Federal Register

11–8–06 Wednesday
Vol. 71 No. 216 Nov. 8, 2006

Pages 65365–65710

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, November 14, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 216

Wednesday, November 8, 2006

Agricultural Marketing Service
RULES
Almonds grown in California, 65373–65376
PROPOSED RULES
Perishable Agricultural Commodities Act; implementation:
Electronic data interchange; trust benefit preservation; clarification, 65426–65430

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Economic Research Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Alcohol; viticultural area designations:
Tracy Hills, San Joaquin and Stanislaus Counties, CA, 65409–65412
PROPOSED RULES
Alcohol; viticultural area designations:
Lehigh Valley; Lehigh, Northampton, Berks, Schuylkill, Carbon, and Monroe Counties, PA, 65437–65442
Tulocay, Napa County, CA, 65432–65437
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65569–65570

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65451–65454
Environmental statements; availability, etc.:
Hawaii garbage; interstate movement to Washington landfill, 65454

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65526–65527

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act; systems of records, 65527–65531

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65531–65532

Coast Guard
RULES
Drawbridge operations:
Florida, 65412–65414
PROPOSED RULES
Drawbridge operations:
Florida, 65443–65445
Pollution:
Mandatory ballast water management reporting and recordkeeping requirements, 65445–65446

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65456–65457

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65476–65477

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65477–65478

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 65544

Economic Research Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65455

Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65545

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65545–65546

Energy Department
See Federal Energy Regulatory Commission
RULES
Sales regulation:
Strategic Petroleum Reserve; petroleum acquisition procedures, 65376–65383
NOTICES
Senior Executive Service Performance Review Board; membership, 65478–65480

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa, 65414–65416
Ohio, 65417–65424
Water supply:
National primary drinking water regulations—
Ground water systems; waterborne pathogens from fecal contamination; public health risk reduction, 65574–65660

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Iowa, 65446–65447
NOTICES
Hazardous waste:
Idaho and Argonne National Laboratories; Central Characterization Project's remote-handled waste characterization programs; proposed approvals, 65488–65493
Pesticide, food, and feed additive petitions:
Interregional Research Project (No. 4) et al., 65504–65507
Pesticide registration, cancellation, etc.:
Bayer CropScience et al., 65493–65496
Bonide Products, Inc., et al., 65496–65504
Pesticides; experimental use permits, etc.:
Syngenta Seeds, Inc., 65508–65509
Water pollution control:
National Pollutant Discharge Elimination System—
Michigan; partial sewage sludge management program, 65509–65511

Executive Office of the President
See Presidential Documents

Farm Credit Administration
RULES
Farm credit system:
Regulatory burden reduction, 65383–65387

Federal Aviation Administration
RULES
Airworthiness directives:
Diamond Aircraft Industries GmbH, 65391–65393
Pilatus Aircraft Ltd., 65387–65389
Raytheon, 65389–65391
PROPOSED RULES
Airworthiness directives:
Turbomecca S.A., 65430–65432

Federal Communications Commission
RULES
Common carrier services:
Interconnection—
Incumbent local exchange carriers; reclassification from competitive local exchange carriers, 65424–65425
Radio stations; table of assignments:
Texas, 65425
PROPOSED RULES
Radio services, special:
Maritime communications, 65447–65450
Radio stations; table of assignments:
California, 65447
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65511–65517
Grants and cooperative agreements; availability, etc.:
Rural Health Care Support Mechanism Pilot Program, 65517–65520
Meetings:
North American Numbering Council, 65520–65521

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65538
Disaster and emergency areas:
Alaska, 65539
Indiana, 65539
New York, 65539

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 65483–65488
Applications, hearings, determinations, etc.:
California Independent System Operator, Inc., et al., 65481
CalPeak Power LLC et al., 65481–65482
CenterPoint Energy Gas Transmission Co., 65482
Texas Eastern Transmission, LP, 65482
Williston Basin Interstate Pipeline Co., 65482–65483

Federal Maritime Commission
NOTICES
Agreements, filed, etc., 65521–65523

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 65546

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 65523
Formations, acquisitions, and mergers, 65523–65524

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 65524

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Munich Reinsurance America, Inc., 65570

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Willowy monardella, 65662–65683
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Brevard County, FL; Florida scrub-jay, 65540–65541
Survival enhancement permits—
Orange County, FL; red cockaded woodpecker; safe harbor agreement, 65541–65542
Meetings:
Sporting Conservation Council, 65542

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65532–65536

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 65544

Forest Service
NOTICES
Environmental statements; notice of intent:
Allegheny National Forest, PA; canceled, 65456

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65477–65478
Meetings:
National Federal Fleet Manager Workshop and Information Fair (FedFleet 2007), including Aviation and Motor Vehicle Workshops, 65524–65525

Government Accountability Office
NOTICES
Reports and guidance documents; availability, etc.:
Federal antidiscrimination, whistleblower protection, and retaliation laws; No FEAR Act notice, 65525–65526

Grain Inspection, Packers and Stockyards Administration
RULES
Barley protein testing; official fees and tolerances, 65371–65373

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program, Center for Evaluation of Risks to Human Reproduction—
Genistein and soy formula expert panel reports, 65537–65538

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Industry and Security Bureau
NOTICES
Chemical Weapons Convention regulations:
Schedule 1 chemicals; implementation impact on commercial activities, 65457–65458

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
NOTICES
Meetings:
Natural Resource Damage Assessment and Restoration Advisory Committee, 65540

Internal Revenue Service
NOTICES
Privacy Act; systems of records, 65570–65571

International Trade Administration
NOTICES
Antidumping:
Hot-rolled carbon steel flat products from—
Thailand, 65458–65465
Stainless steel bar from—
Japan, 65465–65466
Countervailing duties:
Pure magnesium and alloy magnesium from—
Canada, 65468–65469
Meetings:
Exporters' Textile Advisory Committee, 65469
Applications, hearings, determinations, etc.:
University of—
Alabama et al., 65466–65468

International Trade Commission
NOTICES
Import investigations:
U.S.-China trade; U.S.-Asia-Pacific trade and investment trends; implications, 65543–65544

Justice Department
See Drug Enforcement Administration
See Foreign Claims Settlement Commission

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Alaska, 65542–65543

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 65477–65478

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65546

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 65536–65537

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65469–65470
Committees; establishment, renewal, termination, etc.:
Olympic Coast National Marine Sanctuary Advisory Council, 65470
Endangered and threatened species permit applications, determinations, etc., 65470–65471
Grants and cooperative agreements; availability, etc.:
Sustainable Fisheries Leadership Awards Program, 65471–65472
Meetings:
Science Advisory Board, 65472–65473
Reports and guidance documents; availability, etc.:
Sea turtle conservation strategy for Atlantic and Gulf of Mexico fisheries; state trawl fishery characterizations; comment request, 65473–65474
Scientific research permit applications, determinations, etc., 65474–65476

National Park Service
PROPOSED RULES
Special regulations:
Golden Gate National Recreation Area Dog Management Negotiated Rulemaking Advisory Committee Meeting; canceled, 65446
NOTICES
Meetings:
Boston Harbor Islands Advisory Council, 65543

National Telecommunications and Information Administration
NOTICES
Meetings:
Digital-to-analog converter box coupon program, 65476

Natural Resources Conservation Service
NOTICES
Environmental statements; record of decision:
Rockhouse Creek Watershed, KY, 65456

Nuclear Regulatory Commission
RULES
National Source Tracking System; manufacture, transfer, receipt, or disposal of nationally tracked sealed sources; reporting requirements, 65686–65709

Personnel Management Office
NOTICES
Senior Executive Service Performance Review Board; membership, 65546–65547

Postal Service
NOTICES
Meetings; Sunshine Act, 65547

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Identity Theft Task Force; amendment to Executive order 13402 (EO 13414), 65365
ADMINISTRATIVE ORDERS
Brazil; drug interdiction assistance (Presidential Determination)
No. 2007-3 of October 16, 2006, 65369
International Criminal Court; waiving prohibition on United States military assistance to parties to the Rome Statute (Presidential Determination)
No. 2006-27 of September 29, 2006, 65367

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
RULES
Securities:
Tender-offer best-price rules; amendments, 65393–65409
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65547–65552
Investment Company Act of 1940:
Fidelity Management & Research Co., et al., 65552–65554
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 65554–65555
National Association of Securities Dealers, Inc., 65555–65559
New York Stock Exchange LLC, 65559–65561
NYSE Arca, Inc., 65561–65562

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65562

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65562–65563
Culturally significant objects imported for exhibition:
Jasper Johns: An Allegory of Painting (1955-1965), 65563
Grants and cooperative agreements; availability, etc.:
World Expo 2010, U.S. pavilion/exhibition; fundraising, construction, development, organization, and management, 65563–65566

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
BNSF Railway Co., 65568
Rail services abandonment:
BNSF Railway Co., 65567–65568

Tennessee Valley Authority
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65566–65567

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 65568–65569

Separate Parts In This Issue

Part II
Environmental Protection Agency, 65574–65660

Part III
Interior Department, Fish and Wildlife Service, 65662–65683

Part IV
Nuclear Regulatory Commission, 65686–65709

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13402 (Amended by 13414) 65365
13414 65365

Administrative Orders:

Presidential Determinations:
No. 2006-27 of September 29, 2006 65367
No. 2007-3 of October 16, 2006 65369

7 CFR

800 65371
801 65371
981 65373

Proposed Rules:

46 65426

10 CFR

20 65686
32 65686
626 65376

12 CFR

611 65383
612 65383
613 65383
614 65383
615 65383

14 CFR

39 (3 documents) 65387, 65389, 65391

Proposed Rules:

39 65430

17 CFR

200 65393
240 65393

27 CFR

9 65409

Proposed Rules:

9 (2 documents) 65432, 65437

33 CFR

117 65412

Proposed Rules:

117 65443
151 65445

36 CFR

Proposed Rules:

1 65446

40 CFR

9 65574
52 (2 documents) 65414, 65417
141 65574
142 65574

Proposed Rules:

52 65446

47 CFR

51 65424
73 65425

Proposed Rules:

73 65447
80 65447

50 CFR

17 65662

Federal Register
Vol. 71, No. 216
Wednesday, November 8, 2006

Presidential Documents

Title 3—

The President

Executive Order 13414 of November 3, 2006

Amendment to Executive Order 13402, Strengthening Federal Efforts To Protect Against Identity Theft

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend the date by which the Identity Theft Task Force shall submit to the President its coordinated strategic plan, it is hereby ordered that section 3(a) of Executive Order 13402 of May 10, 2006, is amended to read as follows: ''review the activities of executive branch departments, agencies, and instrumentalities relating to the policy set forth in section 1, and building upon these prior activities, prepare and submit in writing to the President by February 9, 2007, or as soon as practicable thereafter as the Chairman and Co-Chairman shall determine, a coordinated strategic plan to further improve the effectiveness and efficiency of the Federal Government's activities in the areas of identity theft awareness, prevention, detection, and prosecution.''.

THE WHITE HOUSE,
November 3, 2006.

[FR Doc. 06–9148
Filed 11–7–06; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 71, No. 216
Wednesday, November 8, 2006

Presidential Documents

Title 3—

The President

Presidential Determination No. 2006–27 of September 29, 2006

Waiving Prohibition on United States Military Assistance With Respect to Various Parties to the Rome Statute Establishing the International Criminal Court

Memorandum for the Secretary of State

Consistent with the authority vested in me by the Constitution and the laws of the United States, including section 2007 of the American Servicemembers' Protection Act of 2002 (the ''2002 Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that it is important to the national interest of the United States to waive the prohibition of section 2007(a) of the 2002 Act with respect to Barbados, Bolivia, Brazil, Costa Rica, Croatia, Ecuador, Kenya, Mali, Malta, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, Serbia, South Africa, St. Vincent and the Grenadines, Tanzania, Trinidad and Tobago, and Uruguay with respect to military assistance provided under the International Military Education and Training program, chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*); and

• Waive the prohibition of section 2007(a) with respect to the military assistance described above with respect to these countries.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 29, 2006.

[FR Doc. 06–9157
Filed 11–7–06; 8:45 am]
Billing code 4710–10–P

Federal Register
Vol. 71, No. 216
Wednesday, November 8, 2006

Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–3 of October 16, 2006

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State [and the] Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C 2291–4), I hereby certify, with respect to Brazil, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, October 16, 2006.

[FR Doc. 06–9158
Filed 11–7–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 71, No. 216
Wednesday, November 8, 2006

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

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 801

RIN 0580–AA95

Official Fees and Tolerances for Barley Protein Testing

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) previously extended its official inspection program to include testing of barley protein. Testing is provided using near-infrared spectroscopy analyzers that were previously approved for different grains. GIPSA is establishing in the fee schedule a generic fee for all near-infrared measurements (NIR) and nuclear magnetic resonance (NMR) analyses, which is identical to existing fees. The fee for barley protein testing is included in this fee and is identical to the fees already established for other measurements (wheat protein; soybean oil and protein; and corn oil, protein, and starch). Also, GIPSA is amending regulations under the United States Grain Standards Act (USGSA) to establish performance tolerances for protein analyzers used to predict the percentage of protein in barley.

DATES: *Effective Date:* November 9, 2006.

Comment Date: Comments must be received on or before January 8, 2007.

ADDRESSES: We invite you to submit comments on this interim rule. You may submit comments by any of the following methods:

- *E-mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to (202) 690–2755.
- *Hand Deliver or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John C. Giler, Acting Director, Field Management Division, at his e-mail address: *John.C.Giler@usda.gov* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

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

The Administrator of GIPSA has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, near-infrared spectroscopy analyzers are being used to determine wheat protein; soybean oil and protein; and corn oil, protein, and starch in both domestic and export markets. This rule establishes tolerances to expand the use of currently approved near-infrared spectroscopy analyzers to test barley protein and establishes a generic fee for all NIR and NMR testing that is identical to current fees. Testing for barley protein is included in this fee. There are 58 official agencies (46 private entities, 12 States) that are designated and/or delegated by GIPSA to perform official grain inspection services. Most of the agencies could be considered small entities under Small Business Administration criteria.

The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service on a request basis, and locations where service is requested infrequently may make arrangements with neighboring agencies to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 2006/2007 Market Year (June to May), USDA's Economic Research Service estimated the U.S. Barley Supply to be 303,000,000 bushels. Between June 2006 and September 2006 (the months for which we have data), 20,010,000 bushels of barley were tested for protein. Of the Official Agencies, 10 performed barley protein tests in the first 11 months of fiscal year 2006. There were 5,176 barley protein tests performed; of those 2,624 were tests performed for trucks and rail cars, 2,546 were tests performed on submitted samples, and 6 were performed locally, such as within a grain elevator.

According to USDA's National Agricultural Statistics Service, there are 24,747 farms (producers) in the barley for grain category. We do not have estimates for the number of grain handlers, exporters, and feedlot operators that may be involved in submitting barley for protein testing. In general, many producers, grain handlers, exporters, and feedlot operators may be considered small entities under Small Business Administration criteria. Further, grain handlers and exporters often use testing results to determine value and premiums. The extent to which these entities will request the official barley protein or the impact of offering this service is difficult to quantify. GIPSA believes that barley producers, feedlot operators, grain handlers, and exporters will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premiums.

Fees currently are charged for NIR testing. The fees charged by GIPSA are $2.25 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory, and when an inspection service is performed at a location other than an applicant's facility in an FGIS laboratory the fees are $10.00 per test for an original

inspection service and $17.70 for an appeal inspection service. The generic fee is the same as fees charged for current individual tests and their impact on applicants for services will vary depending upon usage since these tests are on a request basis.

Executive Order 12988

Executive Order 12988, Civil Justice Reform, instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This interim rule has been reviewed under this Executive Order. This interim rule is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this interim rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Parts 800 and 801 were previously approved by OMB under control number 0580–0013 and will not be affected by this rule.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

On November 4, 2004, GIPSA issued a **Federal Register** notice (69 FR 64269–64270), announcing an intent to implement barley protein measurement as official criteria under the United States Grain Standards Act (USGSA) effective July 1, 2005. The **Federal Register** notice is available on the GIPSA Web site at *http://www.gipsa.usda.gov*.

This provides the barley industry with accurate results for protein that the market can rely on to negotiate price, value, and premium.

Fees

GIPSA collects fees for providing official testing services to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine protein in barley using the approved near-infrared transmittance (NIRT) analyzers are the same as those required for NIRT wheat protein; soybean oil and protein; and corn oil, protein, and starch determinations. Accordingly, the fee to test barley is the same as for tests for the above cited commodities. The fee is $2.25 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory, and for services performed at a location other than an applicant's facility in an FGIS laboratory the fees will be $10.00 per test for an original inspection service and $17.70 per test for an appeal inspection service.

