selected by the regulatory authority, all selected techniques will require the same level of precision. Our experience has shown that State personnel have both the expertise and experience to determine the reliability of new sampling techniques. Eliminating the approved program requirement from § 816.116(a)(1) will, therefore, enable regulatory authorities to more quickly adopt new and reliable techniques, but will not require States to make changes should they be satisfied with their existing techniques.

Another of the commenters stated that OSM's goal of allowing variance among legitimate methods of measuring revegetation success could still be met through the State program amendment process but cautioned that the standards for measuring success do not change so dramatically and rapidly as to necessitate ''streamlining'' State adoption of new measurement techniques by eliminating OSM and public review.

As we stated previously, the time involved in the program amendment process is substantial and does not allow expedited implementation of new measurement technologies in approved State programs. We have also explained that the final rule will not eliminate public access to information about new measurement techniques selected by the States, nor will it impair our oversight of State evaluations of revegetation success. While public involvement in such changes will be different than under the prior rule, as will be our involvement, we believe the changes will fully, and more efficiently implement the requirements of SMCRA. After considering the benefits and costs of removing the approved program requirement from § 816.116(a)(1), we have concluded that both the environment and good science would be appropriately served by its removal.

One commenter was concerned that, without the Federal requirement for including selected success standards and measuring techniques in States' approved programs, States that have a ''no more stringent than'' clause in their State law may feel constrained not to adopt such standards and techniques as a matter of State regulation.

We disagree with the commenter's concern that the existence of a ''no more stringent than'' clause in a State law will result in the State not adopting success standards and measuring techniques. Revised § 816.116(a)(1) does not change its requirement that a State must still select success standards and sampling techniques for use in its program. Furthermore, these selected standards and techniques must continue to be consistent with the Secretary's regulations, particularly with the requirements of § 816.116(a)(2) and (b). A ''no more stringent'' clause in the State's approved program would not negate any of these requirements.

Two commenters stated that § 816.116(a)(1) does not need to be changed in order for a State's success standards to address the variability of environmental conditions found in that State. While we acknowledge the truth of this statement, the principal motivation for our changing § 816.116(a)(1) continues to be reducing the time that may be required before a State program may adopt the latest, scientifically responsible standards for revegetation success.

One commenter asserted that removal of the approved program requirement from § 816.116(a)(1) also removes the ''force of rule'' from the sampling techniques selected by the regulatory authority.

In response, we note that final § 816.116(a)(1) does not change the requirement for States to select the standards for success and statistically valid sampling techniques. Under the prior rule, however, the standards and techniques selected by a State were required to be included in the approved program but were not required to be in rule form. As discussed above, these standards and techniques could also have been included in a guideline or other statement of technical procedures. Under final § 816.116(a)(1), States will still have those options; but selected standards and techniques will have to be made available to the public.

Another commenter took issue with the statement in our 2005 proposed rule that the existing requirements of § 816.116(a)(2) and (b) should ensure that selected success standards and sampling techniques used in the various States will provide similar degrees of proof that adequate reclamation has been achieved. The commenter disagreed with this assessment, indicating that, while standards for success are specified in these sections, the only specification regarding sampling methods is that parameters must be evaluated using sampling techniques with a 90-percent statistical confidence interval. The commenter added that the application of a statistical confidence limit is merely the final step in a long process, with no requirements being established in the rule for the intermediate steps in this process. While the commenter observed that there are many ways to obtain a data set for evaluation that meets the requirement for sampling using a 90-percent confidence interval, he noted that many of these ways do not, for various reasons, constitute a representative sample of the target

population. In addition, there are many different types of statistical tests that might be applied to determine 90-percent confidence. The commenter further stated that inappropriate application of statistical tests would result in incorrect conclusions regarding eligibility of lands for bond release. The use of sampling methods and statistical tests with no rules on approved methods would inevitably result in incorrect decisions regarding bond release and inconsistent application of rules and standards. In conclusion, this commenter declared that the premise that a regulatory authority will be able to ensure appropriate use of sampling methods and statistics without those requirements being included in the approved program is entirely unrealistic.

The commenter is correct in its statement that there are many ways to obtain data satisfying the required 90-percent statistical confidence interval that may not constitute a representative sample of the target population. Similarly, there are many types of statistical tests that might be applied to determine the 90-percent statistical confidence interval. Inappropriate application of these statistical tests could, as the commenter suggested, result in incorrect conclusions regarding the eligibility of lands for bond release. The framing and the appropriate application of these sampling methods and statistical tests have always been two of the challenges facing the State regulatory authority under the prior rule. The same challenges will continue under the new rule. The only ''rule,'' *i.e.*, regulatory prescription, that has ever governed the selection and application of sampling techniques and statistical tests is the 90-percent statistical confidence interval of § 816.116(a)(2). This requirement will not be affected by the revision to § 816.116(a)(1). Accordingly, we strongly question the commenter's broad declaration that without ''rules'' on approved methods, incorrect decisions regarding bond release and inconsistent application of rules would ''inevitably result.'' As stated above, it furthermore has been our experience that States have the necessary technical expertise both to select statistically valid sampling techniques and statistical tests that would result in a representative sample of the target population and to ensure that the statistical tests are applied correctly. As before, we will be available to provide technical assistance to the States in any further development and application of statistically valid sampling techniques and statistical tests. While not absolute guarantees in themselves, we reasonably believe that the current rules at § 816.116(a)(2) and the current level of State expertise will continue to provide for appropriate development and use of sampling methods and statistics.

Apparently in response to the statement in our 2005 preamble that our regulations allow technical standards to be included in technical guidance documents that are not part of the approved regulatory program, one commenter questioned whether any outside party had access to our ''records'' as the regulatory authority in Tennessee, Washington, and for the Indian Lands Programs. All permitting actions and bond releases in Tennessee, Washington and on Indian Lands are, in fact, available for public review. All reclamation plans, including revegetation success standards and sampling techniques, for permits in Tennessee and Washington and on Indian Lands are also available for public review. Arrangements may be made to review those records by contacting the appropriate OSM office.

3. Section 816.116(b)(3): Success Standards for Undeveloped Land

What are the revisions to § 816.116(b)(3)?

We have revised § 816.116(b)(3) to add undeveloped land as one of the land uses subject to that section's success standards. Revised § 816.116(b)(3) will read as follows, with new language in italics:

> For areas to be developed for fish and wildlife habitat, recreation, *undeveloped land*, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover.

This provision is identical to that proposed in our 2005 **Federal Register** notice.

The basis for our revision to § 816.116(b)(3) is set forth in detail in that notice. There we noted that several commenters responding to our 1999 outreach had suggested that current § 701.5 includes undeveloped land as a land use category and defines it as ''land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.'' Therefore, without any change to the current regulations, undeveloped land can be approved as a postmining land use under the postmining land use provisions of § 816.133. However, unlike all the other land use categories listed in § 701.5, undeveloped land does not have success standards specified in § 816.116(b). Under this final rule, the inclusion of undeveloped land among the land uses subject to the revegetation success standards of § 816.116(b)(3) will mean that undeveloped land will be subject to cover and, if applicable, stocking requirements depending on the vegetation goals for each parcel of land. We consider the cover and stocking requirements of § 816.116(b)(3) to be particularly appropriate criteria for evaluating the revegetation success of an undeveloped land use area, as they can be used to ensure the establishment of the seral species, *i.e.*, a community of mixed grasses, forbs, shrubs and trees, necessary to facilitate natural plant succession.

What were the comments submitted on our proposed revision to § 816.116(b)(3)?

Eight commenters supported the proposed revision of § 816.116(b)(3) to add undeveloped land as one of the land uses subject to that section's success standards. These commenters were in general agreement that having undeveloped land available as a postmining land use could allow reclamation of areas that potentially provide higher ecological benefits and diversity (and reforestation) than the other land uses previously identified in the regulations at § 816.116(b).

One of these commenters asked whether the seral species on undeveloped land must be predominately native to the area or whether large swaths of introduced species, such as kudzu, could be acceptable in States such as Tennessee or Alabama.