Further, since the fees for near-infrared (NIR) analysis are the same as the fees for nuclear magnetic resonance (NMR) analysis, these fees are included in a generic NIR and NMR analysis fee. This should simplify the fee schedule and will not require a regulatory fee change when new NIR and NMR analysis are available for other grain products. Specifically, in 7 CFR 800.71, in tables 1 and 2, we will add a single new fee for ''NIR and NMR analysis (protein, oil, starch, etc.)'' to replace the individual fees currently listed for the following 4 categories: (1) Corn oil, protein, and starch (one of any combination), (2) soybean protein and oil (one or both), (3) wheat protein (per test), and (4) sunflower (per test). We will renumber the remaining fees listed in table 1, section 2 and table 2, sections 1 and 2. We are not making any other changes to the remaining fee amounts or categories at this time.

Tolerances

We run standard reference samples through the equipment to evaluate the accuracy of the equipment; for barley, the standard reference samples sets typically weigh between 650 and 750 grams. Due to the natural variation in individual kernels of barley and other sources of variability, each time we test the barley the testing equipment is likely to produce slightly different results. Therefore, we determine the allowable amount of differences between the test results from the standard reference sample and the expected outcome. We refer to this amount as the tolerance, which is the variation we allow for the equipment to produce accurate results.

We determined that, based upon the performance of the instruments and calibration, the maintenance tolerance will be 0.20 percent mean deviation from the national standard NIRS instruments for the NIRS analyzers used in performing official inspections. We determined that this level of accuracy will provide reliable testing procedures and accurate results to meet prospective official customer needs and that the market can rely on to negotiate price, value, and premium. We will apply this tolerance according to testing instructions found in the GIPSA Near-Infrared Transmittance (NIRT) Handbook.

We are adding this tolerance as a new paragraph (b)(4) in 9 CFR 801.7. Currently, 7 CFR 801.7 includes tolerances for (1) NIRS wheat protein analyzers, (2) NIRS soybean oil and protein analyzers, and (3) NIRS corn oil, protein, and starch analyzers.

As with other commodities for which NIRS analyzers are used, we will use the chemical reference protein determinations to reference and calibrate official NIRS instruments in accordance with the Combustion Method, AOAC International Method 992.23, which we previously incorporated by reference into 7 CFR 801.7. No change to the incorporation is required for barley protein testing.

Immediate Action

Immediate action is necessary for good cause under 5 U.S.C. 553. The Administrator has determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule in effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because (1) the rule simplifies the current fee schedule by establishing a generic fee for all NIR and NMR testing that is the same as fee charged for individual tests and (2) includes in Part 801 maintenance tolerances for NIRS barley protein analyzers.

We will consider all 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 received and any amendments we are making to the rule.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements.

7 CFR Part 801

Exports, Grains, Scientific equipment.

■ For the reasons set out in the preamble, we are amending 7 CFR parts 800 and 801 as follows:

PART 800—GENERAL REGULATIONS

■ 1. Revise the authority citation for part 800 to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Amend § 800.71 by revising Table 1(2) (i through xi) and revising Table 2(1)(v) and (2)(ii) in Schedule A of paragraph (a) to read as follows:

§ 800.71 Fees Assessed by the Service.

(a) * * *

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

* * * * * * *	
(2) Additional Tests (cost per test, assessed in addition to the hourly rate): [3]	
(i) Aflatoxin (rapid test kit method)	$10.00
(ii) NIR or NMR Analysis (protein, oil, starch, etc.)	2.25
(iii) Vomitoxin (qualitative)	12.50
(iv) Vomitoxin (quantitative)	18.50
(v) Waxy corn (per test)	2.25
(vi) Fees for other tests not listed above will be based on the lowest noncontract hourly rate	.....
(vii) Other services	.....
(a) Class Y Weighing (per carrier)	.....
(1) Truck/container	0.30
(2) Railcar	1.25
(3) Barge	2.50
* * * * * * *	

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services * * *	
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method)	$30.00
(b) NIR or NMR Analysis (protein, oil, starch, etc.)	10.00
(c) Vomitoxin (qualitative)	31.00
(d) Vomitoxin (quantitative)	38.50
(e) Waxy corn (per test)	10.00
(f) Canola (per test_00 dip test)	10.00
(g) Pesticide Residue Testing: [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per hour per service representative)	115.00
(h) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4] * * *	
(ii) Additional tests (assessed in addition to all other applicable tests):	
(a) Aflatoxin (rapid test kit method)	$30.00
(b) NIR or NMR Analysis (protein, oil, starch, etc.)	17.70
(c) Vomitoxin (per test-qualitative)	41.00
(d) Vomitoxin (per test-quantitative)	47.00
(e) Vomitoxin (per test-HPLC Board Appeal)	141.00
(f) Pesticide Residue Testing: [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per hour per service representative)	115.00
(g) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
* * * * * * *	

PART 801—[AMENDED]

■ 3. Revise the authority for part 801 to read as follows:

Authority: 7 U.S.C. 71–87k

■ 4. Amend § 801.7 by adding a new paragraph (b)(4) to read as follows:

§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.

* * * * *

(b) * * *

(4) NIRS barley protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of barley protein content are 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

Pat Donohue-Galvin,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–18860 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06–981–2 FR]

Almonds Grown in California; Changes to Incoming Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the incoming quality control requirements under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). These changes will help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. This action is intended to improve the overall quality of almonds placed into consumer channels.

EFFECTIVE DATE: This final rule becomes effective on November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Maureen.Pello@usda.gov,* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the incoming quality control requirements under the administrative rules and regulations of the order. These changes will help minimize the risk of aflatoxin in almonds by removing inedible almonds from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. These changes are intended to improve the overall quality of almonds placed into consumer channels, and were recommended by the Board at a meeting on May 18, 2006.

Section 981.42 of the order provides authority for a quality control program. Paragraph (a) of that section requires handlers to obtain incoming inspections on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Based on these inspections, handlers incur an inedible disposition obligation. They must satisfy their obligation by disposing of inedible almonds in outlets such as oil and animal feed.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in excess of 1 percent of kernel weight shall constitute that handler's disposition obligation. Handlers must satisfy the disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users of such product. Accepted users dispose of this material through non-human consumption outlets. Paragraph (a)(5) of § 981.442 specifies further that at least 25 percent of a handler's total annual disposition obligation be satisfied with inedible kernels as defined under § 981.408 (hereinafter referred to as ''true inedibles''). Handlers with total annual inedible obligations of less than 1,000 pounds are exempt from the 25 percent requirement.

Board research has shown that aflatoxin in almonds is directly related to insect damage in inedible kernels. In order to help minimize the risk of aflatoxin in almonds, the Board recommended reducing the tolerance for inedible kernels from 1 to 0.50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. Such revisions are intended to improve the overall quality of almonds placed into consumer channels.

All of the Board's members supported the change regarding true inedibles, but three of the Board's 10 members opposed the change to reduce the incoming tolerance for inedible kernels (the Board's chairperson abstained). Those opposed pointed to the existing 2 percent voluntary outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. The majority of Board members supported both changes. Paragraphs (a)(4) and (a)(5) of § 981.442 are revised accordingly.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Data for the most recently completed crop year indicate that about 52 percent of the handlers shipped under $6,500,000 worth of almonds. Dividing average almond crop value for 2003–2005 reported by the National

Agricultural Statistics Service ($2.171 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about $362,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule revises paragraphs (a)(4) and (a)(5) of § 981.442 of the order's administrative rules and regulations regarding inedible almonds. These changes will help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. Specifically, this action reduces the tolerance for inedible kernels in each variety of almonds received by a handler from 1 to 0.50 percent, and increases the percent of a handler's annual inedible obligation that must be satisfied with dispositions containing inedible almonds from 25 to 50 percent. Authority for these changes is provided in § 981.42(a) of the order.

Regarding the impact of this action on affected entities, this action is intended to improve the overall quality of almonds placed into consumer channels and therefore should be beneficial to the industry. In addition, this rule is not expected to change handler inspection costs. Handlers must currently have an incoming inspection done on each lot of almonds received to determine the percent of inedible kernels. Additionally, inedible almond dispositions must be inspected to determine the percent of inedible kernels in such dispositions. Such inspections are performed by the inspection agency, which means the Federal-State Inspection Service. The inspection agency charges a fee of $40 per hour, plus $0.75 per ton, with a minimum total fee of $55, to perform an inedible disposition inspection.

The Board considered various alternatives and options before making its recommendation on inedible almonds. It was decided that a 0.50 percent tolerance was appropriate rather than 0 percent. As previously stated, Board members opposed pointed to the existing 2 percent voluntary outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. Ultimately, the majority of Board members supported both changes. The Board's Food Quality and Safety (FQS) Committee met again via teleconference on June 13, 2006, and concurred with the Board's recommendation.

This action imposes no additional reporting and recordkeeping burden on California almonds handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. There are U.S. Standards for Grades of Shelled Almonds (7 CFR 51.2105 through 51.2131) and U.S. Standards for Grades of Almonds in the Shell (7 CFR 51.2075 through 51.2091) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). However, these standards are voluntary for the almond industry.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all Board meetings, the task force meetings on March 23 and April 26, 2006, the FQS Committee meetings on April 11, May 8, and June 13, 2006, and the Board meeting on May 18, 2006, were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2006 (71 FR 47152). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 7-day comment period ending August 23, 2006, was provided for interested persons to respond to the proposal. Five comments were received from industry handlers opposed to the proposed reduced tolerance for inedible kernels from 1 to 0.50 percent. All the points raised in these five comments were previously discussed by the almond industry at the meetings cited earlier in this rule.

Two of the commenters believe that reducing the incoming tolerance for inedible kernels will not remove additional inedible almonds from the market. They pointed to the existing voluntary outgoing tolerances for seriously damaged kernels in the U.S. Standards for Grades of Shelled Almonds (1 percent tolerance for U.S. Fancy and 2 percent tolerance for U.S. Select Sheller run). One commenter also pointed to the Board's voluntary aflatoxin sampling plan that recommends that loads of almonds with over 2 percent serious damage be tested for aflatoxin. The commenters contend that reducing the incoming tolerance will not cause handlers to ship almonds at a lower outgoing tolerance into the market.

We disagree with these comments. Reducing the incoming tolerance for inedible kernels will remove more inedible almonds from channels of commerce. Let us assume that the annual almond production is 1 billion pounds, of which 3 percent or 30 million pounds (.03 × 1 billion pounds) are inedible. The current inedible program provides for a 1 percent tolerance, or 10 million pounds (.01 × 1 billion pounds) of almonds that can be inedible and sold into normal market channels. Thus, 20 million pounds (.02 × 1 billion pounds) must be disposed of into specified outlets for inedible almonds. Of the 20 million pounds, only 25 percent, or 5 million pounds, must be true inedibles, and the remaining 15 million pounds can be edible, inedible, or meal.

In comparison, the revised inedible program provides for a tolerance of 0.50 percent, or 5 million pounds (.005 × 1 billion pounds) of almonds that can be inedible and sold into normal market channels. Thus, 25 million pounds (.025 × 1 billion pounds) must be disposed of into specified outlets for inedible almonds. Of the 25 million pounds, 50 percent, or 12.5 million pounds, must be true inedibles, and the remaining 12.5 million pounds can be edible, inedible, or meal.

In summary, a total of 5 million pounds of true inedible almonds are removed from the market annually under the current program, and 12.5 million pounds of almonds will be removed annually under the revised program. Thus, the revised program will remove an additional 7.5 million pounds of inedible almonds from the market.

A commenter also stated that reducing the incoming tolerance from 1 to 0.50 percent may provide an unfair advantage for larger processors that have blanching facilities. We disagree. The process of blanching involves scalding the almonds with hot water to remove the skins, and then running the almonds

through a series of rollers to remove any remaining skin and smooth the almond surface. Handlers with blanching equipment may clean up inedible almonds for market. However, increasing the percent of a handler's total annual obligation that must be true inedible from 25 to 50 percent will reduce the amount of inedible almonds that are available to be cleaned up with blanching equipment. Additionally, the revised tolerances apply to all handlers throughout the industry, regardless of size or processing capabilities.

Another commenter expressed concern that the reduced incoming tolerance is only being applied to the California almond industry, and that other producing countries like Spain and Australia would not be impacted by the change. The commenter added that the real concern to the California industry is aflatoxin, and suggested that the industry focus more on testing almonds prior to shipment rather than tightening up the inedible almond program under the order.

The comment correctly points out that the revised tolerances are applied under the California almond marketing order, and are only applicable to domestic California production. However, concerning the issue of aflatoxin, a number of initiatives have been recommended by the Board. For example, the Board has endorsed a voluntary aflatoxin sampling plan that recommends that loads of almonds with over 2 percent serious damage be tested for aflatoxin. Additionally, Board research has shown that aflatoxin in almonds is directly related to insect damage in inedible kernels. In order to help minimize the risk of aflatoxin, the Board recommended reducing the tolerance for inedible kernels from 1 to 0.50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. This rule implements the Board's recommendation.

Two commenters expressed concern that this issue was not fully deliberated by the Board and/or its committees. However, the Board formed a task force to address the industry's concerns regarding aflatoxin. The task force met on March 23 and April 26, 2006, and recommended reducing the incoming tolerance from 1 to 0 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. The FQS Committee reviewed the task force's proposal on April 11 and again on May 8, 2006. After much discussion, the FQS Committee reached a compromise and recommended that the incoming tolerance be reduced from 1 to 0.50 percent. The FQS Committee concurred with the proposal regarding true inedibles. The Board considered the issue on May 18, 2006. Ultimately, the majority of Board members concurred with the FQS Committee's proposal. The FQS Committee met again via teleconference on June 13, 2006, revisited the issue, and reaffirmed its previous recommendation that was ultimately approved by the Board and submitted to USDA. Thus, the issue was fully deliberated at several meetings, and interested persons had ample opportunity to express their views and participate in the discussions.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–07 crop year began on August 1, 2006, and handlers are disposing of inedible almonds. These changes should be in effect for as much of the crop year as possible. Handlers are aware of this action which was recommended at a public meeting. Additionally, a 7-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.442 is amended by revising the first sentence of paragraph (a)(4)(i) and the eleventh sentence in paragraph (a)(5) to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 0.50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * *

(5) *Meeting the disposition obligation.* * * * At least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided,* That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. * * *

* * * * *

Dated: November 3, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9133 Filed 11–3–06; 4:34 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 626

RIN 1901–AB16

Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve

AGENCY: Office of Petroleum Reserves, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy Act of 2005 (EPAct 2005) directs the Secretary of Energy (Secretary) to develop procedures for the acquisition of petroleum for the Strategic Petroleum Reserve (SPR) in appropriate circumstances. On April 24, 2006, the Department of Energy (DOE) published proposed procedures in the **Federal Register** for public comment. Today DOE is issuing the final rule governing procedures for the acquisition of petroleum for the SPR, including acquisition by direct purchase and transfer of royalty oil from the Department of the Interior (DOI). The final rule also has provisions concerning the deferral of scheduled deliveries of petroleum for the SPR. With the exception of some minor clarification changes and definitional and editorial adjustments, these final procedures are substantially the same as those proposed.

DATES: *Effective Date:* This final rule is effective December 8, 2006.

FOR FURTHER INFORMATION CONTACT: Lynnette le Mat, Director, Operations and Readiness, Office of Petroleum Reserves, Office of Fossil Energy, FE–43, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4398.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Background
B. The Energy Policy Act of 2005
II. Discussion of the Comments and Changes to Proposed Procedures
III. Final Acquisition Procedures
A. Discussion of Acquisition Principles
B. Vehicles for Petroleum Acquisition
IV. Regulatory Review

I. Introduction

A. Background

The Strategic Petroleum Reserve was established pursuant to the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*) to store petroleum to diminish the impact on the United States of disruptions in petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA authorizes the Secretary of Energy to acquire petroleum for storage in the SPR by a variety of methods.

Since its authorization, the Federal Government has created six crude oil storage sites and has subsequently decommissioned two of the six. The SPR currently consists of underground storage caverns located in the four Government-owned sites. The locations are Bryan Mound and Big Hill in Texas and West Hackberry and Bayou Choctaw in Louisiana. These four storage locations have salt dome caverns with 727 million barrels of useable storage capacity.

Over the last thirty years, the Government has acquired approximately 800 million barrels of petroleum for the SPR. Over 100 million barrels of oil have been withdrawn from the SPR for sale or exchange. The inventory reached its highest level of 700.7 million barrels in August 2005 before the drawdown, exchange and sale of 20.8 million barrels in the aftermath of Hurricane Katrina.

Crude oil was initially acquired for the SPR by direct purchases on the open market. Through a 1977 Interagency Agreement, the Department of Defense served as DOE's agent to acquire crude oil using appropriated funds to attempt to meet a series of target fill rates specified by Congress. Petroleum was acquired through a combination of spot market purchases and term contracts, including a matching purchase and sale involving the Government's share of production from the Naval Petroleum Reserve in California. Except for various pauses occasioned by geopolitical events, such as Desert Storm in 1991, direct purchases continued with the Defense Fuel Supply Center (currently the Defense Energy Support Center) functioning as DOE's acquisition agent through 1994, at which time funds from direct appropriations and receipts from sales in 1990 and 1991 were exhausted.

In December 1981, DOE entered into the first of a series of four country-to-country contracts with Petroleos Mexicanos (PEMEX), the state-owned oil company of Mexico. These term contracts—under which deliveries of approximately 220 million barrels of petroleum were completed in 1990—employed commercial market terms and were priced according to a formula indexed to prices of globally-traded petroleum.

In 1996, in a series of congressionally-mandated sales, an aggregate 28 million barrels of SPR inventory were sold to fund SPR programmatic requirements and for general deficit reduction purposes. Subsequently, pursuant to a 1999 Memorandum of Understanding (MOU) between the DOI and DOE, DOE initiated a program to replace the 28 million barrels by the transfer to DOE of crude oil royalties collected in-kind on production from Federal leases in the Gulf of Mexico Outer Continental Shelf. Under this MOU, DOE contracted with commercial entities to receive the royalty oil at offshore production facilities and transfer it to the SPR, either directly or by exchange for other crude oil meeting SPR quality specifications.

In 1998, in order to improve the efficiency of drawdown operations at the Bryan Mound site, DOE conducted a competition under the exchange authority in EPCA to trade crude oil of one type for another type of superior quality. Although this resulted in a net decrease in the number of barrels in inventory, the upgrade in oil quality maintained the value of the Government's assets and enhanced emergency response capabilities.

In the fall of 2000, again under the EPCA exchange authority, DOE conducted a time exchange of oil from the SPR. Through open competition, DOE entered into agreements with nine companies to exchange 30 million barrels of oil. Under these agreements, oil delivered to companies from SPR sites was to be repaid the following year with oil of comparable quality and quantity, plus additional premium barrels paid as interest.

In November 2001, the Administration announced it would extend the royalty-in-kind program to fill the SPR to a level of 700 million barrels. To accomplish this, a new MOU was signed with DOI, and DOE issued a series of competitive solicitations for six-month terms, similar to those used previously to acquire 28 million barrels.

At various times since 1999, when the market moved into steep backwardation (prices are progressively lower in succeeding delivery months than in earlier months), suppliers under both the time exchange and royalty-in-kind transfer programs requested that contractually scheduled deliveries to the SPR be delayed. DOE granted these deferral requests through individual negotiations for the future return of the originally scheduled barrels plus additional premium barrels.

In addition, there have been periods when catastrophic events, most recently severe weather, have prompted requests for emergency time exchanges of oil from the SPR. These emergency time exchanges have been conducted in a manner similar to deferred deliveries, in that the exchanged oil is returned plus additional barrels as a premium.

B. EPAct 2005

Section 159 of EPCA (42 U.S.C. 6239) authorizes the Secretary to acquire petroleum products for storage in the SPR by purchase, exchange, or otherwise, subject to the provisions of section 160. The acquisition authority in section 160(b) of EPCA requires that the Secretary, to the greatest extent practicable, acquire petroleum products for the SPR in a manner consistent with the following objectives: Minimization of the cost of the SPR, minimization of the Nation's vulnerability to a severe energy supply interruption, minimization of the impact of such acquisition upon supply levels and market forces, and encouragement of competition in the petroleum industry.

In addition, section 301(e)(2)(A) of EPAct 2005 amends EPCA by adding a new subsection (c) to section 160. Subsection (c) directs the Secretary to develop, with public notice and opportunity for comment, procedures consistent with the objectives of section 160 to acquire petroleum for the SPR. Such procedures must take into account the need to:

(1) Maximize overall domestic supply of crude oil (including quantities stored in private sector inventories);

(2) Avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers;

(3) Minimize the costs to DOI and DOE in acquiring such petroleum products (including foregone revenues to the Treasury when petroleum products for the SPR are obtained through the royalty-in-kind program);

(4) Protect national security;

(5) Avoid adversely affecting current and futures prices, supplies, and inventories of oil; and

(6) Address other factors that the Secretary determines to be appropriate.

Section 301(e)(2)(B) of EPAct 2005 further provides that the procedures developed under section 160(c) shall include procedures and criteria for the review of requests for the deferrals of scheduled deliveries.

Consistent with the principles set forth in EPCA and the requirements and objectives of EPAct 2005, DOE is issuing this final rule establishing procedures for oil acquisition by direct purchase and by royalty oil transfers from DOI, including procedures to address deferrals of scheduled deliveries.

These acquisition procedures will be effective thirty (30) days after the publication of this final rule in the **Federal Register**. However, the President has directed DOE to defer filling the SPR for the summer of 2006. Therefore, DOE has no current plans to utilize these procedures to enter into the market to acquire additional oil supplies for the SPR.

II. Discussion of the Comments and Changes to Proposed Procedures

As previously mentioned, DOE published a notice of proposed rulemaking in the **Federal Register** on April 24, 2006 (78 FR 20909) and requested public comments on the proposed procedures. In response to the request for comments, three comments were received, one from an anonymous member of the general public, one from a trade association and one from a refiner.

The general public comment was not directed specifically at the proposed SPR acquisition regulations. It simply encouraged DOE to look for more effective measures to deter disruptions in the U.S oil supply.

The trade association comment recommended that DOE should establish procedures to acquire oil for the SPR when prices are low in order to minimize the effect on present and future market conditions and petroleum product prices. It suggested that the proposed procedures be modified to provide that DOE would not acquire oil for the SPR or would delay acquisition transactions when prices exceed a fixed percentage from the median monthly average for a specified period. Specifically, it recommended setting this trigger at a 40 percent differential using the prior ten year period. Generally, DOE does not support tying the acquisition of oil for the SPR or deferral of transactions to a specific pricing trigger. DOE believes that such trigger mechanisms do not always reflect the true state of petroleum markets or necessitate activities related to petroleum stockpiles. Use of a predetermined calculation raises definitional issues and questions as to accuracy and timeliness of data, questions as to whether the market is experiencing sustained trends versus anomalies, and questions as to what would be the appropriate action when calculations no longer exceed thresholds. DOE prefers to retain the flexibility to achieve the statutory objectives through the management of acquisition activities only after a careful review of a number of market indicators. For these reasons, DOE has not accepted this recommendation.

Finally, the refiner comment suggested that the wording for termination of contracts in proposed section 626.5(d)(2) be clarified. The comment wanted clarification that the Government would be liable for any reasonable costs incurred by suppliers in the performance of valid contracts for the delivery of SPR oil prior to termination or deferral of such contracts. The comment suggested using language modified from the termination provisions of the SPR price competitive sales regulations in 10 CFR Part 625. DOE agrees with the intent of this recommendation and has modified the language of sections 626.5(d)(2) and 626.8(c)(1) accordingly.

The procedures adopted in section 626.1 do not represent actual terms and conditions to be contained in contracts for the acquisition of SPR petroleum.

The definition of Contracting Officer in section 626.2 was modified to more clearly define the responsibilities of the Contracting Officer.

III. Final Acquisition Procedures

A. Discussion of Acquisition Principles

DOE will consider a wide range of factors consonant with the objectives set forth in section 160 (b) of EPCA and the new section 160 (c) added by EPAct 2005. DOE will give careful and deliberative consideration of these factors prior to acquisition of petroleum for the SPR or deferral of scheduled deliveries.

While the mission of the SPR is to provide energy security by storing substantial quantities of petroleum, the acquisition of petroleum to meet this long term objective must be conducted using the criteria set forth in EPCA, as amended by the EPAct 2005. When acquiring petroleum, whether by purchase or royalty transfer, DOE will seek to balance the objectives of assuring adequate security and minimizing impact to the petroleum market. To this end, DOE will consider various factors that may be affecting market fundamentals, current and projected SPR and commercial receipt capabilities, and the geopolitical climate.

Whether acquiring by purchase or royalty transfer, DOE will seek to maximize the overall domestic supply of crude oil. Assuming the necessary authorizations and appropriations have been made, DOE decisions on crude oil acquisition will take into consideration the current level of the SPR and private inventories, national and regional import dependency, the outlook for international and domestic production levels, oil acquisition by other stockpiling entities, the added security value of the marginal barrel in storage, incipient disruptions of supply or refining capability, the level of market volatility, the demand and supply elasticity to price changes, logistics and economics of petroleum movement, and any other considerations that may be pertinent to the balance of petroleum supply and demand. More indirect considerations, such as monetary policy, the current and projected rate of economic growth, and impacts on specific domestic market segments, as well as foreign policy considerations may also be pertinent to near-term acquisition strategy. All of these factors are recognized as having an impact, at some level, on U.S. energy security.

The timing of DOE entry into the market, its sustained presence, and the quantities sought will all be sensitive to these factors. DOE will remain aware of the extent to which the SPR fill rate and prices paid for its own acquisitions will impact supply availability and prices for other market participants. DOE will strive to avoid incurring excessive cost or appreciably affecting the price of petroleum products to consumers by analyzing market activity for crude oil and related commodities and prices of oil for delivery in future months, as well as the perceived availability of near term and forward supplies.

For purchases or exchanges, DOE will ensure the use of commercially reasonable terms and conditions.

B. Vehicles for Petroleum Acquisition

DOE may acquire oil for the SPR through direct purchase, the transfer of royalty-in-kind oil, through deferrals

and exchanges, or other means authorized in sections 159 and 160 of EPCA. In order to acquire oil, DOE may enter into agreements with other Federal agencies with relevant expertise and resources to acquire oil for the SPR consistent with the provisions of 10 CFR Part 626.

1. Direct Purchases

Use of the direct purchase method for oil acquisition is contingent upon the availability of funds. If funds are made available, DOE would provide public notice of its intent to issue a solicitation for the acquisition of crude oil. The quantity and quality of oil to be purchased would be identified in the solicitation. When acquiring by direct purchase, DOE would use competitive solicitations to assure that prices paid are fair and reasonable in a global market, and in line with contemporaneous commercial transactions for comparable quality crude oils. The use of open, continuous solicitations that allow entry into price and delivery negotiations would enable DOE to increase the rate of purchases if price volatility reduces prices below trend and offers the opportunity to reduce the average cost of oil acquisition. Under these procedures, DOE also may decrease the rate of purchase if volatility or future price projections indicate a delay would result in better acquisition prices and less stress on seasonal petroleum markets. DOE's decision to enter the market, delay purchases or defer deliveries would follow the careful analysis of the effect of such a decision on current and futures prices, supplies and inventories of oil.

2. Royalty-in-Kind Transfers

DOI is responsible for collecting royalties on production from leases on Federally-owned properties. DOI, on behalf of the Federal Government, receives royalties of a defined percentage of the amount or value of the oil produced from the leases. Royalties taken ''in kind'', in the oil itself, may be transferred to the SPR pursuant to agreement between DOE and DOI for the transfer of royalty oil. Such transfers are conducted in coordination with the Minerals Management Service of DOI. Under the royalty-in-kind acquisition method in this rule, DOE may take the royalty oil directly from DOI and place it in the SPR if it is of suitable quality and transportation logistics are amenable for direct transfer. DOE expects this would be a small proportion of the total oil transferred. However, in most cases, DOE will competitively solicit suppliers to deliver oil of comparable value to the SPR in exchange for the receipt of royalty-in-kind oil. In these competitive exchange agreements, the suppliers are bound by contract to provide oil of suitable quality to the SPR.

When using royalty production to fill the SPR, DOE would minimize the cost to the DOI and DOE through its analysis of royalty values, as well as a comparative analysis of the relative market values of crude oil offered in a competitive exchange. Both agencies will encourage the direct transfer of royalty oil to the SPR when in the Government's interest.

3. Deferrals

DOE may defer scheduled deliveries to the SPR for the purpose of obtaining additional crude oil. Under the rule, DOE could defer scheduled crude oil deliveries to the SPR to a later date in exchange for a premium, which would be paid to DOE in oil.

The precise amount of that premium would be negotiated with the contractor by a DOE contracting officer. The determination of an appropriate premium would take into consideration the length of deferral as well as prevailing market conditions.

4. Exceptions to Applicability

The procedures do not apply to the following transactions during which oil may be acquired: (1) Country-to-country oil purchases; (2) facility leases with payments in oil; and (3) contracts for oil not owned by the United States as provided for by section 171 of EPCA. These excluded transactions generally are not conducted primarily for the acquisition of oil by DOE.

IV. Regulatory Review

A. Executive Order 12866

Today's rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's procedures under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These procedures would not directly affect small businesses or other small entities. The procedures would apply only to individuals who are engaged in the acquisition of petroleum products for the Strategic Petroleum Reserve. On the basis of the foregoing, DOE certifies that the procedures, if implemented would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This rule would not impose any new collection of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance

or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

These procedures would not impose a Federal mandate on State, local or tribal governments. The rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well being. These procedures apply only to Federal employees involved in the acquisition of petroleum products for the SPR. While some of these individuals may be members of a family, the rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the procedures meet the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have an adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

L. Approval by the Office of the Secretary

The Secretary has approved the issuance of this notice of final rulemaking.

List of Subjects in 10 CFR Part 626

Government contracts, Oil and gas reserves, Strategic and critical materials.

Issued in Washington, DC on November 1, 2006.

Jeffrey D. Jarrett,

Assistant Secretary for Fossil Energy.

■ For the reasons stated in the preamble, DOE hereby amends chapter II of title 10 of the Code of Federal Regulations by adding a new part 626 as set forth below:

PART 626—PROCEDURES FOR ACQUISITION OF PETROLEUM FOR THE STRATEGIC PETROLEUM RESERVE

Sec.
626.1 Purpose.
626.2 Definitions.
626.3 Applicability.
626.4 General acquisition strategy.
626.5 Acquisition procedures-general.
626.6 Acquiring oil by direct purchase.
626.7 Royalty transfer and exchange.
626.8 Deferrals of contractually scheduled deliveries.

Authority: 42 U.S.C. 6240(c); 42 U.S.C. 7101, *et seq.*

§ 626.1 Purpose.

This part establishes the procedures for acquiring petroleum for, and deferring contractually scheduled deliveries to, the Strategic Petroleum Reserve. The procedures do not represent actual terms and conditions to be contained in the contracts for the acquisition of SPR petroleum.

§ 626.2 Definitions.

Backwardation means a market situation in which prices are progressively lower in succeeding delivery months than in earlier months.

Contango means a market situation in which prices are progressively higher in the succeeding delivery months than in earlier months.

Contract means the agreement under which DOE acquires SPR petroleum, consisting of the solicitation, the contract form signed by both parties, the successful offer, and any subsequent modifications, including those granting requests for deferrals.

Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings, including entering into sales contracts on behalf of the Government. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

DEAR means the Department of Energy Acquisition Regulation.

Deferral means a process whereby petroleum scheduled for delivery to the SPR in a specific contract period is rescheduled for later delivery, outside of that period and encompasses the future delivery of the originally scheduled quantity plus an in-kind premium.

DOE means the Department of Energy.

DOI means the Department of the Interior.

Exchange means a process whereby petroleum owned by or due to the SPR is provided to a person or contractor in return for petroleum of comparable quality plus a premium quantity of petroleum delivered to the SPR in the future, or when SPR petroleum is traded for petroleum of a different quality for operational reasons based on the relative values of the quantities traded.

FAR means the Federal Acquisition Regulation.

Government means the United States Government, and includes DOE as its representative.

International Energy Program means the program established by the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including any subsequent amendments and additions to that Agreement.

OPR means the Office of Petroleum Reserves within the DOE Office of Fossil Energy, whose responsibilities include the operation of the Strategic Petroleum Reserve.

Petroleum means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned, or contracted for, by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

Secretary means the Secretary of Energy.

Strategic Petroleum Reserve or *SPR* means the DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*

§ 626.3 Applicability.

The procedures in this part apply to the acquisition of petroleum by DOE for the Strategic Petroleum Reserve through direct purchase or transfer of royalty-in-kind oil, as well as to deferrals of contractually scheduled deliveries.

§ 626.4 General acquisition strategy.

(a) *Criteria for commencing acquisition.* To reduce the potential for negative impacts from market participation, DOE shall review the following factors prior to commencing acquisition of petroleum for the SPR:

(1) The current inventory of the SPR;

(2) The current level of private inventories;

(3) Days of net import protection;

(4) Current price levels for crude oil and related commodities;

(5) The outlook for international and domestic production levels;

(6) Existing or potential disruptions in supply or refining capability;

(7) The level of market volatility;

(8) Futures market price differentials for crude oil and related commodities; and

(9) Any other factor the consideration of which the Secretary deems to be necessary or appropriate.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of oil acquisition each time an open market acquisition has been suspended for more than three months, and every six months in the case of ongoing or suspended royalty-in-kind transfers.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire oil for the SPR on behalf of DOE.