As previously noted, undeveloped land is defined as ''land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.'' Therefore, if an operator chooses undeveloped land as a postmining land use, we believe that the operator would have to reclaim the land with the revegetation goal of promoting natural succession. In this regard, the revegetation provisions of § 816.111 require the use of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use. The use of those introduced species must also be approved by the regulatory authority, and under § 816.111 those species must be capable of plant succession. Species like kudzu that are considered noxious weeds could not be introduced because of the prohibitions of State and Federal laws and regulations governing noxious

plant and introduced species. It would not be feasible or appropriate for us to establish national standards for seral species because of the vast differences in plant communities throughout the country. Planting and seeding plans for development of seral plant communities is best done at the local level by professionals most familiar with the local environment.

Another commenter noted that the Ohio approved program has established a postmining success standard for undeveloped lands. The intended purpose of that program regulation was to encourage the planting of trees and shrubs without the need to achieve an established standard for stems per acre, survival or plant productivity. The commenter observed that, in spite of this incentive, the Ohio regulation has not proven successful in encouraging additional tree and shrub plantings within mined areas. Based on this Ohio experience, the commenter stated that the proposed revision to include undeveloped land among the listed land uses of § 816.116(b)(3) is unnecessary as the inclusion is not likely to achieve its intended purpose of encouraging tree and shrub planting. Instead, the commenter recommended the establishment of a national standard requiring that a minimum of 80 percent of the acreage that is disturbed by mining and that supported a forest or shrub cover prior to mining must be reclaimed to forest and shrub cover following mining. The commenter based this recommendation on several States' interpretation of their existing rules. The commenter further stated that this restoration requirement for forest and shrub lands would necessitate the development and utilization of techniques necessary to ensure successful restoration of premine land use capabilities, including those of forestry or fish and wildlife habitat. Such a national requirement would also establish a consistent playing field for operators across the country.

We appreciate the commenter's concern as to whether the Ohio rules have been successful in encouraging tree and shrub planting on undeveloped land. Nonetheless, because undeveloped land is already available as a postmining land use, we believe that it is necessary both to establish revegetation success parameters for this land use and to require that operators, to obtain bond release, then demonstrate compliance with those parameters. Revising § 816.116(b)(3) to include undeveloped land among the numbered postmining land uses assures that all approved postmining land uses will have to meet prescribed revegetation success standards. The commenter's proposal to require reclamation to premining cover type of 80 percent of the acreage that previously supported a forest or shrub cover goes beyond the requirements of SMCRA. Section 515(b)(2) of the Act addresses postmining land use and requires restoration of affected lands to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses. The proposed establishment of national criteria requiring redistribution of a particular level of premine tree and shrub cover is therefore not authorized, because SMCRA allows landowners to choose higher or better postmining land uses.

Two commenters contended that OSM should do more than simply adding undeveloped land to the list of land uses subject to the requirements of § 816.116(b). They argued that, if OSM finalizes its proposal, the new rule would not foster one of our stated objectives which was to encourage reforestation. These commenters asserted that some permit applicants would choose not to select undeveloped land as their postmining land use and would propose not to plant trees if the revegetation standards for undeveloped land were unnecessarily burdensome. Moreover, these commenters noted that, in approving Ohio's success standards for undeveloped land, we stated that ''undeveloped land is consistent with the Federal regulations which do not contain specific success standards for undeveloped land, and is in keeping with section 101(f) of SMCRA, which vests the States with the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamations operations.'' 59 FR 22514, May 2, 1994.

The same two commenters indicated that, instead of treating the undeveloped land category like the other land uses in § 816.116(b)(3), OSM should recognize that the State regulatory authority may develop its own undeveloped land revegetation success standards on a program-wide or individual permit basis. Such State-specific revegetation success standards for undeveloped land would, of course, ensure that the land be allowed to return to its natural or undeveloped state, or to forest through natural succession. The commenters suggested using the Ohio approved program as a model for development of future Federal regulations. Under this approach, revegetation success for the undeveloped land use would be determined on the basis of ground cover and the proper planting of appropriate tree and shrub species specified in the permittee's approved planting plan. In addition, these commenters suggested that revegetation on undeveloped land should be found successful for phase II bond release when the herbaceous ground cover species are established and provide sufficient ground cover to control erosion. For phase III, the bond should be released when the five-year period of responsibility has expired and acceptable species of trees and shrubs have been properly planted in accordance with the approved planting plan. The commenters indicated that survival of tree or shrub plantings should not be a requirement for phase III bond release, as long as the permittee demonstrates that the planting plan has been approved and followed and that trees and shrubs have been planted in approved numbers and locations. The commenters affirmed that this proposed regulatory approach to revegetation success for undeveloped land would encourage more reforestation than OSM's proposal to include undeveloped land among the land uses subject to the revegetation success standards of § 816.116(b)(3).

We do not agree with any aspect of the commenters' proposal. As noted in the preamble to the proposed rule, unlike all the other land use categories listed in § 701.5, undeveloped land does not have specified revegetation success standards in § 816.116(b). The inclusion of undeveloped land as one of the land uses subject to the success standards of § 816.116(b)(3) means that undeveloped land will, like all the other listed land uses, have specific revegetation success standards. Therefore, any area with an approved undeveloped land use will be subject to the cover and, if applicable, stocking requirements of § 816.116(b)(3) depending on the particular vegetation goals set for that parcel of land. These cover and stocking requirements are particularly appropriate criteria for evaluating the revegetation success of an undeveloped land use area as these requirements should ensure the establishment of the seral species, *i.e.*, a community of mixed grasses, forbs, shrubs and trees, necessary to facilitate natural plant succession. Upon promulgation of this final rule, if reforestation proves to be the desired goal of individual revegetation efforts, the approved land uses could be forest products (forestry), fish and wildlife habitat, or undeveloped land. For phase II bond release the operator must only demonstrate the establishment of the seeded or planted species. However, we maintain that in all cases, and for obvious reasons, the ultimate success of revegetation when it is evaluated at

phase III must be based on cover and the survival of the planted trees, not simply the planting of those trees. Under both the prior and final rule the specific success standards and criteria used to evaluate each of these land uses will be established by the regulatory authority. We note that, contrary to these latter commenters' assertions about the efficacy of the Ohio model in encouraging reforestation, Ohio has indicated that its approved provisions for evaluating revegetation success for undeveloped land, which do not require evaluation of survival, have not been successful in encouraging tree and shrub planting. We do not believe that including survival requirements for trees in the success standards for undeveloped land will adversely affect reforestation efforts. In sum, we find no meaningful basis for exempting the undeveloped land use from the success requirements common to all other land uses listed in § 816.116(b).

4. Section 816.116(b)(3): Shelter Belts

What are the revisions to § 816.116(b)(3)?

We are further revising the revegetation success provisions of § 816.116(b)(3) to eliminate the reference to shelter belts from listed land uses. This revision is identical to that in the 2005 proposed rule. We will address the use of shelter belts under the revegetation success provisions of § 816.116(c)(4), which governs normal husbandry practices.

As discussed in the preamble to that proposed rule, we have removed shelter belts from the land uses listed in § 816.116(b)(3) for three reasons: shelter belts have never been included among the land use categories listed in § 701.5; shelter belts are defined as conservation practices, not land uses, by the Natural Resources Conservation Service (NRCS); and the recognized purpose and ongoing maintenance requirements of shelter belts are consistent with the normal husbandry practices allowed by § 816.116(c)(4).

What were the comments submitted on our proposed revision to § 816.116(b)(3)?

Ten commenters supported removing shelter belts from the land uses listed in § 816.116(b)(3). All these commenters agreed with our position that shelter belts are conservation practices and should, therefore, be addressed as normal husbandry practices.

One commenter opposed the proposed revision, preferring that the reference to shelter belts be retained in our regulations at § 816.116(b)(3). This commenter stated that the underlying idea behind the (b)(3) regulation has been that shelter belts would provide cover for game traveling between different kinds of postmining land uses and would aid in controlling wind and water erosion. The commenter indicated that we should retain the idea of providing cover for game and controlling erosion with tree and shrub plantings, even within areas reclaimed for residential, commercial, or industrial postmining land uses. The commenter contended that, if the idea of providing cover for game and controlling erosion with tree and shrub plantings is lost by removing shelter belts from among the listed land uses of § 816.116(b)(3), we would be bowing to the ''barrenness'' of those uses. While the commenter agreed that the NRCS definition of shelter belt'' may be a husbandry practice, he noted that the shelter belt concept, as currently used in our regulations, involves more than a mere husbandry practice and should be retained in § 816.116(b)(3).

We agree that, to provide habitat for various wildlife species as well as to control wind and water erosion, we should encourage the use of shelter belts. However, the inclusion of shelter belts among listed land uses in § 816.116(b)(3) triggers a statistical evaluation of shelter belts under § 816.116(a)(2) for determining revegetation success at bond release. We believe that requiring such a statistical evaluation actually discourages the use of shelter belts on reclaimed lands because of the time and money necessary for sampling and preparing a bond release application. Not surprisingly, the current use of shelter belts is very limited. Redesignation of shelter belts as a normal husbandry practice should reasonably encourage their future use and proper maintenance.

In response to the commenter's concern about the value of shelter belts as wildlife cover, we note that the Federal regulations at § 816.97(a) continue to require that the operator must, to the extent possible and using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and must enhance such resources where practicable. Furthermore, § 816.97(h) continues to require that, where cropland is to be the postmining land use and where it is appropriate for wildlife- and crop-management practices, the operator must intersperse fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Finally, § 816.97(i) requires that, where residential, public service, or industrial uses are to be the postmining land use, and, where it is consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife. In answer to the commenter's general concerns, these cited regulations clearly provide for the use of vegetated areas similar to shelter belts for enhancing wildlife habitat, even with residential or industrial postmining land uses.

Another commenter supported the proposed changes, agreeing that shelter belts are not a land use but rather a conservation practice supporting approved land uses. Nonetheless, this commenter argued that any trees included in the shelter belt area should still be subject to the requirement at § 816.116(b)(3)(ii) that, at the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility and all shall have been in place for at least two years (the ''80/60 rule''). Accordingly, the commenter suggested that language be included in the regulations to clarify that shelter belts are subject to the success standard of § 816.116(b)(3)(ii).

In response to this comment, we note that it would be logically inconsistent to treat shelter belts as normal husbandry practices, which allow for maintenance that could include dead tree or shrub replacement, irrigation, thinning, pruning, chemical application for disease and pests, protection from livestock and wildlife, and fertilization, but still require shelter belts to comply with the 80/60 rule, which places limits on tree and shrub replanting.

5. Section 816.116(b)(3)(ii): Tree and Shrub Stocking Standards

What are the revisions to § 816.116(b)(3)(ii)?

We have made three minor revisions to § 816.116(b)(3)(ii) to provide new ways in which operators may accurately satisfy the existing revegetation success standards of the 80/60 rule for areas developed for fish and wildlife habitat, recreation, undeveloped land, or forest product postmining land uses. Revised § 816.116(b)(3)(ii) will read as follows, with new language in italics:

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining

such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility. *The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.*

The revised language is identical to that included in our 2005 proposed rule. As discussed in the preamble to that rule, many mine operators over the years have perceived the 80/60 rule as not only being complex and confusing but also subject to uncertain implementation by State regulatory authorities. Furthermore, operators often perceived as unnecessarily difficult, costly, and time-consuming the need under the 80/60 rule for determining the length of time that individual trees and shrubs have been in place. In response to these concerns, we have added five sentences to the end of the existing language of § 816.116(b)(3)(ii) to implement three minor revisions in the way operators may satisfy the 80/60 success standards.

The first revision to § 816.116(b)(3)(ii), represented by the first two new sentences added to the end of existing rule language, effectively eliminates the current potential need under the 80/60 rule for field verification of the time in place of individual plants. Under the prior rule, especially in areas of greater than 26 inches of average annual precipitation (''humid areas'') where mined land could reasonably be reforested, the need for determining the time in place of trees has proven to be a significant disincentive to reforestation. Instead, operators have tended to choose grazing land or pastureland, not forestry, in order to avoid application of the tree-counting requirements of the 80/60 rule. With our first revision to § 816.116(b)(3)(ii), operators can now document compliance with the 80/60 rule time-in-place requirements for individual plants by comparing records of initial planting (or ''stocking'') and replanting of transplants to the final field count of plants at bond release. The second sentence specifically requires the use of transplants rather than seeding for any replanting. We have added this requirement because the use of transplants or plant seedlings allows us to quantify easily the amount of replanting that has occurred and thereby ensure compliance with the 80/60 rule time-in-place requirements. By contrast, if an operator used seeding for replanting, because of the variability in seed germination it would be extremely difficult to quantify the number of trees and shrubs that would result from the supplemental seeding. This would make verification of compliance with the 80/60 rule time-in-place requirements extremely difficult, if not impossible.

The 80/60 rule time-in-place requirements can be met when the following easily documented facts are established: (1) The final field count of plants of approved species at bond release shows that the requisite number of plants are in place; (2) records show that no woody species have been planted in the last three years of a five-year responsibility period or six years of a ten-year responsibility period; (3) if replanting has occurred in the last 60 percent of the responsibility period, planting records show that the number of plants replanted is below 20 percent of the final plant count; and (4) no woody species have been planted during the last two years of the responsibility period. By establishing these facts, it will now be possible for an operator to make a numerical assessment of compliance with the 80/60 rule that is at least as accurate as could be obtained under the current laborious practice of having to determine the length of time that individual plants have been in place.

The second revision to § 816.116(b)(3)(ii), represented by the third and fourth sentences added to the end of existing rule language, will allow volunteer plants of approved species to be included in the 80/60 revegetation success count even when it cannot be verified that the volunteers are more than two years old. Operators and regulatory officials from both the humid and semi-arid precipitation areas have often questioned the wisdom of not being able to include volunteer plants of approved species in the 80/60 revegetation success count when it cannot be verified that the volunteer plants have been in place for not less than two growing seasons. We believe the new provision permitting operators to count volunteer plants is consistent with section 515(b)(19) of the Act, which requires the operator to establish vegetation that is ''capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area.'' The volunteer plants allowed under this revision represent either regeneration of species already present on the reclaimed area or invasion of native species from adjacent undisturbed areas, which is itself a strong indication of plant succession. Live volunteer plants are as likely to continue to grow and mature as transplants of the same species that may be little more than two years old. Therefore, counting the first products of plant regeneration or invasion is a clear and reasonable indicator of successful reclamation and an appropriate revision to the 80/60 rule.

The third revision to § 816.116(b)(3)(ii), represented by the fifth sentence added at the end of existing rule language, will allow individual suckers from shrubs to be counted as volunteer plants under the 80/60 rule when it is evident that the shrub community is vigorous and expanding. As discussed in our proposed rule, many of the planted or seeded shrub species in semi-arid areas undergo a continual process called ''suckering'' by which multiple new aboveground stems are generated from the initial plant. It is not possible, however, to document the time in place of these new suckers. Therefore, even though the sucker plant community may be vigorous and expanding, the individual suckers could not be counted under the prior rule for purposes of meeting the 80/60 revegetation success count. As is the case with other volunteer plants, we believe that allowing for the counting of individual suckers within a vigorous and expanding shrub community is also a reasonable indicator of successful reclamation and an appropriate revision to the 80/60 rule.

What were the comments submitted on proposed revisions to § 816.116(b)(3)(ii)?

Fourteen commenters supported the proposed revisions to § 816.116(b)(3)(ii) and the new ways operators may accurately establish compliance with the 80/60 revegetation requirements of that rule. These commenters echoed many of the same themes that we had set forth in our preamble to the proposed rule. The commenters affirmed that the new language added to § 816.116(b)(3)(ii) would reduce some of the sampling problems and unnecessary

burdens associated with proving reclamation success on woodland land uses. They viewed the new ability to include volunteer trees and shrubs, including suckers, in success determinations as encouraging greater use of woody species and the reforestation of mined lands. Finally, because the regenerative capabilities of a planting can greatly increase its prospects for long term success, they confirmed that volunteer plants would be no less valuable for determining revegetation success than original plantings.