§ 626.5 Acquisition procedures—general.

(a) *Notice of acquisition.*

(1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum for the SPR. The notice of acquisition is usually in the form of a solicitation. DOE shall state in the notice of acquisition the general terms and details of DOE's crude oil acquisition and, to the extent feasible, shall inform the public of its overall fill goals, so that they may be factored into market participants' plans and activities.

(2) The notice of acquisition generally states:

(i) The method of acquisition to be employed;

(ii) The time that the solicitations will be open;

(iii) The quantity of oil that is sought;

(iv) The minimum crude oil quality requirements;

(v) The acceptable delivery locations; and

(vi) The necessary instructions for the offer process.

(b) *Method of acquisition.*

(1) DOE shall define the method of crude oil acquisition, direct purchase or royalty-in-kind transfer and exchange, in the notice of acquisition.

(2) DOE shall determine the method of crude oil acquisition after taking into account the availability of appropriated funds, current market conditions, the availability of oil from the Department of the Interior, and other considerations DOE deems to be relevant.

(c) *Solicitation.*

(1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum to the SPR, DOE shall maintain a listing, developed through on-line registration and personal contact, of interested suppliers. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered e-mail addresses.

(2) DOE shall make the solicitation publicly available on the Web sites of

the DOE Office of Fossil Energy *http://www.fe.doe.gov/programs/reserves* and the OPR *http://www.spr.doe.gov.*

(d) *Timing and duration of solicitation.*

(1) DOE shall determine crude oil requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) DOE may terminate all solicitations and contracts pertaining to the acquisition of crude oil at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than costs for oil delivered to the SPR and for reasonable, customary, and applicable costs incurred by the supplier in the performance of a valid contract for delivery before the effective date of termination of such contract. In no event shall the Government be liable for consequential damages or the contractor's lost profits as a result of such termination.

(e) *Quality.*

(1) DOE shall define minimum crude oil quality specifications for the SPR. DOE shall include such specifications in acquisition solicitations, and shall make them available on the Web sites of the DOE Office of Fossil Energy *http://www.fe.doe.gov/programs/reserves* and the OPR *http://www.spr.doe.gov.*

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the crude oil mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of oil to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or crude oil market fundamentals.

(g) *Offer and evaluation procedures.*

(1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation and award procedures may vary depending on the method of acquisition.

(2) DOE shall use relative crude values and time differentials to the maximum extent practicable to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE shall evaluate offers based on prevailing market prices of specific crude oils, and shall award contracts on a competitive basis.

(4) Whether acquisition is by direct purchase or royalty transfer and exchange on a term contract basis, DOE shall use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.*

(1) Except as provided in paragraph (h)(4) of this section, DOE shall accept offers for crude oil delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (h)(4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically-sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

§ 626.6 Acquiring oil by direct purchase.

(a) *General.* For the direct purchase of crude oil, DOE shall, through certified contracting officers, conduct crude oil acquisitions in accordance with the FAR and the DEAR.

(b) *Acquisition strategy.*

(1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time (usually no longer than 6 months); and

(ii) May provide either for prompt delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of oil, based on a consideration of the availability of storage capacity in the SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines and terminals to move and receive the oil.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers or suspend the acquisition process on the basis of Government estimates that project substantially lower oil prices in the future than those contained in offers. If DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may either contract for delivery at a future date or delay purchases to take advantage of projected future lower prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of oil acquisitions in anticipation of higher prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers, decrease the rate of purchase, or suspend the acquisition process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a world-wide basis. DOE may consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(c) *Fill requirements determination.*

DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of storage capacity, and the need for specific grades and quantities of crude oil.

(d) *Market analysis.*

(1) DOE shall establish a market value for each crude type to be acquired based on a market analysis at the time of contract award.

(2) In conducting the market analysis, DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(3) A market analysis may also consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(e) *Evaluation of offers.*

(1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors, in the form of a letter of credit or equivalent financial assurance.

§ 626.7 Royalty transfer and exchange.

(a) *General.*

DOE shall conduct royalty transfers pursuant to an agreement between DOE and DOI for the transfer of royalty oil.

(b) *Acquisition strategy.*

(1) DOE and DOI shall select a royalty volume from specified leases for transfer usually over six-month periods.

(2) If logistics and crude oil quality are compatible with SPR receipt capabilities and requirements respectively, DOE may take the royalty oil directly from DOI and place it in SPR storage sites. Otherwise, DOE may competitively solicit suppliers to deliver oil of comparable value to the SPR in exchange for the receipt of royalty-in-kind oil.

(3) If, based on the market analysis described in paragraph (d) of this section, DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may contract for delivery at a future date in expectation of lower prices and a higher quantity of oil in exchange. Conversely, it may schedule deliveries at an earlier date under the contract in anticipation of higher prices at later dates.

(4) Based on the market analysis in paragraph (d) of this section, DOE may, after consultation with DOI, suspend the transfer of royalty oil to DOE if it appears the added demand for oil will add significant upward pressure to prices either regionally or on a world-wide basis.

(c) *Fill requirements determination.*

DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of royalty oil and storage capacity, and need for specific grades and quantities of crude oil.

(d) *Market analysis.*

(1) DOE may use prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools to determine the most desirable acquisition profile.

(2) A market analysis may also consider recent price changes, private inventory levels, oil acquisition by other stockpiling entities, the outlook for world oil production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum supply and demand.

(e) *Evaluation of royalty exchange offers.*

(1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from contractors in the form of a letter of credit or equivalent financial assurance.

§ 626.8 Deferrals of contractually scheduled deliveries.

(a) *General.*

(1) DOE prefers to take deliveries of petroleum for the SPR at times scheduled under applicable contracts. However, in the event the market is distorted by disruption to supply or other factors, DOE may defer scheduled deliveries or request or entertain deferral requests from contractors.

(2) A contractor seeking to defer scheduled deliveries of oil to the SPR may submit a deferral request to DOE.

(b) *Deferral criteria.* DOE shall only grant a deferral request for negotiation under paragraph (c) of this section if it determines that DOE can receive a premium for the deferral paid in additional barrels of oil and, based on DOE's deferral analysis, that at least one of the following conditions exists:

(1) DOE can reduce the cost of its oil acquisition per barrel and increase the volume of oil being delivered to the SPR by means of the premium barrels required by the deferral process.

(2) DOE anticipates private inventories are approaching a point where unscheduled outages may occur.

(3) There is evidence that refineries are reducing their run rates for lack of feedstock.

(4) There is an unanticipated disruption to crude oil supply.

(c) *Negotiating terms.*

(1) If DOE decides to negotiate a deferral of deliveries, DOE shall estimate the market value of the deferral and establish a strategy for negotiating with suppliers the minimum percentage of the market value to be taken by the Government. During these negotiations, if the deferral request was initiated by DOE, DOE may consider any reasonable, customary, and applicable costs already incurred by the supplier in the performance of a valid contract for delivery. In no event shall such consideration account for any consequential damages or lost profits suffered by the supplier as a result of such deferral.

(2) DOE shall only agree to amend the contract if the negotiation results in an agreement to give the Government a fair and reasonable share of the market value.

[FR Doc. E6–18786 Filed 11–7–06; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 613, 614, and 615

RIN 3052–AC15

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This final rule is intended to reduce regulatory burden on the Farm Credit System (FCS or System) by repealing or revising five regulations. The final rule also corrects eight outdated and erroneous cross-references in five regulation sections. These revisions provide System banks and associations with greater flexibility concerning stock ownership of service corporations, employee reporting under standards of conduct rules, domestic lending to cooperatives, and real property evaluations for certain business loans.

DATES: *Effective Date:* These regulations will be effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Associate Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434; or Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this rule is to reduce regulatory burden by repealing and/or revising regulations and correcting outdated and erroneous regulations.

II. Background

On March 28, 2006, we invited the public to comment on five proposed changes to our regulations. *See* 71 FR 15343. The comment period was scheduled to close on May 30, 2006. However, on May 26, 2006, the Independent Community Bankers of America requested that the FCA extend

the comment period. On June 15, 2006, we reopened the comment period until July 17, 2006. *See* 71 FR 34549.

We also published a separate notice in the **Federal Register** on March 28, 2006, explaining how we addressed or will address comments we received as part of the 2003 solicitation, including the reasons why we are not changing certain regulations at this time. *See* 71 FR 15413. Our proposed rule addressed the following issues:

A. *Service corporations.* Clarifying that service corporations are not required to offer stock to every System bank and association.

B. *Standards of conduct.* Allowing new System employees to report to the Standards of Conduct official within 5 days after starting employment.

C. *Cooperative eligibility.* Eliminating the 10-percent limitation on dividends in determining a cooperative's eligibility to borrow from a title III System lender.

D. *Appraisal requirements.* Eliminating a requirement for a Uniform Standards of Professional Appraisal Practices (USPAP) compliant real property appraisal for business loans between $250,000 and $1 million.

E. *Bankers' acceptance financing.* Repealing an outdated regulation pertaining to the purchase of bankers' acceptances by the Federal Farm Credit Banks Funding Corporation from an agricultural credit bank.

We also proposed to correct outdated and erroneous cross-references affecting two regulations governing title III lending.

III. Comments Received

We received 275 comment letters. Overall, supporters aligned with the System commented favoring our five proposed amendments, while those aligned with non-System lenders commented opposing two of our proposed amendments. Additionally, our proposed amendment pertaining to cooperative eligibility rules were supported by three independent groups, the National Council of Farm Credit Cooperatives, the Minnesota Association of Cooperatives, and the Iowa Institute for Cooperatives.

Comments from five System banks, 59 System associations and the Farm Credit Council, on behalf of its members, urged FCA to move forward on its five proposed amendments. Also, in response to our 2003 regulatory burden solicitation, some System supporters asked that we implement changes on all regulations for which we received comments. As stated in section II above, we addressed the 2003 solicitation comments in a separate notice in the **Federal Register** on March 28, 2006.

Comments from 129 commercial banks, eight individuals and, on behalf of their members, the Independent Community Bankers of America, the Independent Bankers of Colorado, the Independent Bankers of Minnesota, and the Community Bankers of Wisconsin opposed our proposed amendments to eliminate: (1) The 10-percent dividend limitation on cooperatives borrowing from a title III System lender; and (2) the requirement for a USPAP-compliant appraisal on certain business loans.

After careful consideration of all the comments, we are adopting all five proposed amendments as final without change. In this final rule, we also make eight technical and conforming changes to five regulation sections governing title III System lenders; six changes are made to correct outdated and erroneous cross-references and two changes are made to remove references to deleted § 614.4710. Three of the cross-reference changes were part of our proposed rule and are adopted without change. We also made five additional technical and conforming changes in the final rule. We find that publishing a notice and asking for public comment on these changes is unnecessary and impractical because they are not substantive and merely correct and update cross-references in other related parts of our rules.

IV. Section-by-Section Discussion of Comments to the Five Amendments

A. Section 611.1135—Incorporation of Service Corporations

We proposed to amend the relevant sentence of § 611.1135(b) to clarify that service corporations are not required to offer stock to every System bank and association. We did not receive any specific comments on this proposal. We are adopting this proposal as final.

B. Section 612.2155—Employee Reporting

We proposed to amend § 612.2155(d) to require a newly hired employee to complete a standards of conduct report not later than 5 business days after the new employee's start date. We did not receive any specific comments on this proposal. We are adopting this proposal as final.

C. Section 613.3100—Domestic Lending—Banks Operating Under Title III of the Farm Credit Act

Section 3.8(a) of the Farm Credit Act of 1971, as amended (Act),[1] provides that an agricultural or aquatic cooperative (that meets statutory minimum levels of farmer ownership and business with members) is eligible for financing from a title III System lender if it conforms to either of the two following requirements:

(1) No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) Does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration * * *.[2]

Current § 613.3100(b)(1)(iii) provides that an eligible cooperative must comply with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable state law, whichever is less.

We proposed to delete the 10-percent limitation, allowing state law to govern compliance with the dividend requirement.

Commenters who supported the amendment stated that the amendment would be of significant benefit as cooperatives continue to develop new ownership structures and capital plans. Other commenters stated changes to the eligibility provisions in title III of the Act will be necessary for System lenders to serve new farmer-owned businesses being created under state laws. These commenters further noted the limited effect of the regulatory change, stating that the 80-percent farmer voting control requirement contained in the Act remains a more serious obstacle for cooperatives.

Commenters who opposed the amendment asserted that the Act requires the FCA to set the dividend limit and that FCA cannot defer this authority and responsibility to the states. These commenters stated that FCA's proposal was therefore arbitrary and capricious. After careful consideration of these comments, we conclude that it is appropriate to adopt the proposed section as final for the following four reasons.

First, we note that Congress gave FCA substantial discretion in this area. Unlike section 3.8(a)(1), (a)(3), and (a)(4) of the Act, which prescribe very specific eligibility requirements for cooperatives,

[1] 12 U.S.C. 2129(a).

[2] As discussed below, even if one of these eligibility requirements is met, the Act has other requirements that must also be satisfied in order for a cooperative to borrow from a title III System lender.

section 3.8(a)(2) of the Act leaves the determination of the maximum dividend percentage solely to the discretion of FCA. It is an appropriate use of discretion for FCA to look to another authoritative source of applicable law—state law—in setting this limit. Moreover, our existing rule—10 percent per year or the maximum percentage per year permitted by applicable state law, whichever is less—already generally defers to state law because most states have an 8-percent limit.

Second, FCA's reference to state law is not ''arbitrary'' in this context because cooperatives that borrow from a title III System lender are usually a form of a state-chartered corporation whose organization and operations are governed by state law. Compliance with state law—for corporate formation requirements—always impacts the eligibility of a ''legal entity'' to borrow from the System. Therefore, we believe that it is reasonable for FCA to defer to state law—an external authoritative source—in adopting this cooperative eligibility rule.

Third, we disagree with commenters who stated that FCA should look to the Capper-Volstead Act's limitations on cooperative dividends. As we noted in the proposed rule's preamble, in the Farm Credit Act of 1971, Congress specifically eliminated the former Farm Credit law's reference to the Capper-Volstead Act (and its 8-percent dividend limitation) in providing for cooperative eligibility. Therefore, Capper-Volstead Act limitations are irrelevant and their application to FCS eligibility arguably violates congressional intent.

Fourth, after careful consideration of comments to the contrary, we conclude that FCA's proposed amendment would not have sweeping adverse effects and would not allow lending to all types of cooperatives. The Act specifically limits eligibility to agricultural cooperatives that meet very specific farmer ownership and business with members' requirements. Nothing in this rule alters those requirements. Moreover, three non-System organizations representing cooperatives commented that the proposed rule would benefit agricultural cooperatives and their farmer members.

For the reasons stated above, we are adopting the proposed amendment as final.

D. Section 614.4265—Real Property Evaluations

We proposed to eliminate the requirement for a USPAP-compliant real property appraisal for business loans between $250,000 and $1 million that are not otherwise exempt under our rules. Supporting commenters stated that the existing requirement is unduly burdensome and places System lenders at a competitive disadvantage because non-System lenders are not required to perform USPAP-compliant appraisals for these types of business loans. Commenters further added that the existing requirement does not necessarily ensure greater safety and soundness because a similar level of analysis is required for collateral evaluations.

Opposing commenters asserted that the deletion of the proposed amendment could create numerous safety and soundness problems because FCA does not have other safeguards in place like other Federal financial regulators. They stated that the Office of the Comptroller of the Currency's (OCC) regulations [3] provide safeguards that do not exist in FCA's regulations.

FCA believes that our regulations provide safeguards that are comparable to other financial regulators. Part 614, subpart F (''Collateral Evaluation Requirements'') of our regulations requires well-defined and effective collateral evaluation policies and standards which cover areas such as:

- Criteria for when USPAP collateral appraisals are required rather than a collateral evaluation;
- Accounting for market trends, volatility, and types of credit;
- Using an unbiased and qualified evaluator;
- Collateral evaluation standards found in § 614.4250 addressing such items as market value, highest and best use, and income-producing capacity;
- Evaluation requirements found in § 614.4260 addressing such items as appraiser certifications;
- Real property evaluations found in § 614.4265 addressing such items as the approach used and debt-servicing capacity;
- Personal and intangible property evaluations found in § 614.4266 addressing such items as comparisons of value, and USPAP Competency and Ethics Provisions; and
- Professional association membership.

Some commenters asserted that FCA's appraisal regulations pertaining to independence standards are not as stringent as the OCC regulations in 12 CFR 34.45.