One of the commenters supporting the proposed revisions provided much useful information for evaluating shrubs from different shrub populations and developing species-specific sampling techniques. We particularly appreciate this commenter's insight into evaluating shrubs. The provided information may well prove useful in the future for developing sampling techniques based on the particular species of shrubs to be sampled.

One commenter, however, objected to the revision of § 816.116(b)(3)(ii) on the grounds that it eliminated the continuing need under the 80/60 rule to make a plant count of trees and shrubs for establishing revegetation success. This commenter also expressed concern that one-year-old suckers in the West might be included in the final field count, even though such suckers are not viable. The commenter did not object to counting suckers if they are vigorous and expanding but observed that a competent horticulturist or agronomist familiar with an area should be able to determine if a sucker ''is going into its second growing season.''

We note that our revision of the methods by which trees and shrubs can be counted under the 80/60 rule does not change the requirement that, during the final year of the responsibility period, the operator must still demonstrate that the revegetation success standard has been achieved. This demonstration will require sampling, i.e., field counting, the individual trees and/or shrubs on the reclaimed area. The counting of one-year-old suckers should not be a concern because, since they receive nourishment from both the parent plant and their own root system, their continued survival and expansion beyond year one should be reasonably ensured. Evaluation of tree and shrub density in the last year of the responsibility period should also ensure that the stands are well established. Accordingly no changes are necessary to address this commenter's concern.

Still another commenter opposed the proposed revisions to the 80/60 rule because it feared these revisions would weaken the regulatory authority's ability to require success standards and sampling techniques that would ensure good and lasting reclamation. This commenter stated that under the proposed rule operators could essentially choose whatever sampling technique is least costly—whether the technique is valid or not—and apply reclamation performance standards as they see fit. The commenter further questioned how regulators and the public would be able to hold operators to a high and successful reclamation standard. The commenter suggested that, under the proposed rule, lands might be released from reclamation bonds even though they did not, in fact, ''meet long lasting reclamation requirements or the intent of the SMCRA.''

Contrary to this commenter's contention, our revisions to § 816.116(b)(3)(ii) will not weaken or otherwise adversely affect the regulatory authority's ability to require that, during the final year of the responsibility period, the operator must still demonstrate that the revegetation success standard has been achieved. As always, this demonstration under § 816.116(b)(3) will require sampling, i.e., field counting, the tree and/or shrub density on the reclaimed area and comparing those counts to records of original planting and replanting to determine if revegetation is successful. Under § 816.116(a)(1), the regulatory authority will continue to select the success standards and statistically valid sampling techniques that operators must use to demonstrate revegetation success. Accordingly, the new methodologies allowed under revised § 816.116(b)(3)(ii) for establishing compliance with the revegetation requirements of the 80/60 rule will not affect the quality of the reclamation required under the Act. These new methodologies will merely allow the operator to demonstrate achievement of the revegetation success standard without having to track the time in place of individual plants through the revegetation responsibility period.

6. Section 816.116(c)(3)(i) and (ii): Sampling Timeframes for Areas With Less Than 26 Inches of Precipitation

What are the revisions to § 816.116(c)(3)(i) and (ii)?

We have revised § 816.116(c)(3) to change the timeframes for sampling revegetated lands in areas receiving less than 26 inches of precipitation to determine if they meet the appropriate success standards. Revised § 816.116(c)(3)(i) and (ii) will read as follows, with new language in italics:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) below. The vegetation parameters identified in paragraph (b) of this section *for grazing land, pasture land, or cropland* shall equal or exceed the approved success standard *during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.*
(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the *growing season of the last year of the responsibility period.*

This revised language is identical to that included in the 2005 proposed rule.

We are changing our revegetation regulations at § 816.116(c)(3) to bring the timing of revegetation success measurements for areas of 26 inches or less of average annual precipitation (''semi-arid areas'') into line with those for areas of greater than 26 inches of average annual precipitation (''humid areas'') at § 816.116(c)(2). As discussed more fully in our 2005 proposed rule, our 1979 regulations provided for the timing of revegetation success measurements for semi-arid areas to be identical to that for humid areas. These regulations required that the revegetation success standards be equaled or exceeded for the last two consecutive years of the respective five- and ten-year responsibility periods. In 1983, we revised our humid area regulations, redesignated as § 816.116(c)(2)(i), to require that revegetation success standards be equaled or exceeded during the growing season of the last year of the five-year responsibility period, or, if required by the regulatory authority, during the growing season of the last two consecutive years of responsibility period. We did not, however, change the semi-arid area regulation at § 816.116(c)(3)(i), which continued to require that the revegetation success standard be equaled or exceeded for the last two consecutive years of the ten-year responsibility period. In 1985, the court remanded the 1983 revision to us because of the lack of supporting evidence.

On September 7, 1988, we promulgated the current rules at § 816.116(c)(2)(i) setting forth the periods for measuring revegetation success for humid areas with a five-year

responsibility period. 53 FR 34643. The new regulations required that revegetation success standards for grazing land, pasture land, or cropland postmining land uses be equaled or exceeded during any two years of the responsibility period, except the first. Prior to the 1988 revision to § 816.116(c)(2)(i), evaluation of revegetation success was required in the last two years of the responsibility period for these land uses, regardless of the precipitation regime. In support of this relaxation from the 1979 ''last-two-consecutive-years-of-the-responsibility-period'' standard, the 1988 preamble noted that the earlier 1983 preamble had cited the effect of year-to-year [climatic] variability on crop yields or other parameters that are highly sensitive to such conditions as justifying the requirement of two consecutive years of revegetation success. 48 FR 40156, September 2. Notwithstanding, we reasoned that, relative to grazing land, pasture land, and cropland postmining land uses in humid areas, ''[m]easurement in nonconsecutive years avoids unduly penalizing the operator for the negative effects of climatic variability.'' The 1988 preamble continued, ''OSM * * * believe[s] that measurement over two years is important to attenuate the influences of climatic variability, but now realizes that consecutiveness imposes an unnecessary degree of regulatory rigidity.'' Furthermore, we argued that to require measurement of crop or pasture yields in the last year of the responsibility period would be an unnecessarily rigid standard given the variability of weather conditions. 53 FR 34640.

The 1988 revision also provided that, for humid areas, the revegetation success standards for postmining land uses other than grazing land, pasture land, and cropland, e.g., forest products, fish and wildlife habitat, etc., must be equaled or exceeded during the growing season of the last year of the responsibility period. Supporting this relaxation of the 1979 ''last-two-consecutive-years-of-the-responsibility-standard,'' we reasoned that within a forest ecosystem there exists a positive relationship between time and vegetative cover. Therefore, we concluded that, for forest-type ecosystems, the last year of the responsibility period would provide an accurate measurement of revegetation success. 53 FR 34641.

After reviewing the 1988 preamble rationale that supported relaxation of the last-two-consecutive-years requirement for humid areas with a five-year responsibility period, we have not found any persuasive reason why the same rationale would not equally apply to semi-arid areas with a ten-year responsibility period. For example, for areas with postmining land uses other than grazing land, pasture land, or cropland, determining vegetation success requires measurement of vegetative parameters that are not sensitive to short-term weather variations. With each of these other postmining land uses, the vegetative measurements done for the last year of the responsibility period can be reasonably expected to represent the baseline for vegetative success in future years. Trees counted in the last year of the responsibility period for a forestry postmining land use should reasonably be expected to survive as a permanent vegetative cover. This holds true whether the other postmining land uses are located in humid or semi-arid areas. For all postmining land uses, we believe that it is the nature of the individual postmining land use and not the relative moisture of the area in which the land use is located that appropriately determines the number and spacing of the years for which vegetation success must be measured.

Accordingly, we have revised our regulations for semi-arid areas at § 816.116(c)(3)(i) to comport with our regulations for humid areas at § 816.116(c)(2)(i). The revised rules for semi-arid areas provide that the vegetation parameters identified in § 816.116(b) for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. For semi-arid areas approved for the other land uses identified in paragraph (b) of that section, vegetation must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

Revising the revegetation rules in this manner makes the requirements of § 816.116(c)(3)(i) for areas receiving 26 inches or less of annual precipitation similar to those of § 816.116(c)(2)(i) for areas receiving more than 26 inches of annual precipitation. For the sake of further consistency, we are similarly revising the rules for lands in semi-arid areas at § 816.116(c)(3)(ii), which govern the timing of revegetation success measurement for lands eligible for remining, to comport with the rules for similar lands in humid areas at § 816.116(c)(2)(ii). Both rules will then require that revegetation standards be met or exceeded during the growing season of the last year of responsibility period.

What were the comments submitted on proposed revision to § 816.116(c)(3)?

Nine commenters supported the proposed revision that would require revegetation success measurements for grazing land, pasture land, and cropland in semi-arid areas to equal or exceed the approved success standard during the growing season for any two years after year six of the ten-year responsibility period. Noting that our 1988 rulemaking had cited the climatic variability of humid areas as supporting the new any-two-year measurement schedule for grazing lands, pasture lands, and croplands, commenters added that the climatic variability in the semi-arid areas of the West can also be very extreme, particularly with regard to periods of drought. Because vegetation parameters may equal or exceed success standards in the years both before and following a drought, commenters concluded that flexibility was needed to allow the second year of sampling to be collected in a non-consecutive year. Accordingly, with regard to grazing lands, pasture lands, and croplands in semi-arid areas, commenters supported the proposed rule as allowing needed flexibility in the timing of revegetation success measurements without compromising the standard for that success.

We agree with this analysis. By allowing measurements for revegetation success in any two years after year six of the responsibility period, the new rule will provide semi-arid areas with the same flexibility for dealing with climatic variability presently afforded only in humid areas. At the same time both rules will ensure not only successful revegetation, but also timely bond release.

One commenter noted that if an operator is using a reference area as the success standard against which revegetated areas will be compared, the climatic variability discussed in the preamble would not pose substantial problems during bond release demonstrations because the reference area would be subject to the same climatic variability as the revegetated area.

We generally agree with this comment, noting that if reference areas are located in close proximity to revegetated areas, the amount of climatic variability between any two areas may not be substantial. However, as mines expand, the distances between long-established reference areas and newly reclaimed areas often increase. Given the localized nature of storms in the West, these increased distances can result in increased climatic variability

between the reference and revegetated areas. Therefore, we believe that it is particularly important to take into account the potential for climatic variability between reference and revegetated areas when the two are not in close proximity.

Another commenter opposed revising the measurement time frames for grazing land, pasture land, and cropland in semi-arid areas to comport with those in humid areas. Because the climate of the area determines the specific plants used to achieve approved postmining land uses, this commenter declared that it is entirely possible to plant for a specified land use and then, due to changed climatic conditions, fail to meet the revegetation standards in any year of the ten-year responsibility period. For example the commenter indicated that in May 1996, she had planted a dry land hay field of grass and legume mix on undisturbed soils. In the nine subsequent years, she harvested only one crop and that crop was only half a crop. Because climate determined the production on that hay field, not her intention to use the land as a hay field, she did not think that picking any two years out of the last four years of the ten-year responsibility period is either a conservative or safe way to determine the ultimate survivability of semi-arid western vegetation. She reasoned that, if the vegetation meets the standards for the last two years, then there would be a better probability that the reclaimed area would be able to meet the intended postmining land use. In this context, the commenter also stated that drought and wet cycles in the West alternate on much longer time frames than those in the East. The commenter further suggested that OSM could extrapolate the duration of the past drought cycles from available information, noting that some of these drought cycles were reputed to have lasted for extended periods. On this basis, the commenter concluded that OSM should err on the side of caution and retain the current rule.

We do not agree with many of the conclusions expressed by this commenter. Meeting the success standards for pasture land, grazing land or cropland in the last two years of the ten-year responsibility period is not necessarily a better indicator of revegetation success than meeting the same success standards in any two years after year six. For example, suppose an operator in a semi-arid area were to meet grassland production and cover success standards in year seven, but, because of drought, did not meet those same success standards in years eight and nine. Then, because precipitation returned to normal in year ten, the operator met the grassland production and cover success standards in that year, thus satisfying the new standard of any two years of the responsibility period after year six. We believe that this any-two-year approach clearly demonstrates the permanence, resilience and effectiveness of the reclaimed plant community following a period of drought. Such a clear demonstration of the resilience of the reclaimed plant community would not, however, satisfy the evaluation time frames of the prior rule when the data could only be collected in the last two consecutive years of the responsibility period. In the commenter's personal example of the dry land hay field, the hay field would not have met either the prior standard supported by the commenter or the new standard finalized in this rulemaking. We note that, if there are concerns as to the adequacy of revegetation at the time of the bond release inspection, the regulatory authority should conduct additional vegetation investigations.

Another commenter had two other concerns with our proposed revisions to the time frames for measuring revegetation success in semi-arid areas with grazing land, pasture land, or cropland postmining land uses. First, he asserted that the proposed language would allow the first year of measurement for grazing land, pasture land, and cropland to be conducted in the seventh year after the last augmented seeding. The commenter found this fact particularly troubling as, in the semi-arid areas of the West, the reclaimed vegetation community in year seven is still undergoing significant changes in composition, cover, and production. The commenter's second concern was that the proposed rules would sometimes allow a demonstration of revegetation success many years before an operator requests formal bond release. More specifically, an operator could conceivably demonstrate that he had met revegetation success in years seven and eight but not apply for formal bond release until year twenty. Accordingly, the commenter suggested that we change the rules to require measurement of revegetation success in two out of the last three years of the responsibility period. The commenter viewed this suggested change as tying the demonstration of revegetation success to the formal bond release request while still allowing flexibility in addressing negative impacts to the reclamation caused by climatic variability.

We agree that reclaimed plant communities are dynamic and change over time as the plants mature and composition responds to climatic variability and soil conditions. However, this change within plant communities will also continue long after the responsibility period is over. Therefore, OSM does not believe that the fact of continuing change within plant communities is sufficient reason to delay measurement of revegetation success on grazing land, until either the last two years of the responsibility period, as the rule formerly provided, or two out of the last three years of the responsibility period as this commenter suggested. Pasture land and cropland are not subject to significant change in composition, cover and/or production over time because of the nature of the plant species planted. Once established, cover and/or production on these land uses generally fluctuates only in response to climatic variability. For these reasons we revised the rule to allow measuring for revegetation success on grazing land, pasture land, and cropland in any two years after year six. We find it unlikely that an operator might measure revegetation success in years seven and eight but wait until year twenty to request bond release. Even so, § 800.40(c)(3) clearly requires that the operator must fully meet the requirements of the Act and the permit (including revegetation success standards) for a phase III bond release. Therefore, if, the regulatory authority is concerned that vegetation does not meet the revegetation success standards during the final bond release inspection, the regulatory authority can and should require additional investigation to determine whether those standards have been met. The regulatory authority may also set limitations on acceptable timeframes for sampling vegetation prior to submission of a bond release application. Accordingly, no change in the regulation is necessary to address the commenter's concern.

While five commenters agreed with the proposed revision to § 816.116(3)(c)(i) as it applied to pasture land, grazing land, and cropland in semi-arid areas, they did not agree with the revision as it applied to the semi-arid areas approved for the ''other uses'' identified in § 816.116(b)(3), (4) and (5). Under the proposed revision, identified vegetative parameters in semi-arid areas would have to meet or exceed the applicable success standard during the growing season of the last year of the responsibility period. These commenters asserted that this particular revision would be overly burdensome to operators who, in some situations, would have to conduct a total of three

separate samplings of the vegetation in a large tract with mixed land uses to qualify for bond release. In contrast, commenters asserted that the prior rule would only require two samplings of vegetation in same large tract to qualify for bond release. The commenters characterized the additional sampling required under the proposed rule as an unnecessary expenditure of time and money. To alleviate this problem the commenters proposed to allow revegetation sampling for the other land uses of § 816.116(b) in any one year after year six of the responsibility period. This proposed change would, for large tracts with mixed land uses, allow operators to reduce their sampling efforts to two years by sampling for the other uses in the same year as they sample for grazing land, pasture land, or cropland.