FCA finds that its regulations on appraisal independence are as stringent as those of other regulators. Multiple FCA regulation sections address independence, such as:

- Section 614.4255, which is devoted exclusively to ''Independence Requirements,'' outlines clear prohibitions for directors, officers, employees, real estate appraisers, and fee appraisers. In addition, this section prohibits persons performing a collateral evaluation from involvement in credit decisions.
- Section 614.4240(n) defines qualified evaluators as persons who are competent, reputable, impartial, and have demonstrated sufficient training and experience.
- Section 614.4245(a)(3) requires System institution policies and standards to ensure that collateral evaluations are completed by a qualified evaluator in an unbiased manner.

Commenters also contended that removing the USPAP requirement could result in ''inflated land values.'' We believe that removing this requirement will not inflate collateral values and thus, will not adversely impact the System's safety and soundness. For business loans under $1 million, real property evaluations will be required. Section 614.4265 contains specific requirements of those real property evaluations such as:

- Determining market value that considers approaches using income capitalization, sales comparisons, and/or costs.
- Evaluating and documenting the income and debt-servicing capacity for the property and operation for transaction values over $250,000.
- Identifying nonagricultural influences.

Several commenters stated that Federal Reserve Regulation Y generally requires ''outside'' appraisals for transactions over $250,000, and that FCA's requirement should be the same. We believe our requirements are essentially the same. Regulation Y at 12 CFR 225.63(a)(1) requires appraisals by a state-certified or licensed appraiser for non-business loan transactions with values more than $250,000. FCA's requirements at § 614.4260(b)(1) also require appraisals by a state-certified or licensed appraiser for non-business loan transactions over $250,000. Regulation Y at 12 CFR 225.63(a)(5) requires an appraisal by a state-certified or licensed appraiser for a business loan transaction over $1 million. Section 614.4260(c)(2) also requires an appraisal by a state-certified or licensed appraiser for a business loan transaction over $1 million.

Several commenters stated that FCA's proposal regarding appraisal requirements for business loans was not comparable to other Federal financial regulators. FCA finds that its

[3] *See* 12 CFR 34.62 (addressing loan portfolio management and expertise on local markets).

requirements are very similar to those of other regulators. The amendment will make our regulations more comparable to the:

- Federal Reserve's regulation at 12 CFR 225.63(a)(5).
- Federal Deposit Insurance Corporation's regulation at 12 CFR 323.3(a)(5).
- Office of Thrift Supervision's regulation at 12 CFR 464.3(a)(5).
- OCC's regulation at 12 CFR 34.43(a)(5).

For the reasons stated above, we are adopting the proposed amendment as final.

E. Section 614.4710—Bankers' Acceptance Financing

We proposed to delete § 614.4710, pertaining to bankers' acceptance financing, in its entirety. We did not receive any specific comments on this proposal. We are adopting this proposal as final.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, FCS institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Crime, Investigations, Rural areas.

12 CFR Part 613

Agriculture, Banks, banking, Credit, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, parts 611, 612, 613, 614, and 615 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart I—Service Organizations

■ 2. Amend § 611.1135 by revising paragraph (b) to read as follows:

§ 611.1135 Incorporation of service corporations.

* * * * *

(b) *Who may own equities in your service corporation?*

(1) Your service corporation may only issue voting and non-voting stock to:

(i) One or more Farm Credit banks and associations; and

(ii) Persons that are not Farm Credit banks or associations, provided that at least 80 percent of the voting stock is at all times held by Farm Credit banks or associations.

(2) For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any state or territory thereof.

* * * * *

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

■ 3. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

Subpart A—Standards of Conduct

■ 4. Amend 612.2155 by revising paragraph (d) to read as follows:

§ 612.2155 Employee reporting.

* * * * *

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official 5 business days after starting employment and thereafter shall comply with the requirements of this section.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

■ 5. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

■ 6. Amend § 613.3100 by revising paragraphs (b)(1)(iii)(B) and (d)(1) to read as follows:

§ 613.3100 Domestic lending.

* * * * *

(b) * * *

(1) * * *

* * * * *

(iii) * * *

(A) * * *

(B) The cooperative restricts dividends on stock or membership capital to the maximum percentage per year permitted by applicable state law.

* * * * *

(d) *Water and waste disposal facilities*—(1) *Eligibility.* A cooperative or a public agency, quasi-public agency, body, or other public or private entity that, under the authority of state or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(4) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

■ 7. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

■ 8. Amend § 614.4010 by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * *

(d) * * *

(1) Eligible cooperatives, as defined in § 613.3100(b)(1), in accordance with §§ 614.4200, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3100(b)(2), in accordance with §§ 614.4200, 614.4231, and 614.4232;

* * * * *

§ 614.4020 [Amended]

■ 9. Amend § 614.4020 by:

■ a. Removing the reference ''§ 613.3110'' and adding in its place, the reference ''§ 613.3100(b)(1)'' in paragraph (a)(1); and

■ b. Removing the reference ''§ 613.3110(c)'' and adding in its place, the reference ''§ 613.3100(b)(2)'' in paragraph (a)(2).

Subpart F—Collateral Evaluation Requirements

§ 614.4265 [Amended]

■ 10. Amend § 614.4265 by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), and (h) as (c), (d), (e), (f), and (g), respectively.

Subpart J—Lending and Leasing Limits

■ 11. Amend § 614.4355 by:

■ a. Revising paragraph (a)(8) to read as follows; and

■ b. Removing the reference ''§ 614.4321'' and adding in its place, the reference ''§ 614.4720'' in paragraph (a)(9).

§ 614.4355 Banks for cooperatives.

* * * * *

(a) * * *

(8) Commodity loans qualifying under § 614.4231: 50 percent.

* * * * *

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Removed]

■ 12. Remove and reserve § 614.4710.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 13. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart Q—Bankers' Acceptances

■ 14. Revise § 615.5550 to read as follows:

§ 615.5550 Bankers' acceptances.

Banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives' board of directors, under established policies, may delegate this authority to management.

Dated: November 3, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–18841 Filed 11–7–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25582; Directorate Identifier 2006–CE–42–AD; Amendment 39–14813; AD 2006–23–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires you to do repetitive eddy-current, non-destructive inspections of the nose skin and adjacent structure above the left and right main landing gear bay and repetitive visual inspections of the forward support structure of the floor panel for crack damage. If you find any crack damage, this AD requires you to contact Pilatus to obtain a repair solution and incorporate the repair. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct cracks in the nose skin and adjacent structure above the left and right main landing gear bay and in the forward support structure of the floor panel. Crack propagation in certain areas could lead to failure of the main wing torsion box, which could result in loss of control.

DATES: This AD becomes effective on December 13, 2006.

As of December 13, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; fax: +41 41 619 6224.

To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25582; Directorate Identifier 2006–CE–42–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On September 11, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 15, 2006 (71 FR 54441). The NPRM proposed to require you to do repetitive eddy-current, non-destructive inspections of the nose skin and adjacent structure above the left and right main landing gear bay and repetitive visual inspections of the forward support structure of the floor panel for crack damage. If crack damage is found, the NPRM proposed to require you to contact Pilatus to obtain a repair solution and incorporate the repair.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

We received one comment from Pilatus Aircraft in favor of the proposed AD.

Comment Issue No. 1: Publish the Manufacturer Service Information

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments on the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the Pilatus service bulletin.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, Pilatus PC–7 Service Bulletin No. 57–009, dated January 29, 2004, is incorporated by reference.

Comment Issue No. 2: Availability of IBR Documents in the Docket Management System (DMS)

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the DMS.

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Differences Between the FOCA AD, the Service Information, and This AD

The FOCA AD HB–2006–374, effective date August 2, 2006, allows continued flight if cracks are found in the nose skin that do not exceed certain limits. The applicable service bulletin specifies repair of the nose skin only if cracks are found exceeding limits illustrated in Pilatus PC–7 Service Bulletin No. 57–009, dated January 29, 2004, as does FOCA AD HB–2006–374, effective date August 2, 2006. This AD does not allow continued flight if any crack is found. The FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The nose skin is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

The requirements of this AD take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this AD affects 10 airplanes in the U.S. registry.

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $80 per hour = $240	No parts required	$240	$2,400

Any required ''upon-condition'' repairs will vary depending upon the damage found. Based on this, we have no way of determining the potential repair costs for each airplane or the number of airplanes that will need the repairs based on the result of the inspections.

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) 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 ''Docket No. FAA–2006–25582; Directorate Identifier 2006–CE–42–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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2006–23–01 Pilatus Aircraft Ltd.: Amendment 39–14813; Docket No. FAA–2006–25582; Directorate Identifier 2006–CE–42–AD.

Effective Date

(a) This AD becomes effective on December 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PC–7 airplanes, manufacturer serial numbers 101 through 618 inclusive, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to detect and correct cracks in the nose skin and adjacent structure above the left and right main landing gear bay and in the forward support structure of the floor panel. Crack propagation in certain areas could lead to failure of the main wing torsion box. This failure could result in loss of control.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect: (i) The forward area of the floor panel and the related structure for cracks using magnified, visual methods. (ii) The nose skin and adjacent structure above the left and right main landing gear bay for cracks using eddy-current, non-destructive methods.	Initially inspect within the next 150 hours time-in-service or 6 calendar months, whichever occurs first, after December 13, 2006 (the effective date of this AD), unless already done. Repetitively inspect thereafter at intervals specified in paragraph 2.B. of Pilatus PC–7 Aircraft Maintenance Manual (AMM) 05–10–00, dated March 4, 2005.	Do the initial inspection following Pilatus PC–7 Service Bulletin No. 57–009, dated January 29, 2004. Do the repetitive inspections following the procedures in AMM 57–10–03, dated March 4, 2005, and AMM 05–30–05, dated February 28, 2006.
(2) If crack damage is found during any inspection required by paragraph (e)(1) of this AD, obtain an FAA-approved repair solution from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate the repair.	Before further flight after any inspection in which crack damage is found. Further flight with crack damage is not permitted. After incorporating the repair, repetitively inspect as specified in paragraph (e)(1) of this AD.	Obtain an FAA-approved repair solution from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate the repair.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Staff, FAA, Small Airplane Directorate, Attn: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) The Federal Office for Civil Aviation Swiss AD HB–2006–374, effective date August 2, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(h) You must use Pilatus PC–7 Service Bulletin No. 57–009, dated January 29, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; fax: +41 41 619 6224.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 26, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18734 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25157; Directorate Identifier 2006–CE–34–AD; Amendment 39–14814; AD 2006–23–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models C90A, B200, B200C, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company (RAC) (formerly Beech) Models C90A, B200, B200C, B300, and B300C airplanes. This AD requires you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action. This AD results from a report of inspections of several affected airplanes with improperly assembled or damaged flight controls. We are issuing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight controls and lead to loss of control of the airplane.

DATES: This AD becomes effective on December 13, 2006.

As of December 13, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25157; Directorate Identifier 2006–CE–34–AD.

FOR FURTHER INFORMATION CONTACT: Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4154; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On July 24, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to

certain RAC Models C90A, B200, B200C, B300, and B300C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 31, 2006 (71 FR 43083). The NPRM proposed to require you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Jack Buster with the Modification and Replacement Parts Association provides comments on the AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the RAC service bulletin.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006, is incorporated by reference.

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 135 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
80 work-hours × $80 per hour = $6,400	Not applicable	$6,400	$864,000

We have no way of determining the number of airplanes that may need any corrective action that would be required based on the results of the inspection.

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) 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 ''Docket No. FAA–2006–25157; Directorate Identifier 2006–CE–34–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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2006–23–02 Raytheon Aircraft Company (Formerly Beech): Amendment 39–14814; Docket No. FAA–2006–25157; Directorate Identifier 2006–CE–34–AD.

Effective Date

(a) This AD becomes effective on December 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
C90A	LJ–1697 through LJ–1726, LJ–1728, LJ–1729, and LJ–1731 through LJ–1739.
B200	BB–1827 through BB–1912.
B200C	BL–148 and BL–149.
B300	FL–379 through FL–423, FL–426, FL–428 through FL–450, and FL–452.
B300C	FM–11.

Unsafe Condition

(d) This AD results from a report of inspections of several affected airplanes with improperly assembled or damaged flight controls. We are issuing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight control and lead to loss of control of the airplanes.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the entire flight control system for improper assembly and any damage.	At whichever of the following occurs first: (i) Within 100 hours time-in-service after December 13, 2006 (the effective date of this AD); or (ii) At the next annual inspection that occurs at least 30 days after December 13, 2006 (the effective date of this AD).	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006.
(2) If you find any improperly assembled or damaged flight controls as a result of the inspection required by paragraph (e)(1) of this AD, take corrective action as specified in the service information.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Chris B. Morgan, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4154; facsimile: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(g) You must use Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 27, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18727 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26165; Directorate Identifier 2006–CE–57–AD; Amendment 39–14816; AD 2006–23–04]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 40 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as during production installation of the Garmin G1000 supplemental type certificate (STC) some parts of the installed fuel system indicating system were contaminated with particles from the manufacturing process. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 28, 2006.

The Director of the Federal Register approved the incorporation by reference of Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–40–048/2, Revision 2, dated September 26, 2006; and Work Instruction WI–MSB–40.048/2, Revision 2, dated September 26, 2006, listed in this AD as of November 28, 2006.

We must receive comments on this AD by December 8, 2006.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined

process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the European Union (EU), has issued Emergency Airworthiness Directive No.: 2006–0295–E, dated September 26, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that the aircraft manufacturer has identified that during production installation of the Garmin G1000 STC some parts of the installed fuel system indicating system were contaminated with particles from the manufacturing process. If not corrected, this fuel system contamination may lead to improper engine operation, power loss or in-flight engine failure. The MCAI requires you to do a one time special inspection and recertification for the effected airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB–40–048/2, Revision 2, dated September 26, 2006; and Work Instruction WI–MSB–40.048/2, Revision 2, dated September 26, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the fuel system contamination may lead to improper engine operation, power loss or in-flight engine failure. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26165; Directorate Identifier 2006–CE–57–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 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.

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 FAA amends § 39.13 by adding the following new AD:

2006–23–04 Diamond Aircraft Industries GmbH: Amendment 39–14816; Docket No. FAA–2006–26165; Directorate Identifier 2006–CE–57–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DA 40 airplanes equipped with Garmin G1000 supplemental type certificate (STC) SA01254WI, serial numbers 40.448 through 40.673, excluding 40.538, 40.590, 40.641, 40.642, 40.644, 40.651, 40.654, 40.655, and 40.699, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that the aircraft manufacturer has identified that during production installation of the Garmin G1000 STC some parts of the installed fuel system indicating system were contaminated with particles from the manufacturing process. If not corrected, this may lead to improper engine operation, power loss or in-flight engine failure. The MCAI requires you to do a one time special inspection and recertification for the effected airplanes.

Actions and Compliance

(e) Prior to further flight, unless already done, inspect engine fuel system for possible contamination of fuel per Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 40–048/2, Revision 2, dated September 26, 2006; and Work Instruction WI–MSB–40.048/2, Revision 2, dated September 26, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to European Aviation Safety Agency (EASA) Emergency Airworthiness Directive No.: 2006–0295–E, dated September 26, 2006; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–40–048/2, Revision 2, dated September 26, 2006; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB–40.048/2, Revision 2, dated September 26, 2006, for related information.

Material Incorporated by Reference

(h) You must use Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–40–048/2, Revision 2, dated September 26, 2006; and Diamond Aircraft Industries GmbH Work instruction WI–MSB–40.048/2, Revision 2, dated September 26, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straβe 2, A–2700 Wiener Neustadt, Germany; telephone +43 2622 26700; fax +43 2622 26780.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; 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.*

Issued in Kansas City, Missouri on October 30, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18732 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release Nos. 34–54684; IC–27542; File No. S7–11–05]

RIN 3235–AJ50

Amendments to the Tender Offer Best-Price Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the language of the third-party and issuer tender offer best-price rules to clarify that the provisions apply only with respect to the consideration offered and paid for securities tendered in a tender offer. We also are amending the third-party and issuer tender offer best-price rules to provide that any consideration that is offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the subject company that meet certain requirements will not be prohibited by the rules. Finally, we are amending the third-party and issuer tender offer best-price rules to provide a safe harbor provision so that arrangements that are approved by certain independent directors of either the subject company's or the bidder's board of directors, as applicable, will not be prohibited by the rules. These amendments are intended to make it clear that the best-price rule was not intended to capture employment compensation, severance or other employee benefit arrangements. We are also making a technical amendment to correct a cross-reference in the rules that govern the ability to delegate authority for purposes of granting exemptions under the best-price rule.

DATES: *Effective Date:* December 8, 2006.

FOR FURTHER INFORMATION CONTACT: Brian V. Breheny, Chief, or Mara L. Ransom, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance, at (202) 551–3440.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 13e–4 [1] and Rule 14d–10 [2] under the Securities Exchange Act of 1934 [3] and making certain technical changes to a delegated authority rule that is affected by the amendments to the best-price rule.[4]

I. Background

A. Introduction and Summary

On December 16, 2005, we proposed changes to the issuer and third-party tender offer best-price rules [5] to make it clear that the best-price rule generally was not intended to apply to compensatory arrangements.[6] We believed that these amendments were necessary to alleviate the uncertainty

[1] 17 CFR 240.13e–4.

[2] 17 CFR 240.14d–10.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 200.30–1.

[5] For purposes of this release, unless otherwise indicated, our references to the ''tender offer best-price rule'' or the ''best-price rule'' are intended to refer to both Exchange Act Rule 13e–4(f)(8)(ii) (17 CFR 240.13e–4(f)(8)(ii)) and Exchange Act Rule 14d–10(a)(2) (17 CFR 240.14d–10(a)(2)).

[6] Amendments to the Tender Offer Best-Price Rule, Release No. 34–52968 (Dec. 22, 2005) [70 FR 76116] (the ''Proposing Release'').

that the various interpretations of the best-price rule by courts have produced. We also intended that the amendments would reduce a regulatory disincentive to structuring an acquisition of securities as a tender offer, as compared to a statutory merger, to which the best-price rule does not apply.[7] We received 11 comment letters on the proposed amendments.[8] In general, commenters supported our proposed changes to the tender offer best-price rule and believed that the proposed changes, if adopted, would meet our objectives. We did, however, receive a number of comments with regard to specific aspects of the proposed changes. The changes we adopt today are, in most respects, consistent with those proposed on December 16, 2005, but include certain revisions made in response to concerns raised by commenters.

The amendments to the best-price rule will change the language of the rule to clarify that the provisions of the rule apply only with respect to the consideration offered and paid for securities tendered in a tender offer. The amendments are premised on our view that the best-price rule was never intended to apply to consideration paid pursuant to arrangements, including employment compensation, severance or other employee benefit arrangements, entered into with security holders of the subject company, so long as the consideration paid pursuant to such arrangements was not to acquire their securities.[9] Accordingly, the amendments provide that consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the subject company of a tender offer, where the arrangements meet certain requirements, are not prohibited by the best-price rule.

The amendments also provide for a non-exclusive safe harbor, which states that arrangements, and any consideration offered and paid according to such arrangements, that are approved by either a compensation committee of the subject company's board of directors or a committee performing similar functions, regardless of whether the subject company is a party to the arrangement, are not prohibited by the best-price rules. Alternatively, if the bidder is a party to the arrangement, the arrangement may be approved by either a compensation committee or a committee performing similar functions of the bidder's board of directors.[10] In order to satisfy the safe harbor, we have provided certain alternatives for bidders or subject companies, as applicable, that do not have a compensation committee or that are foreign private issuers.[11]

The principal changes from the proposals, as discussed in detail below, are:

- For purposes of the exemption and the safe harbor, the persons who may enter into an employment compensation, severance or other employee benefit arrangement have been expanded to include all security holders of the subject company, as opposed to only employees and directors of the subject company;
- The requirements of the exemption have been modified;
- The approval of the directors of the subject company will satisfy the safe harbor requirements, regardless of whether the subject company is a party to the arrangement;
- A special committee of the board of directors of the subject company or the bidder, as applicable, comprised solely of independent members and formed to consider and approve the arrangement may approve the arrangement and satisfy the safe harbor requirements if the subject company's or bidder's board of directors, as applicable, does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if none of the members of those committees is independent;
- The approving directors do not need to determine that the arrangements meet the additional requirements of the compensation arrangement exemption to qualify for the safe harbor;
- The safe harbor provides certain accommodations for foreign private issuers;
- A new instruction provides that a determination by the board of directors that the board members approving an arrangement are independent in accordance with the provisions of the safe harbor will satisfy the independence requirements of the safe harbor; and
- The exemption and safe harbor are included as part of the issuer, as well as third–party, best-price rule.

B. History of the Best-Price Rule and the Reasons for Today's Amendments

Section 14(d)(7) of the Exchange Act[12] requires equal treatment of security holders.[13] Based on the objectives of the Williams Act[14] and the protections afforded by Section 14(d)(7), the Commission adopted Rules 13e–4(f)(8) and 14d–10 in 1986.[15] These rules codified the positions that both an issuer tender offer and a third-party tender offer must be open to all holders of the class of securities subject to the tender offer (commonly referred to as the ''all-holders rule'') and that all security holders must be paid the highest consideration paid to any security holder (commonly referred to as the ''best-price rule'').[16] The rules provided that no one may ''make a tender offer unless: (1) [T]he tender offer is open to all security holders of the class of securities subject to the tender offer; and (2) [t]he consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.''[17]

Since the adoption of these rules, the best-price rule has been the basis for litigation brought in connection with tender offers in which it is claimed that the rule was violated as a result of the bidder entering into new agreements or arrangements, or adopting the subject company's pre-existing agreements or arrangements, with security holders of the subject company.[18] When ruling on these best-price rule claims, courts generally have employed either an ''integral-part test'' or a ''bright-line

[7] Statutory mergers are also known as ''long-form'' or unitary mergers, the requirements of which are governed generally by applicable State law.

[8] The public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE., Washington DC 20549 in File No. S7–11–05, or may be viewed at *http://www.sec.gov/rules/proposed/s71105.shtml.*

[9] *See* the definition of ''subject company'' at Exchange Act Rule 14d–1(g)(7) (17 CFR 240.14d–1(g)(7)).

[10] *See* the definition of ''bidder'' at Exchange Act Rule 14d–1(g)(2) (17 CFR 240.14d–1(g)(2)).

[11] *See* the definition of ''foreign private issuer'' at Rule 405 of the Securities Act of 1933 (17 CFR 230.405).

[12] 15 U.S.C. 78n(d)(7).

[13] The statute and rules governing third-party tender offers apply to tender offers for more than 5 per cent of any class of any equity security registered pursuant to Section 12 of the Exchange Act, or any equity security of an insurance company that would have been required to be registered but for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940. *See* Section 14(d)(1) of the Exchange Act.

[14] Pub. L. No. 90–439, 82 Stat. 454 (1968).

[15] *See* Amendments to Tender Offer Rules: All-Holders and Best-Price, Release No. 34–23421 (July 17, 1986) [51 FR 25873].

[16] *Id.*

[17] Exchange Act Rules 13e–4(f)(8) (17 CFR 240.13e–4(f)(8)) and 14d–10(a) (17 CFR 240.14d–10(a)).

[18] *See, e.g., Epstein* v. *MCA, Inc.*, 50 F.3d 644 (9th Cir. 1995), *rev'd on other grounds sub nom.*; *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367 (1996); *Lerro* v. *Quaker Oats Co.*, 84 F.3d 239 (7th Cir. 1996); *Walker* v. *Shield Acquisition Corp.*, 145 F. Supp.2d 1360 (N.D. Ga. 2001).

test'' to determine whether the arrangement violates the best-price rule.

The integral-part test states that the best-price rule applies to all integral elements of a tender offer, including employment compensation, severance and other employee benefit arrangements or commercial arrangements that are deemed to be part of the tender offer, regardless of whether the arrangements are executed and performed outside of the time that the tender offer formally commences and expires.[19] Courts following the integral-part test have ruled that agreements or arrangements made with security holders that constituted an ''integral part'' of the tender offer violate the best-price rule.[20]

The bright-line test, on the other hand, States that the best-price rule applies only to arrangements executed and performed between the time a tender offer formally commences[21] and expires.[22] Jurisdictions following the bright-line test have held that agreements or arrangements with security holders of the subject company do not violate the best-price rule if they are not executed and performed ''during the tender offer.''[23]

These differing interpretations of the best-price rule have made using a tender offer acquisition structure unattractive because of the potential liability of bidders for claims alleging that compensation payments violate the best-price rule.[24] This potential liability is heightened by the possibility that claimants can choose to bring a claim in a jurisdiction that recognizes an interpretation of the best-price rule that suits the claimant's case. These differing interpretations do not best serve the interests of security holders and have resulted in a regulatory disincentive to structuring an acquisition of securities as a tender offer, as compared to a statutory merger, to which the best-price rule does not apply. We believe that the interests of security holders are better served when all acquisition structures are viable options.[25] We intend for the amendments we are adopting today to alleviate this regulatory disincentive.

C. Overview of the Proposed Amendments

As we discussed in the Proposing Release, we do not believe that the best-price rule should be subject to a strict temporal test because such a test lends itself to abuse. However, we also do not believe that all payments that are conditioned on or otherwise somehow related to a tender offer, including payments under compensatory or commercial arrangements that are made to persons who happen to be security holders, whether made before, during or after the tender offer period, should be subject to the best-price rule. Accordingly, we proposed amendments to the best-price rule that did not follow the approach of either the integral-part or the bright-line test. Instead, we proposed to change the language of the best-price rule so that only consideration paid to security holders for securities tendered into a tender offer will be evaluated when determining the highest consideration paid to any other security holder for securities tendered into the tender offer.

Our proposed amendments to the third-party tender offer best-price rule also acknowledged that critical personnel decisions often are required to be made concurrently with decisions regarding whether to pursue a transaction with the subject company in a tender offer. We believed, and continue to believe, that these decisions generally are made independently from the consideration paid for securities tendered in the tender offer. We therefore proposed a specific exemption from the third-party tender offer best-price rule for consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with employees and directors of the subject company of a tender offer where the amounts payable under the arrangements meet certain requirements. We also proposed a safe harbor to the exemption from the third-party tender offer best-price rule for consideration offered and paid according to certain employment compensation, severance or other employee benefit arrangements that were approved by either the compensation committee or a committee performing similar functions as the compensation committee of the board of directors of either the subject company or bidder, depending on which entity was a party to the arrangement.

II. Amendments to the Best-Price Rule

A. Amendments to the Basic Standard in Exchange Act Rules 13e–4(f)(8)(ii) and 14d–10(a)(2)

1. Discussion

We proposed amendments to the issuer and third-party best-price rule to address the uncertainty that the various court interpretations have produced while ensuring that the intent of the best-price rule—equal treatment of security holders—is satisfied. The amendments revise the best-price rule to state that no one may make a tender offer unless ''[t]he consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.'' The clause ''for securities tendered in the tender offer'' would replace the clauses ''pursuant to the tender offer'' and ''during such tender offer,'' as the rule previously read, to clarify the intent of the best-price rule. Today, we adopt these changes as proposed.

2. Comments Regarding the Proposed Amendments to the Basic Standard in Exchange Act Rules 13e–4(f)(8)(ii) and 14d–10(a)(2)

Although commenters generally favored the proposals, certain commenters expressed some concerns

[19] *See Epstein*, 50 F.3d 644; *Perera* v. *Chiron Corp.*, 1996 U.S. Dist. LEXIS 22503 (N.D. Cal. 1996); *Padilla* v. *MedPartners, Inc.*, 1998 U.S. Dist. LEXIS 22839 (C.D. Cal. 1998); *Millionerrors Inv. Club* v. *General Elec. Co.*, 2000 U.S. Dist. LEXIS 4778 (W.D. Pa. 2000); *Maxick* v. *Cadence Design Sys., Inc.*, 2000 U.S. Dist. LEXIS 14099 (N.D. Cal. 2000); *McMichael* v. *United States Filter Corp.*, 2001 U.S. Dist. LEXIS 3918 (C.D. Cal. 2001); *Karlin* v. *Alcatel, S.A.*, 2001 U.S. Dist. LEXIS 12349 (C.D. Cal. 2001); *Harris* v. *Intel Corp.*, 2002 U.S. Dist. LEXIS 13796 (N.D. Cal. 2002); *Cummings* v. *Koninklijke Philips Elec., N.V.*, 2002 U.S. Dist. LEXIS 23383 (N.D. Cal. 2002); *In re: Luxottica Group S.p.A.*, 293 F. Supp.2d 224 (E.D. N.Y. 2003).

[20] *Id.*

[21] *See* Exchange Act Rule 13e–4(a)(4) (17 CFR 240.13e–4(a)(4)) and Exchange Act Rule 14d–2 (17 CFR 240.14d–2) (relating to procedures for formal commencement of tender offers).

[22] *See Lerro*, 84 F.3d 239; *Gerber* v. *Computer Assoc. Int'l, Inc.*, 303 F.3d 126 (2d Cir. 2002); *In re: Digital Island Securities Litig.*, 357 F.3d 322 (3d Cir. 2004); *Walker* v. *Shield Acquisition Corp.*, 145 F. Supp.2d 1360 (N.D. Ga. 2001); *Susquehanna Capital Group* v. *Rite Aid Corp.*, 2002 U.S. Dist. LEXIS 18290 (E.D. Pa. 2002); *Katt* v. *Titan Acquisitions, Inc.*, 244 F. Supp.2d 841 (M.D. Tenn. 2003).

[23] *Id.*

[24] Commenters cited the judicial interpretations as one reason for the decline in the use of tender offers and some indicated that they do not recommend the use of tender offers if other acquisition structures are available. *See, e.g.*, the letters from the American Bar Association, Business Law Section, Committee on Federal Regulation of Securities (''ABA''); Cravath, Swaine & Moore LLP, Davis Polk & Wardwell, Latham & Watkins LLP, Simpson Thacher & Bartlett LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Sullivan & Cromwell LLP, and Wachtell, Lipton, Rosen & Katz (''Law Firm Group''); and Association of the Bar of the City of New York, Special Committee on Mergers, Acquisitions and Corporate Control Contests (''NYCBA'').

[25] As we indicated in the Proposing Release, at the time we adopted Regulation M–A (17 CFR 229.1000–229.1016) we stated that ''[o]ur goals in proposing and adopting these changes are to * * * harmonize inconsistent disclosure requirements and alleviate unnecessary burdens associated with the compliance process * * *'').

regarding the proposed amendments.[26] These commenters were of the view that the proposed changes likely would alter the bright-line precedent that has been established by courts. Specifically, one commenter indicated that the removal of the phrase ''during the tender offer'' would be used to argue that payments made at any time are for ''securities tendered in'' the tender offer, which would expand the application and, therefore, the potential claims that could be made under the best-price rule.[27] We believe that the amendments we are adopting today, as discussed in more detail below, will provide sufficient certainty in assuring that payments made with respect to compensatory arrangements will not be captured by the best-price rule such that any temporal certainty that may previously have been present under the ''bright-line test'' will no longer be necessary. As stated above, we also do not believe that the best-price rule should be subject to a strict temporal test, which could provide opportunities for evasion of the rule.

As we articulated in the Proposing Release, the flexible concept of a tender offer is consistent with the purpose of the best-price rule, in that it prevents bidders from impermissibly circumventing the rule by limiting the application of the rule to stated dates.[28] The best-price rule was not intended to apply to all payments made to persons who happen to be security holders of a subject company, whether made before, during or after the formal tender offer period. Further, the amendments that we are adopting today will remove the potentially expansive concept of consideration paid ''pursuant to'' the tender offer in order to focus the analysis as to whether the consideration to which the best-price rule would apply was paid ''for securities tendered in'' the tender offer.

In response to questions that we posed about whether employees and directors who enter into arrangements with the bidder or subject company and do not tender their securities into a tender offer will avoid the strictures of the best-price rule as proposed, commenters generally agreed that no violation of the best-price rule should occur under these circumstances.[29] Commenters believed that this outcome was appropriate. We agree, because the best-price rule would not be applicable in these instances.

B. Exemption for Consideration Offered and Paid Pursuant to Compensatory Arrangements

1. Discussion

We are adopting an amendment to the issuer and third-party best-price rules so that consideration offered and paid pursuant to employment compensation, severance or other employee benefit arrangements that are entered into with security holders of the subject company and that meet certain substantive requirements are not prohibited by the best-price rules.[30] We believe that amounts paid pursuant to arrangements meeting the requirements of this provision should not be considered when calculating the price paid for tendered securities.

We have revised the proposed exemption for compensatory arrangements that meet specified substantive requirements to address a number of the comments received. We have expanded the persons who may enter into an employment compensation, severance or other employee benefit arrangement to include all security holders of the subject company, as opposed to only employees and directors of the subject company. We are also extending this exemption to issuer tender offers.[31] Finally, we have modified the requirements of the exemption so that the amounts to be paid pursuant to an arrangement will have to be ''paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the security holder (and matters incidental thereto)'' and may ''not [be] calculated based on the number of securities tendered or to be tendered in the tender offer by the security holder.''