As a supporting example of the asserted sampling burden of our proposed rule, the commenters noted that many western surface coal mines reclaim mined lands to multiple land uses. Operators may reclaim large portions of a reclaimed area to a grazing land postmining land use dominated by forage plants, while other smaller portions of the same area may be reclaimed to a different postmining land use, such as fish and wildlife habitat dominated by woody plants. The resultant landscape would be a mosaic of grass-dominated plant communities, subject to the frequency of success determinations for grazing land, intermixed with shrub-dominated communities, and subject to the frequency of success determinations for fish and wildlife habitat. Commenters accurately noted that, to demonstrate revegetation success under the proposed rule, operators could choose to sample the grazing lands to demonstrate revegetation success in any two years of years seven, eight, nine, or ten of the responsibility period. However, operators would have to sample fish and wildlife habitat in year ten, the last year of the responsibility period. Thus, they concluded, sampling within the mosaic of a large reclaimed area would have to occur on three different occasions.

In further support of their proposal to allow revegetation sampling in any year after year six of the responsibility period, these commenters also indicated that operators must sample woody plant density on an interim, ongoing basis to assure that augmented plantings are made in a timely fashion. Otherwise operators would risk the restarting of their liability period because they might have waited too long before determining that a stand of woody plants would not meet the density standard applicable to woody plants. While the commenters acknowledged that interim vegetation sampling could properly be used under their proposal to demonstrate achievement of the success standard without the need for augmented planting, the commenters stressed that operators would still have to resample the same stand in the last year of the responsibility period to demonstrate revegetation success under revised § 816.116(c)(3). Commenters stated that, in their experience, if interim vegetation monitoring confirms the operator has established appropriate woody plant density and has met the revegetation success standard prior to year ten, the woody plant density will be the same or better in year ten. The regulatory authority could also confirm the required woody plant density at the mandatory qualitative final field inspection for bond release. Accordingly, the commenters proposed revising the language of § 816.116(c)(3)(i) to allow operators to sample revegetation for areas approved for other uses identified in § 816.116(b)(3), (4), and (5) in any one year after year six of the responsibility period. These commenters maintained that this suggested change would also encourage diversity of both species and land uses on reclaimed lands.

Still another commenter concluded that there was no benefit to delaying measurement of revegetation success for the other land uses identified in § 816.116(b)(3), (4) and (5) until the last year of the responsibility period. This commenter indicated that its conclusion was supported by the same rationale that OSM had used in its 2005 preamble to justify proposing reduction of the evaluation period for these other land uses from the last two years to the final year of the responsibility period. For example, the commenter reasoned that once woody plants are established, their density and cover is not highly variable from year to year as they are not sensitive to short-term weather variations. Forest-related ecosystems may therefore be expected to improve as they mature since a positive relationship exists between time and vegetative cover. Furthermore, whatever the year during which a land use involving woody plants meets its required success standards, the regulatory authority will have to inspect that land again at bond release to ensure that the land use is still functioning as intended. In addition to there being no perceived benefit to delaying the measurement of revegetation success required by § 816.116(c)(3) until the last year of the responsibility period, the commenter stated that the inconsistent timing requirements for measuring the revegetation success of both grazing land, pasture land, cropland and other land uses may further cause an added and unnecessary burden for measuring vegetation in large areas. The other land uses identified in § 816.116(b)(3), (4), and (5) often constitute only a small proportion of larger surrounding tracts devoted to grazing, pasture or cropland. For example, grazing tracts often include interior wetlands and woodlands. While these grazing tracts could have been measured in any two years after year six of the responsibility period under OSM's proposed rule, wetlands and woodlands, as other land uses, could only be measured in the final year of the responsibility period. Therefore, to make the timing of success measurements consistent for all land uses, to reduce the burden of measuring in different years for several uses in the same inclusive bond release tract, and because of the lack of annual variability in woody plant cover, the commenter recommended that ''the-growing-season-of-the-last-year'' provision be struck from the proposed regulation. By this proposal, we understand the commenter to be also proposing that OSM amend § 816.116(c)(3)(i) to allow sampling of revegetation success on semi-arid areas with the other uses identified in § 816.116(b)(3), (4), and (5) in any year after year six of the responsibility period.

We do not accept these commenters' proposal. As discussed in our 2005 **Federal Register** notice, we proposed to amend § 816.116(c)(3)(i) to make the sampling timeframes for measurement of revegetation success in semi-arid areas consistent with the requirements of § 816.116(c)(2). Section 816.116(c)(2), governing humid areas, continues to require evaluation of revegetation success for land uses other than pasture land, grazing land or cropland in the last year of the responsibility period. The 1988 revision of § 816.116(c)(2) provided that, for humid areas, the revegetation success standards for postmining land uses other than grazing land, pasture land, and cropland be equaled or exceeded during the growing season of the last year of the responsibility period. Supporting this revision, which was a relaxation of the prior standard adopted in 1979 (''last two consecutive years of the responsibility period''), we reasoned that, in a forest ecosystem, a positive relationship exists between time and vegetative cover. Therefore, we concluded that, for forest ecosystems, the last year of the responsibility period

would provide an accurate measurement of revegetation success. 53 FR 34641. While forest ecosystems may develop at slower rates in semi-arid areas, in both humid and semi-arid areas a positive relationship exists between time and vegetative cover. And while we did not specifically discuss the matter in the 1988 preamble, the same positive relationship between time and vegetative cover exists for shrub land ecosystems in both humid and semi-arid areas. Consequently, for both areas, the last year of the responsibility period would be the best time to accurately measure revegetation success. For the reasons discussed above, we believe that the most appropriate time to evaluate revegetation success for forest and shrub lands in semi-arid areas is during the last year of the responsibility period. We are retaining the proposed changes to § 816.116(c)(3) in our final rule.

We further believe that the commenters who gave the example involving the measurement of revegetation success for a large tract with mixed land uses miscalculated the number of sampling events required of each land use for bond release under our prior rule. While that rule would have required the sampling of vegetation in the same two years for a large tract with mixed land uses, the total number of required sampling events for those two years would be a minimum of four—two sampling events for grazing land, etc., and two for any of the other land uses of § 816.116(b). Commenters were correct that our proposed revision to § 816.116(c)(3)(i) might require a total of three years of sampling for a large tract with mixed land uses. The proposed revision would, however, for these other land uses reduce the number of years that operators must measure revegetation success from two to one years. This constitutes a 50 percent reduction in the operators' sampling burden. This burden is not significant as is suggested by one comment stating that some operators voluntarily monitor woody plant stocking on an ongoing basis and do not consider the monitoring to be burdensome. And the commenters are incorrect in their suggestion that the only way they could limit their sampling effort to two years would be to sample in years nine and ten. Under the revised rule, an operator conducts the first sampling event in either years seven, eight, or nine for grazing land and then, in year ten, conducts the second sampling event for grazing land and the only sampling event for fish and wildlife habitat. Finally, commenters provided no information supporting their assertion that allowing measurement of revegetation success during any year after year six would encourage both land use and species diversity on reclaimed lands. Nor do we have any reason to believe that our revision to § 816.116(c)(3) will adversely affect land use or species diversity, as our prior regulation at § 816.116(c)(3) also required sampling during the last year of the responsibility period.

In sum, we believe that the new requirement that operators must conduct evaluation of revegetation success for the other land uses identified in § 816.116(b) during the last year is not overly burdensome and will ensure national consistency in evaluating revegetation success for these other uses both in humid and semi-arid areas.

Other Comments

Although we did not propose any revisions to the timeframes of § 816.116(c)(2) that govern the sampling for revegetation success in humid areas, ten commenters proposed eliminating the current provision of § 816.116(c)(2)(i) that prohibits sampling in the first year of the responsibility period. These commenters based this proposal on their longstanding experience in evaluating revegetation efforts and their belief that such a change would allow operators in some States the opportunity to earlier achieve both phase II and phase III bond release. The commenters asserted that the past twenty years of SMCRA reclamation had resulted in a general consensus in the Midwest that the first year of reclamation is the most difficult in terms of successfully meeting required target yields. Citing their various discussions over the years with State and Federal regulatory personnel, academia, consultants and operators, the commenters knew no sound reason for not measuring revegetation success in the first year. These commenters did note that the preamble in the September 7, 1988, **Federal Register** suggests that a beneficial fertilization carryover effect from initial seeding may produce inaccurate results in the first year. However, the same preamble discussion also concludes that any carry-over effect from the initial fertilization would be insignificant when compared to normal annual fertilization practices. Accordingly, the commenters concluded that the first-year exception is unnecessary. They asserted that allowing the first year to be used for proof of productivity for pasture land, grazing land, and cropland would allow operators the opportunity in some States to more quickly achieve both phase II and phase III bond release. In light of what they perceived as the current difficulty in obtaining surety bonds in the mining industry, the commenters suggested that earlier bond release would provide significant relief in obtaining surety bonds. Also, the commenters maintained that the opportunity for earlier proof of productivity and bond release would provide operators an incentive to improve their methods of handling soils.

We appreciate the interest expressed by these commenters in proposing that we revise the provision in § 816.116(c)(2)(i) that prohibits measuring vegetation in the first year of the responsibility period for humid areas. However, we did not consider this revision in our 2005 proposed rule, and it falls far beyond the scope of the current rulemaking. To include it in the current rulemaking would necessitate a reopening of the comment period on the proposed rule resulting in further delay in implementing its proposed changes. For this reason, we are not accepting the commenters' proposal at this time. We will, however, take the proposal under advisement and may include it in a future rulemaking.

Nonetheless, we would like to take this opportunity to address apparent confusion in some of the comments supporting this suggested change to § 816.116(c)(2)(i). Several of these comments suggested that revising § 816.116(c)(2)(i) to allow evaluation of revegetation success for pasture land, grazing land, and cropland in the first year would allow operators in some States to earlier achieve both phase II and Phase III bond release. In fact, allowing evaluation of revegetation success for pasture land, grazing land, and cropland in the first year would not affect when either phase II or III bond release could occur. The Federal regulations governing standards for success in § 816.116, including § 816.116(c)(2)(i), do not apply to phase II bond release. For the land uses covered by § 816.116(c)(2)(i), § 800.40(c)(2) allows phase II bond release to be granted when topsoil has been redistributed (if it is not included as part of a phase I bond release), and vegetation is established. There is no regulatory requirement to meet cover or production standards for a phase II bond release. Therefore, allowing measurement of cover and production in the first year has no effect on when a phase II bond release can occur. In turn, phase III bond release cannot be granted sooner than five years after the last augmented seeding or planting,

regardless of when measurement occurs. Under the current Federal regulations, the operator then has four years prior to the end of the five year responsibility period to conduct revegetation sampling and demonstrate revegetation success. Therefore, even if we did allow measurement of cover and production in the first year after the last augmented seeding as the commenters proposed, the period of responsibility for phase III bond release would still last five years from the last augmented seeding.

Two commenters also suggested that we develop incentives to use the five forestry reclamation techniques recommended by the Appalachian Regional Reforestation Initiative (ARRI) in its recent reforestation brochure. These commenters warned that we need additional initiatives to encourage reforestation efforts, and indicated that there has been extensive research conducted on how to better reforest reclaimed mined land. Contrasting the leading role that ARRI has taken in promoting enhanced reforestation techniques that are based on this research, the commenters emphasized that regulatory requirements have too often acted as a disincentive for operators' selecting forestry as a postmining land use.

In response to this comment, we recognize that forest fragmentation and the reduction of biodiversity are valid concerns and have endeavored to address them in several ways. The current revisions to the regulations governing topsoil replacement and revegetation would, among other things, encourage species diversity and remove an impediment to the reforestation of reclaimed land. In addition, our agency took the lead in establishing the ARRI for the purpose of restoring forests on lands disturbed by coal mining operations in the eastern United States. ARRI is a coalition of diverse groups comprised of OSM and State government agencies that regulate coal mining in Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. It advocates a specific forestry reclamation approach that, when implemented properly, can provide significant cost savings to mine operators while providing for greater survival and productivity of planted trees, enhancing natural succession, and reducing erosion, sedimentation, and downstream flooding. The industry, the environmental community, landowners, academics, and other governmental agencies have recognized these benefits. At the present time, however, it is unclear what additional incentives might be appropriate to promote the reforestation of mined lands. Interested parties can access information about ARRI on the Internet at *http://arri.osmre.gov/PDFs/ARRI.brochure.pdf.*

We received one final comment that questioned the appropriateness of using ''ground cover,'' as defined in the Federal regulations at § 701.5, instead of using perennial vegetative cover for evaluating revegetation success under § 816.116(a)(2). The commenter further opposed including annual species and litter (dead plant material) in evaluations of ground cover, as is allowed under the current Federal definition of ''ground cover,'' and contended that revegetation success evaluations should focus on the cover of perennial species.

We had not proposed revising the definition of ''ground cover'' because that definition was not identified as an issue either during prior revegetation outreach efforts or consultations with regulatory authorities. However, should a regulatory authority propose revising its definition of ''ground cover'' to include only vegetative cover or perennial cover and demonstrate that the new definition is no less effective than the Federal definition in implementing the requirements of SMCRA, we would approve the use of such a definition.

What effect will this rule have on approved State programs, on Federal programs, and on Indian lands?

Following publication of the final rule, we will evaluate the State programs approved under section 503 of SMCRA and 30 CFR part 732 to determine if any changes in those programs are necessary to maintain consistency with Federal requirements. When we determine that a State program should be amended, we will notify the State in accordance with the provisions of § 732.17(d).

We have made a preliminary determination to require that State programs with provisions authorizing undeveloped land as a postmining land use adopt success standards for undeveloped land as required by §§ 816.116(b)(3) and 817.116(b)(3). We have also made a preliminary determination that, with regard to the other provisions in the final rule, States may adopt similar provisions if they choose to, but will not be required to amend their programs.

Through cross-referencing, this final rule applies to all lands in States with Federal regulatory programs. States with Federal regulatory programs include Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. Those programs are codified at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively.

The revisions to 30 CFR parts 816 and 817 apply to Indian lands as a result of the cross-referencing in § 750.16.

III. Procedural Matters and Required Determinations for This Rule

Executive Order 12866—Regulatory Planning and Review

This document is considered a significant rule and is subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities. The revisions to the regulations governing topsoil redistribution and revegetation success standards will not have an adverse economic impact on the coal industry or State regulatory authorities. During any given year, approximately 880 operators conduct vegetation sampling for bond release. The revisions may reduce operating expenses for coal operators by reducing the time needed to conduct revegetation evaluations and obtain bond release. The estimated reduction in costs is nonquantifiable.

We estimate that approximately two State regulatory authorities will modify their standards for revegetation success during a year, requiring approximately 100 hours to complete each modification. Under the rule, however, the estimated savings will be limited to the costs of submitting the proposed modification to OSM for approval as required by §§ 816.116(a)(1) and 817.116(a)(1) prior to revision. Those costs usually include the expense involved in preparing a transmittal letter and the costs of transmission to OSM.

The principal savings to the Federal government will result from the elimination of the need to draft, review, approve, and publish a proposed rule announcing receipt of, and seeking comment on the modification, and the need to draft, review, approve, and publish a final rule announcing OSM's decision on the State submitted modification. We estimate total annual savings of approximately $10,000–$12,000 per year. This estimate is based on the cost of drafting, reviewing, and approving two proposed and two final

rules and the publication cost of $465 per page in the **Federal Register**.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The proposed revisions to our topsoil redistribution and revegetation success standards may raise novel legal or policy issues, which is why the rule is considered significant by OMB under Executive Order 12866.

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

This rule is not considered a significant energy action under Executive Order 13211. The proposed revisions to our regulations that govern topsoil redistribution and revegetation success standards notice will not have a significant affect on the supply, distribution, or use of energy.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously discussed, some of the revisions may facilitate bond release resulting in a reduction in operating costs for coal operators. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons previously stated, this rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630—Takings

The revisions to the regulations governing topsoil redistribution and revegetation success standards do not have any significant takings implications under Executive Order 12630. Therefore, a takings implication assessment is not required.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the proposed revisions to our regulations that govern topsoil redistribution and revegetation success standards will not have substantial direct effects 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.