2. Comments Regarding the Compensatory Arrangement Exemption

a. Parties to the Arrangement

As proposed, the exemption would have applied to employment compensation, severance or other employee benefit arrangements entered into with employees or directors of the subject company. We solicited comment regarding whether the exemption should be restricted to such persons. Commenters believed that the exemption should be expanded and suggested expansion of the exemption to encompass consultants,[32] independent contractors,[33] employees or directors of the bidder,[34] and/or any security holder of the subject company.[35] Commenters were of the view that it would be appropriate to expand the class of persons because arrangements entered into with the expanded class of persons are, like those entered into with employees and directors, intended to cover compensation for past services or incentives for future services and not tied to the number of shares to be tendered.[36] We agree and have expanded the exemption to apply to any security holder of the subject company. While, as a practical matter, the challenges to the best-price rule to date have focused primarily on employment compensation, severance and other employee benefit arrangements with employees or directors of the subject company, we believe that the role of the person who is a party to the arrangement is irrelevant.

b. Types of Arrangements Covered by the Exemption

In the Proposing Release, we asked whether we should expand the exemption to include commercial arrangements, in addition to employment compensation, severance or other employee benefit arrangements. Several commenters favored extending the exemption to commercial arrangements.[37] In doing so,

[26] *See, e.g.*, letters from ABA; Dechert LLP (''Dechert''); and Law Firm Group.

[27] Letter from Law Firm Group.

[28] *See* note 21 above.

[29] *See, e.g.*, letters from ABA; Jason A. Gonzalez (''Gonzalez''); and Law Firm Group.

[30] The exemption and safe harbor were proposed as amendments to Rule 14d–10(c) of the third-party tender offer rules. The exemption and the safe harbor are adopted as new Rules 14d–10(d)(1) and 14d–10(d)(2), respectively, and Rules 13e–4(f)(12)(i) and 13e–4(f)(12)(ii), respectively. Because we are inserting the exemption and safe harbor into an existing subparagraph (and redesignating old subparagraph (d) as (e), etc.), we are also making a technical change to reflect this redesignation in the rules that govern the ability to delegate authority for purposes of granting exemptions under the best-price rule.

[31] The term ''issuer tender offer,'' as defined in Rule 13e–4(a)(2) (17 CFR 240.13e–4(a)(2)), refers to a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer or an affiliate of such issuer of the class of such equity security. For purposes of this release, all references to ''subject company,'' as defined for purposes of the third-party tender offer rules are intended to refer to ''issuer,'' for purposes of the issuer tender offer rules. Similarly, all references to ''bidder,'' as defined for purposes of the third–party tender offer rules are intended to refer to an ''issuer'' and ''affiliate,'' for purposes of the issuer tender offer rules.

[32] *See, e.g.*, letters from Law Firm Group and Shearman & Sterling LLP (''Shearman'').

[33] Letter from New York State Bar Association, Business Law Section, Committee on Securities Regulation (''NYSBA'').

[34] *See, e.g.*, letters from Gonzalez and Society of Corporate Secretaries & Governance Professionals, Securities Law Committee (''SCSGP'').

[35] *See, e.g.*, letters from ABA and Dechert.

[36] *See, e.g.*, letter from SCSGP.

[37] *See, e.g.*, letters from ABA; Dechert; Intel Corporation (''Intel''); NYCBA; NYSBA; SCSGP; and Securities Industry Association, Capital Markets Committee (''SIA'').

commenters generally argued that it is not uncommon for security holders of the subject company of a tender offer to enter into commercial arrangements with the bidder and, absent a specific exemption, such arrangements could be (and have been) challenged under the best-price rule.[38] Other commenters suggested that providing an express exemption for employment compensation, severance or other employee benefit arrangements but not providing a similar exemption for commercial arrangements may undermine our objectives in adopting these amendments.[39]

We do not believe that it is appropriate to provide a separate exemption for commercial arrangements. As is reflected in an instruction to the exemption, which is adopted as proposed,[40] the fact that the exemption extends to employment compensation, severance or other employee benefit arrangements does not mean that an arrangement of any other nature, including a commercial arrangement, with a security holder should be treated as consideration paid for securities tendered in a tender offer. This instruction should alleviate the concerns raised by commenters about whether the perceived exclusivity of the exemption will create an unintended inference.[41] Also, because of the wide variety of potential commercial arrangements that could be negotiated at the time of a tender offer we are presently unable to craft a specific exemption for commercial arrangements—unlike the language of the compensation arrangement exemption—that could be tailored to be functional while assuring security holders of the intended benefits of the best-price rule.

In the Proposing Release, we also asked whether we should consider adopting a *de minimis* exception to the best-price rule whereby holders of a certain percentage of securities of the subject company would be exempt from the application of the best-price rule. Some commenters were in favor of a *de minimis* exception, although the commenters had differing views as to the percentage to be applied to the exception, to whom the exception would apply and what types of arrangements should be available under the exception.[42] We determined that it would not be appropriate to implement a *de minimis* exception because it could undermine the protections of the best-price rule.

In the Proposing Release, we also asked whether the proposed exemption should provide a definition or provide examples of what we mean when we refer to ''employment compensation, severance or other employee benefit arrangements.'' Commenters were mixed in their preference as to whether or not defining the phrase or offering examples would be helpful, although most did not believe it would be necessary.[43] Some commenters expressed the view that if the phrase was defined and an employment compensation, severance or other employee benefit arrangement did not fall squarely within the definition or list of examples, potential bidders might opt to use a transaction structure other than a tender offer.[44] Others stated that the phrase ''employment compensation, severance or other employee benefit arrangement'' uses terms that are generally understood and an attempt to define the phrase or provide examples would raise questions of interpretation.[45] We agree and generally believe that providing a definition or a list of examples is not necessary and would invite confusion.

c. Additional Requirements of the Exemption

We proposed that, for purposes of satisfying the exemption, the amounts to be paid pursuant to an arrangement would have to relate ''solely to past services performed or future services to be performed or refrained from performing, by the employee or director (and matters incidental thereto)'' and could ''not [be] based on the number of securities the employee or director owns or tenders.'' As we explained in the Proposing Release, we included these requirements so that the amounts paid pursuant to employment compensation, severance or other employee benefit arrangements were based on legitimate compensatory reasons.[46] We also believed that it was not appropriate to permit the exemption of any payments to be made that were proportional to or otherwise based on the number of securities held by the security holder because such a relationship between the payment and the securities tendered presented the type of situation the best-price rule was adopted to guard against.

Most of the commenters believed that excluding employment compensation, severance or other employee benefit arrangements from the application of the best-price rule would provide certainty and address the issues raised by the current legal precedent.[47] A number of commenters suggested, however, that we remove the requirements of the exemption.[48] These commenters generally were concerned that the courts would scrutinize whether the requirements were satisfied, resulting in the substitution of one set of disputed facts for another.[49] Commenters also were concerned that it might be difficult to determine whether or not the requirements have been met, given that it would require the ability to discern the intent of the parties at the time the arrangement was made.[50] At least one commenter also expressed the concern that the requirements might unnecessarily circumscribe the availability of the exemption.[51]

We have considered these comments and determined to retain the requirements with certain modifications. While we recognize that it may be difficult to determine in all instances whether or not the requirements have been satisfied, we believe making the exemption available without the requirements might subject the exemption to abuse. These requirements are designed to prevent the compensation being paid or granted under an arrangement from being for securities tendered in the tender offer.[52]

[38] *See, e.g.*, letters from Dechert, Intel and NYCBA.

[39] *See, e.g.*, letter from NYSBA.

[40] As noted in Section II.C.2.d., the instruction now applies to both the exemption and the safe harbor.

[41] Further, the best-price rule does not apply if a security holder refrains from tendering into a tender offer. *See* Section II.A.2. above.

[42] Letters from ABA; Law Firm Group; NYCBA; NYSBA; SCSGP; and SIA.

[43] *See, e.g.*, letters from ABA; Intel; Law Firm Group; and SCSGP.

[44] *See, e.g.*, letter from Intel.

[45] *See, e.g.*, letters from ABA and SCSGP.

[46] Proposing Release at Section II.B.1.

[47] *See, e.g.*, letters from Dechert; Law Firm Group; and NYCBA.

[48] *See, e.g.*, letters from ABA; Dechert; Law Firm Group; NYCBA; and SIA.

[49] *See, e.g.*, letters from ABA; Dechert; Law Firm Group; and SIA.

[50] *See, e.g.*, letter from Dechert.

[51] *See, e.g.*, letter from Shearman.

[52] Some commenters asked us to confirm whether any compensatory arrangement that is conditioned upon the security holder, who is a party to the arrangement, tendering securities into the tender offer would render the arrangement less likely to be one that should fall within the exemption or whether it is objectionable for the compensatory arrangement to be conditioned upon consummation of the tender offer. We believe that conditioning an arrangement on a security holder tendering securities into the tender offer would most likely violate one or both of the requirements of the exemption. We do not believe that conditioning an arrangement on the completion or consummation of the tender offer, without any requirements as to the security holder who is a party to the arrangement tendering shares in the tender offer, is relevant to a determination as to whether the exemption is available.

i. Requirement That the Amount Payable Under the Compensatory Arrangement Is Being Paid or Granted as Compensation

With respect to the first requirement, some commenters asked that we remove the reference to ''solely'' in order to avoid language that might unnecessarily circumscribe the availability of the exemption.[53] We agree and have substituted the first clause that read ''relate solely to'' with ''is being paid or granted as compensation for'' to clarify that it was our intent to provide an exemption only for employment compensation, severance or other employee benefit arrangements for which there is a legitimate compensatory purpose.

One commenter also asked that we consider using a term other than ''services'' to avoid the possibility that certain forms of consideration, which may be paid or granted pursuant to the arrangements, would not meet the requirements of the exemption.[54] The commenter was concerned that the use of the term ''services'' might exclude those arrangements that called for compensation to be paid that was unconventional, such as the purchase of assets owned or used by an employee or director. We considered this concern and note that this requirement is intended only to require that the consideration paid is for services performed or to be performed or to be refrained from being performed—not to restrict the forms of consideration to be paid under an arrangement. We believe that the inclusion of the phrase ''and matters incidental thereto'' also should provide flexibility to cover other service-related compensation.

ii. Requirement That the Amount Payable Under the Compensatory Arrangement Is Not Calculated Based on the Number of Securities Tendered

With respect to the second requirement, several commenters expressed concern as to whether we intended for employment compensation, severance or other employee benefit arrangements that are in the form of equity-based awards to be captured by this requirement.[55] Because equity-based awards are almost always based on the number of securities ''owned or tendered,'' commenters argued that the grant of equity-based awards or the modification of previously granted equity-based awards generally would fall outside of the compensation arrangement exemption to the best-price rule by virtue of failing to meet this second requirement. They suggested that we clarify the intent of the requirement. For similar reasons, commenters also suggested that we remove the reference to securities ''owned'' and refocus the provisions of this requirement on securities ''tendered.''[56] We believe that we have addressed these concerns by adding the word ''calculated'' before ''based'' and replacing ''owns or tenders'' with ''tendered or to be tendered'' so that the exemption now requires that the arrangement ''not [be] calculated based on the number of securities tendered or to be tendered * * *'' We believe these changes address the concerns raised by commenters and clarify that we did not intend for equity-based employment compensation, severance or other employee benefit arrangements that are premised on legitimate compensatory reasons to fall outside this exemption from the best-price rule.

C. Arrangements Approved by Independent Directors

1. Discussion

We proposed a safe harbor from the third-party tender offer best-price rule for consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with employees and directors of the subject company that are approved by certain committees of the subject company's or bidder's board of directors. As we stated in the Proposing Release, we believe that the fiduciary duty requirements of board members, coupled with significant advances in the independence requirements for compensation committee members and recent advances in corporate governance, provide safeguards to allow employment compensation, severance or other employee benefit arrangements that are approved by independent compensation committee members and groups of independent board members to be exempt from the best-price rule.[57] As proposed, this provision would have operated as a safe harbor within the broader proposed exemption that included the two requirements discussed above. As we noted in the Proposing Release, we believed that providing such a safe harbor would provide increased certainty to bidders and subject companies in connection with the application of the best-price rule. We also believed that the proposed safe harbor struck the proper balance between the need for certainty in planning and structuring proposed acquisitions and the statutory purposes of the best-price rule. Most of the commenters agreed that providing the safe harbor was a good idea, although some commenters suggested certain changes to the provisions of the safe harbor to address issues on which we requested comment or that commenters identified.[58]

We are adopting the safe harbor provision with certain modifications. First, we added the safe harbor to both the issuer and third-party tender offer best-price rules. Next, we amended the language of the safe harbor so that arrangements can be approved by either a compensation committee or a committee performing similar functions of the subject company's board of directors, regardless of whether the subject company is a party to the arrangement. Alternatively, if the bidder is a party to the arrangement, the arrangement may be approved by either a compensation committee or a committee performing similar functions of the board of directors of the bidder. In the case of issuer tender offers, arrangements must be approved by either a compensation committee of the issuer's board of directors or a committee performing similar functions, regardless of whether the issuer is a party to the arrangement. Alternatively, if an affiliate is a party to the arrangement, the arrangement may be approved by either a compensation committee or a committee performing similar functions of the board of directors of the affiliate. We are also amending the safe harbor to allow a special committee of the approving entity formed to consider and approve the arrangement to approve the arrangement and meet the requirements of the safe harbor if the approving entity does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if all the members of either of those committees are not independent. All of the members of the committee used to approve an arrangement must be independent, as defined.[59] We have

[53] *See, e.g.*, letters from SCSGP and Shearman.

[54] Letter from NYCBA.

[55] *See, e.g.*, letters from ABA; NYCBA; and SIA.

[56] *See, e.g.*, letter from ABA.

[57] *See, e.g.*, New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc. Order Approving Proposed Rule Changes, Release No. 34–48745 (Nov. 4, 2003) [68 FR 64154] and Section 303A.05 of the New York Stock Exchange's Listed Company Manual (requiring the compensation committee to be comprised solely of independent directors).

[58] *See* the discussion at Section II.C.2. below.

[59] Therefore, it is not necessary for the entire compensation committee of the bidder or subject company to approve the arrangement and, in fact, a subcommittee of this committee may approve the arrangement, so long as the subcommittee is comprised entirely of members that are

made certain accommodations to these requirements for foreign private issuers, as discussed below.

Most of the commenters believed that providing the safe harbor would create certainty in an otherwise uncertain environment caused by the legal precedent that has evolved in this area.[60] In this regard, commenters were of the view that the safe harbor should provide as much certainty as possible, while still retaining a certain amount of flexibility so as to allow parties to be able to take advantage of it.[61] Commenters provided significant specific guidance regarding the operation of the proposed safe harbor and offered suggestions regarding the most effective means of accomplishing its purpose. The safe harbor we are adopting today has been revised from the proposal to address the following concerns, as discussed in further detail below:

- The approval of the directors of the subject company will satisfy the safe harbor requirements, regardless of whether the subject company is a party to the arrangement;[62]
- A special committee of the board of directors of the subject company or the bidder, as applicable, comprised solely of independent members and formed to consider and approve the arrangement may approve the arrangement and satisfy the safe harbor requirements if the subject company's or bidder's board of directors, as applicable, does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if none of the members of such committees is independent;
- Foreign private issuers may have the arrangement approved by any members of the board of directors or any committee of the board of directors authorized to approve the arrangement under the laws or regulations of their home country, and the members of the board or committee need not be independent in accordance with the U.S. listing standards but must be independent in accordance with the laws, regulations, codes or standards of their home country;
- The approving directors do not need to determine that the arrangements meet the additional requirements of the compensation arrangement exemption;
- A new instruction provides that a determination by the board of directors that the board members approving an arrangement are independent in accordance with the provisions of the safe harbor will satisfy the independence requirements of the safe harbor; and
- We have expanded the safe harbor to apply to issuer, in addition to third-party, tender offers.

2. Comments Regarding the Safe Harbor

a. The Committee Approval Required

i. Approving Party

As proposed, for purposes of satisfying the safe harbor, an arrangement would have needed to be approved by the applicable committee of the board of directors of either the subject company or the bidder, depending on whether the subject company or bidder is a party to the arrangement. We requested comment on whether the safe harbor could be modified to work better with State law protections. Several commenters advocated that the safe harbor provide that the arrangement may be approved by the applicable committee of the subject company, regardless of whether the subject company is a party to the arrangement.[63] We agree with these comments and have followed this approach in the amendments we are adopting. We believe the duties owed by the subject company's board members to the security holders subject to a tender offer provide certain protections of security holder interests regardless of whether the subject company is a party to the arrangement because the subject company's directors have a duty to act in the best interests of the security holders of the subject company. Also, this provides additional flexibility to parties wanting to take advantage of the safe harbor; bidders that, for whatever reason, do not have a compensation committee with independent directors will be able to rely upon the safe harbor by allowing the subject company to approve the compensation arrangement whether or not the bidder is a party to the arrangement. The safe harbor adopted today also allows approval by the applicable committee of the bidder's board of directors only if the bidder is a party to the arrangement. The amendments to the issuer tender offer rules follow a similar approach with respect to the approval required by the directors of the issuer or an affiliate of the issuer.

ii. Approving Body

The proposed safe harbor would have allowed a compensation committee or a committee performing similar functions comprised solely of independent members of the board of directors to approve the arrangement. The safe harbor adopted today includes this provision. In the Proposing Release, we sought comment as to whether certain entities (*e.g.*, small business issuers, foreign private issuers) may not have established compensation committees or committees performing similar functions such that the safe harbor may not be available to them. Commenters suggested we expand the approving body to include, among others, the entire board of directors or another duly authorized committee of the board.[64]

In response to these comments, the safe harbor adopted today has been expanded in two respects. First, the safe harbor allows a special committee of the board of directors of the subject company or the bidder, as applicable, comprised solely of independent members and formed to consider and approve the arrangement, to approve the arrangement and satisfy the safe harbor if the subject company's or bidder's board of directors, as applicable, does not have a compensation committee or a committee that performs functions similar to a compensation committee or does have one of these committees but none of its members is independent. The safe harbor adopted today also has been expanded to allow foreign private issuers to obtain the approval by any or all members of the board of directors or any committee of the board of directors authorized to approve the arrangement under the laws or regulations of the home country of the approving party.