Paperwork Reduction Act

We have determined that this rule does not substantially alter the currently approved collections of information authorized by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* OMB has previously approved the collection activities and assigned clearance number 1029–0047 for 30 CFR parts 816 and 817.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSM Administrative Room, room 101, 1951 Constitution Avenue, NW., Washington, DC 20240.

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: July 12, 2006.

R.M. "Johnnie" Burton,

Director, Minerals Management Service, Exercising the delegated authority of the Assistant Secretary, Land and Minerals Management.

■ Accordingly, we are amending 30 CFR parts 816 and 817 as set forth below.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

■ 1. The authority citation for part 816 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*; and sec. 115 of Public Law 98–146.

■ 2. In § 816.22, revise paragraphs (d)(1) introductory text and (i) to read as follows:

§ 816.22 Topsoil and subsoil.

* * * * *

(d) * * *

(1) Topsoil materials and topsoil substitutes and supplements removed under paragraphs (a) and (b) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

* * * * *

■ 3. Amend § 816.116 as follows:

■ A. Revise paragraph (a)(1);

■ B. Revise the first sentence of paragraph (b)(3) introductory text;

■ C. Add five sentences to the end of paragraph (b)(3)(ii);

■ D. Revise paragraphs (c)(3)(i) and (ii).

The revisions read as follows:

§ 816.116 Revegetation: Standards for success.

(a) * * *

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.

(b) * * *

* * * * *

(3) For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. * * *

(i) * * *

(ii) * * * The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

* * * * *

(c) * * *

(3) * * *

(i) Ten full years, except as provided in paragraph (c)(3)(ii) in this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

■ 4. The authority citation for part 817 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 5. In § 817.22, revise paragraphs (d)(1) introductory text and (d)(1)(i) to read as follows:

§ 817.22 Topsoil and subsoil.

* * * * *

(d) * * *

(1) Topsoil materials and topsoil substitutes and supplements removed under paragraphs (a) and (b) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

* * * * *

■ 6. Amend § 817.116 as follows:

■ A. Revise paragraph (a)(1);

■ B. Revise the first sentence of paragraph (b)(3) introductory text;

■ C. Add five sentences to the end of paragraph (b)(3)(ii);

■ D. Revise paragraphs (c)(3)(i) and (ii).

The revisions read as follows:

§ 817.116 Revegetation: Standards for success.

(a) * * *

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.

* * * * *

(b) * * *

* * * * *

(3) For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. * * *

(i) * * *

(ii) * * * The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

* * * * *

(c) * * *

(3) * * *

(i) Ten full years, except as provided in paragraph (c)(3)(ii) in this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

* * * * *

[FR Doc. 06–7249 Filed 8–29–06; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Wednesday,
August 30, 2006

Part IV

The President

Proclamation 8042—National Alcohol and Drug Addiction Recovery Month, 2006

Proclamation 8043—National Day of Remembrance of Hurricane Katrina, 2006

Federal Register
Vol. 71, No. 168
Wednesday, August 30, 2006

Presidential Documents

Title 3—

The President

Proclamation 8042 of August 25, 2006

National Alcohol and Drug Addiction Recovery Month, 2006

By the President of the United States of America

A Proclamation

Alcohol and drug abuse disrupts families, threatens the safety of our neighborhoods, and ruins the lives of countless men, women, and youth. During National Alcohol and Drug Addiction Recovery Month, we recognize the damaging effects of substance abuse and renew our support for individuals battling to overcome addiction. The theme for 2006, ''Join the Voices for Recovery: Build a Stronger, Healthier Community,'' urges all Americans to help prevent alcohol and drug abuse and to promote treatment and recovery options.

While drug use among youth is down since 2001, we must continue our efforts to help our next generation avoid substance abuse. This work begins with understanding that youth are less likely to engage in risky behaviors when they are connected to strong families and communities. To assist our children in learning to make healthy choices, the Helping America's Youth initiative, led by First Lady Laura Bush, is encouraging local partnerships that empower families, schools, and communities to help our young people reach their full potential.

In order to effectively battle alcohol and drug addiction, we must ensure that Americans in need can readily access services and programs. Over the past 3 years, my Administration has provided nearly $300 million for the Access to Recovery program so that individuals who desire treatment have the ability to seek the form of treatment most suitable for their needs, including assistance from faith-based and community providers. My fiscal year 2007 budget proposes to build upon the success of this initiative by providing $98 million to further expand individual choice.

My Administration is also committed to protecting our citizens and our young people from the scourge of methamphetamine. This substance is highly addictive and is a continuing and devastating threat in too many communities across our Nation. While the number of teens who have ever tried this deadly drug has decreased since 2001, we remain focused on keeping methamphetamine from reaching more Americans. Through the Access to Recovery program, $25 million will be targeted in fiscal year 2007 to help individuals recover from methamphetamine abuse. Additionally, earlier this year I signed into law the USA PATRIOT Improvement and Reauthorization Act of 2005, which increases penalties for smuggling and selling methamphetamine and introduces commonsense safeguards to make many of the ingredients used in manufacturing it harder to obtain and easier to track.

These efforts are helping in the fight against substance abuse in America, yet government action is not the only answer. We are making progress because there are millions of our fellow citizens answering the universal call to love a neighbor. To find out how to join the armies of compassion and be a part of building a stronger, healthier community, interested volunteers should visit recoverymonth.gov and usafreedomcorps.gov. By working together, we can make a difference in the life of someone in need and help fulfill the promise of a more hopeful tomorrow for generations to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2006 as National Alcohol and Drug Addiction Recovery Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–7373
Filed 8–29–06; 9:10 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8043 of August 25, 2006

National Day of Remembrance of Hurricane Katrina, 2006

By the President of the United States of America

A Proclamation

One year ago, a vast coastline of towns and communities was virtually destroyed; one of America's great cities was submerged; and many lives were lost in one of the worst natural disasters in our Nation's history. On this National Day of Remembrance of Hurricane Katrina, we honor those who did not survive the fury of the storm and those who continue to put their lives back together in its aftermath. We also remember the heroism of ordinary citizens who touched our hearts with their bravery and compassion and moved our whole Nation to action.

Hurricane Katrina brought many days of struggle and sorrow; yet, we also witnessed extraordinary acts of courage and kindness. Rescue workers, other first responders, and concerned citizens from around the country risked their lives to save others and performed heroically under the most difficult of circumstances. Many were victims themselves, acting on a sense of duty greater than their own suffering. Men, women, and children across America rallied to help their neighbors in desperate need, providing food, water, shelter, and hope to the victims of Hurricane Katrina. Those days tested our Nation, and they revealed a resilience more powerful than any storm.

Millions of lives were changed in a day by that cruel and destructive storm. America accepted the challenge to restore broken communities and disrupted lives not as a burden, but as our responsibility to help our fellow citizens. Victims and volunteers continue to demonstrate a spirit that cannot be broken—a core of strength that survives all hurt, a faith in God that no storm can take away, and an unyielding determination to clear the wreckage and build anew.

In the past year, Federal, State, and local governments have worked to enhance our Nation's ability to prepare for and respond to natural disasters. The Federal Government has conducted an extensive review of preparedness and response efforts, and actions are being taken at every level to improve communications and coordination and strengthen emergency response capabilities. The American people can know that our government is working hard to be prepared to protect life and property should we face another such challenge.

In the life of our Nation, we have often been reminded that nature is an awesome force, and that all life is fragile. However, Americans have always summoned the will and compassion to persevere and rebuild. Guided by our enduring American spirit, we know that a bright new dawn will rise over the great city of New Orleans, and the entire Gulf Coast region will reemerge stronger and more vibrant than ever.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 29, 2006, as a National Day of Remembrance of Hurricane Katrina. I call upon State and local governments, places of worship, and all Americans to mark this day with services and appropriate observances. I also encourage all Americans to remember and support the continued effort to rebuild our Nation's great Gulf Coast.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–7374
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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.

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Plant-related quarantine, domestic:

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Shelled garden peas from Kenya; comments due by 9-5-06; published 7-6-06 [FR E6-10551]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

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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]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280

Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

Last List August 17, 2006

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