We believe that expanding the safe harbor to include approvals by a special committee comprised of independent directors and the accommodation for foreign private issuers is appropriate for purposes of the best-price rule. Allowing a special committee, in lieu of a compensation or similar committee, to approve the compensatory arrangement provides additional flexibility to parties who want to rely on the safe harbor. Further, because the members of the special committee would have to be independent, we believe the approval by a special committee should not compromise investor protection.[65]

independent in accordance with the requirements of the listing standards. *See* the related discussion at Section II.C.2.b. and note 72 below.

[60] *See, e.g.*, letters from ABA, Dechert and NYCBA.

[61] *See, e.g.*, letters from Law Firm Group and NYCBA.

[62] Alternatively, as adopted, the safe harbor is available where the arrangement is approved by the bidder's board of directors, but only if the bidder is a party to the arrangement.

[63] *See*, *e.g.*, letters from ABA; Dechert; Law Firm Group; NYCBA; and SIA.

[64] *See*, *e.g.*, letters from ABA; Dechert; Law Firm Group; NYCBA; NYSBA; and SIA.

[65] State law also creates an incentive for board members to be disinterested from the transaction.

Continued

The accommodation for foreign private issuers is appropriate because those issuers may not have compensation or similar committees. Deferring to the laws and regulations of the home country of foreign private issuers makes it more likely that they will avail themselves of the safe harbor and, consequently, conduct tender offers that will include U.S. security holders.

b. Determining Independence

In the Proposing Release, we solicited comment regarding the appropriateness of relying on the independence standards for compensation committee members as defined in the listing standards. One commenter suggested that we rely upon State law duties of directors because the approving body is already relying upon State law standards of fiduciary duties in approving the arrangement.[66] Other commenters suggested that codifying an independence definition similar to other definitions provided in some Exchange Act rules—as opposed to relying upon a definition that is determined by reference to the listing standards, as we have in other Exchange Act rules—would be a better approach because this would provide a consistent definition.[67] We disagree and are adopting the provisions related to the independence standards as proposed, with an accommodation for foreign private issuers. We believe this approach is appropriate because the definitions under the listing standards have previously been approved by us and are consistent with the approach we have followed in the past.[68] In addition, the amendments, as adopted, clarify that a director of a registered closed-end investment company is considered to be independent if the director is not an ''interested person'' of the investment company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.[69] This clarification is necessary because compensation committee listing standards typically do not apply to registered investment companies.[70]

The amendments do not require that the approving body of a foreign private issuer be comprised of members that are independent as defined in the listing standards. While foreign private issuers may rely on the listing standards when determining independence for purposes of the new rule, those issuers will have the alternative of determining the independence of the members of the board or committee approving a compensatory arrangement for purposes of the safe harbor in accordance with home country laws, regulations, codes and standards. We believe this accommodation is appropriate because foreign private issuers may not be subject to the listing standard's independence provisions as they relate to compensation committees and should be provided with the flexibility to rely on home country laws, regulations, codes and standards in adhering to independence standards. We recognize that foreign private issuers may be subject to regulatory schemes and structures that differ from those that apply to U.S. issuers and that some of these schemes and structures may have a definition that is not consistent with the definition of independence contained in U.S. listing standards. Nevertheless, we are comfortable with this approach and believe that it balances the premise of the safe harbor—approval of arrangements by independent board members—against the potential that local independence standards differ drastically from the listing standard's definitions.

We also received comments regarding the possibility that a member of an existing compensation committee or a committee that performs functions similar to a compensation committee may not be independent for purposes of a particular tender offer.[71] Recusal by a member of the approving body from considering and approving the arrangement under those circumstances in accordance with State or local law or the listing standards would not eliminate the availability of the safe harbor.[72]

In the Proposing Release, we requested comment regarding whether the language of the proposed amendments provided sufficient certainty and clarity. Some commenters stated that the safe harbor should be clarified to state that a conclusion by the board of directors that each member of the approving committee is independent should be sufficient to determine conclusively that such committee members meet the applicable independence requirements.[73] We have added an instruction to the safe harbor that a determination by the bidder's or the subject company's board of directors, as applicable, that the members of the committee approving an arrangement are independent in accordance with the provisions of the safe harbor will satisfy the requirements of the safe harbor. We believe that clarifying this point is consistent with the provisions of the safe harbor and the intent of the best-price rule.

c. Procedural Aspects of the Approval of Arrangements

We proposed that, for purposes of satisfying the safe harbor, an arrangement needed to be approved by the applicable committee as meeting the additional requirements of the proposed compensation arrangement exemption—specifically, that the amount to be paid pursuant to a compensatory arrangement must ''relate[] solely to past services performed or future services to be performed or refrained from performing, by the employee or director (and matters incidental thereto) and [may not be] based on the number of securities the employee or director owns or tenders.'' We solicited comment on the appropriateness of these requirements. Commenters believed that requiring the committee to consider these additional factors was unnecessary and could potentially lead to confusion regarding the application of the safe harbor.[74] We agree with these comments, and the safe harbor adopted today does not require that the approving committee consider these requirements. The language of the safe harbor adopted today does require that the independent directors approve the arrangement as an employment compensation, severance or other employee benefit arrangement. We believe this procedural requirement is necessary so directors understand that by approving an arrangement and thereby satisfying the requirements of

See, *e.g.*, 8 Del. C. section 144 and *Weinberger* v. *UOP, Inc.*, 457 A.2d 701 (Del. 1983).

[66] *See* letter from Dechert.

[67] *See*, *e.g.*, letter from Shearman, which refers to Rule 16b–3(d), but we presume that the commenter is referring to the definition of ''Non-Employee Director'' provided in Exchange Act Rule 16b–3(b)(3) (17 CFR 240.16b–3(b)(3)).

[68] *See*, *e.g.*, Item 407 of Regulations S–B and S–K (17 CFR 228.407 and 17 CFR 229.407) as adopted in Executive Compensation and Related Person Disclosure, Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] and Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc. Order Approving Proposed Rule Changes, Release No. 34–48745 (Nov. 4, 2003) [68 FR 64154].

[69] 15 U.S.C. 80a–2(a)(19).

[70] *See*, *e.g.*, Section 801 of the American Stock Exchange Company Guide; NASDAQ Rule 4350(a)(2); and, Section 303A.00 of the New York Stock Exchange's Listed Company Manual.

[71] *See*, *e.g.*, letter from SCSGP.

[72] A bidder or subject company's standing compensation committee may include multiple board members, each of whom has qualified as independent in accordance with the requirements of the applicable listing standards. The safe harbor does not require that each of the members of a company's standing compensation committee participate in the consideration and approval of an arrangement.

[73] *See*, *e.g.*, letters from Law Firm Group and NYCBA.

[74] *See* the discussion at Section II.B.2.c. above.

the safe harbor, they are determining that the arrangement is compensatory.[75]

In response to our request for comment, many commenters expressed the view that committee approval of specific arrangements, as compared to approval of plans or programs, with security holders of a subject company should not be required by the proposed safe harbor.[76] We have not made changes in response to these comments, as we believe they are inconsistent with a basic premise of the safe harbor, which is that individuals vested with the fiduciary responsibility for approving compensation arrangements will consider and approve arrangements with security holders of the subject company of a tender offer and, therefore, the best-price rule need not apply. Based on this premise, directors would need to have knowledge of the specific arrangements with security holders and the related tender offer when the approval is given. Of course, the corporate procedures for obtaining and documenting such approval remain matters of State law and the requirements of the safe harbor do not limit the ability of the independent directors to approve multiple specific arrangements or stock grants generally.

Many commenters requested that the timing of the required approval of arrangements by the committee and the ability of committees to reapprove or ratify arrangements originally approved before the consideration of a specific transaction or the effectiveness of these rule changes be clarified. We have not proposed changes to the safe harbor to address these comments, as we do not believe it is necessary to address such procedural issues in the rule itself. We do note, however, that the revised best-price rule states that ''[t]he consideration paid to any security holder for securities tendered in the tender offer [shall be] the highest consideration paid to any other security holder for securities tendered in the tender offer'' and, as such, approval pursuant to the provisions of the safe harbor would need to be received before the consideration is paid in the tender offer. We also note that the requirements of the safe harbor do not prohibit ratification of arrangements provided that the tender offer consideration has not been paid yet.

d. Challenges to the Applicability of the Safe Harbor

Commenters requested clarification of the proposed safe harbor to provide that any finding of a violation of fiduciary duties by the board would not nullify the application of the safe harbor.[77] We have not adopted changes to the safe harbor to address these comments. A violation of State law fiduciary duties would not have any impact on the availability of the safe harbor, as remedies are generally available for such allegations under State law.

We have also expanded the application of the proposed instruction that no inference should be drawn that consideration paid pursuant to arrangements other than compensation arrangements, such as commercial arrangements, constitutes consideration paid for securities tendered in the tender offer. The adopted instruction now relates to both the exemption and the safe harbor. The fact that directors approve an arrangement as an employment compensation, severance or other employee benefit arrangement in order to meet the requirements of the safe harbor should not raise an inference that consideration paid or to be paid pursuant to other arrangements that may be entered into with security holders of the subject company constitutes consideration paid for securities tendered in a tender offer.

We also received comments about whether the language of the safe harbor was potentially ambiguous and whether the safe harbor was self-operating.[78] In order to address these comments, we adopted the exemption and the safe harbor as new sections of the third-party and issuer best-price rules.[79] We also amended the language of the safe harbor so that it is clear that the negotiation, execution and amendment of, and any payments made or to be made or benefits granted or to be granted according to, arrangements approved pursuant to the safe harbor are not prohibited by the best-price rule.

e. Application of the Safe Harbor to the Issuer Best-Price Rule

In the Proposing Release, we proposed to add the safe harbor to the third-party best-price rule but did not propose an analogous safe harbor to the issuer best-price rule. To date it does not appear that claims of a violation of the best-price rule have been made under the issuer tender offer rules. Commenters, however, were unanimous in their request that we extend the safe harbor to the issuer best-price rule.[80] They reasoned that the need to enter into employment compensation, severance or other employee benefit arrangements also arises during issuer tender offers because similar issues of severance and retention often are present, especially in restructuring and recapitalization transactions.[81] Commenters also believed that there appeared to be no compelling reason to distinguish between the issuer and third-party best-price rules, especially because doing so might have unintended consequences.[82] We agree and the amendments we are adopting today add the safe harbor to the issuer best-price rule at Rule 13e–4(f)(12).

III. Paperwork Reduction Act

We have not prepared a submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995 because the proposals do not impose any new recordkeeping or information collection requirements, or other collections of information requiring the approval of the Office of Management and Budget.

IV. Cost-Benefit Analysis

A. Background

On December 16, 2005, we proposed amendments to the best-price rule to clarify that the best-price rule applies only with respect to the consideration offered and paid for securities tendered in a tender offer. We also proposed that the rule exclude employment compensation, severance and other employee benefit arrangements between subject company employees or directors and the subject company or bidder from the application of the best-price rule, as long as the compensatory arrangements meet certain requirements. Finally, we proposed an accompanying safe harbor to the exemption for those compensatory arrangements that were approved by a compensation committee (or a committee performing similar functions) of either the bidder or the subject company, depending upon who was a party to the arrangement.

We are adopting the amendments substantially as proposed. First, we are adopting the amendment to the language of the best-price rule that clarifies that the provisions of the rule apply only with respect to the consideration offered and paid for securities tendered in a tender offer. We also are amending the third-party and

[75] This procedural requirement is not intended to affect the State law or listing standard approval or documentation requirements for matters considered by the board of directors or committees of the board of directors.

[76] *See, e.g.*, letters from ABA; Intel; Law Firm Group; NYCBA; SCSGP; and Shearman.

[77] *See, e.g.*, letters from Intel and SIA.

[78] *See, e.g.*, letter from Dechert.

[79] *See* note 30 above.

[80] *See, e.g.*, letters from ABA; Dechert; Gonzalez; Intel; Law Firm Group; NYCBA; NYSBA; Perkins Coie LLP (''Perkins''); SCSGP; Shearman; and SIA.

[81] *See, e.g.*, letters from ABA; Intel; and SCSGP.

[82] *See, e.g.*, Law Firm Group; SCSGP; and SIA.

issuer tender offer best-price rules to provide that any consideration that is offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the subject company that meet certain requirements will not be prohibited by the rules. Finally, we are amending the third-party and issuer tender offer best-price rules to provide a safe harbor provision so that arrangements that are approved by the independent directors of either the subject company's or the bidder's board of directors, as applicable, will not be prohibited by the rules.

We expect that these amendments will make it clear that the best-price rule was not intended to capture compensatory arrangements. The amendments also are intended to alleviate the reluctance bidders and subject companies have expressed in planning and structuring transactions as tender offers due to differing judicial interpretations of the best-price rule that have been rendered by courts to date. We also want to diminish a regulatory disincentive against structuring transactions as tender offers, as compared to statutory mergers, to which the best-price rule does not apply. We recognize that the amendments may create costs and benefits to parties engaging in tender offers and to the economy as a whole. We have identified those costs and benefits below.

B. Benefits

The amendments to the rule will benefit investors most directly through their intended effect of lowering the costs of tender offer transactions that arise from the risk of litigation under the current case law. Bidders and subject companies are expected to respond with increased tender offer activity as a result of choosing to structure an acquisition as a tender offer, rather than a statutory merger. Some benefits from lower litigation-related costs are expected to arise in each instance, depending on the cost of the litigation risk that would be borne otherwise. This cost would likely continue to persist as a regulatory obstacle in the absence of the amendment; such cost would deter the use of tender offers relative to statutory mergers and the conduct of acquisitions as tender offers that would not occur otherwise. The magnitude of the benefit from the amendment will thus partly depend on the magnitude of the substitution into tender offers and any tender offer-related increase in acquisition activity generally. In the Proposing Release, we requested comment on the magnitude of these and other potential benefits of the proposed amendments. We received no direct response to this request. Commenters also did not indicate that the judicial interpretations of the best-price rule were preventing potential acquisitions from proceeding in any form. Commenters did indicate that the judicial interpretations of the best-price rule were causing transactions to proceed as statutory mergers, as opposed to tender offers. Accordingly, we do not expect the amended best-price rule to materially impact the number of transactions that occur overall, but rather the form in which the transaction takes place.[83]

The comments that we received on the proposed amendments are consistent with the view that benefits would occur through a reduction in the litigation-related cost of conducting tender offers, leading to an increased incentive to undertake tender offers. As to the regulatory incentives to conduct statutory mergers as compared to tender offers, one commenter indicated that the economic efficiencies of using tender offers, as compared to mergers, have been lost because of the potential liability associated with conducting a tender offer that may be subject to a lawsuit where a compensatory arrangement is involved.[84] This commenter endorsed the objectives of the amendments to the best-price rule. Several commenters also indicated generally that the amendments would meet the objectives of the best-price rule.[85] Others expressed their support by indicating that the amendments would provide clarity and certainty to participants in tender offers, particularly regarding the perceived litigation risk that has been present in the best-price rule.[86] Almost all of the commenters suggested additional changes to the amendments, particularly with respect to the exemption and safe harbor from the best-price rule.

The litigation-related costs that the amendment would eliminate stem from diverging court interpretations of the best-price rule that have emerged in the past decade. The best-price rule has been interpreted as requiring, in some courts, that the amounts paid pursuant to compensation arrangements be included as part of the consideration paid to security holders in the tender offer either because the compensation was offered or paid during a tender offer and, in other courts, because the compensatory arrangement constituted an ''integral part'' of the tender offer. These interpretations have made parties reluctant to structure acquisitions as tender offers for fear of exposure to potential liability. We believe it is appropriate to amend the best-price rule to clarify this point now, rather than to wait and see how the courts might interpret the rule in the future. These amendments are thus intended to eliminate a regulatory obstacle to the use of tender offers as a viable alternative to statutory mergers for parties who wish to conduct an acquisition. We believe that the interests of security holders are better served when all acquisition structures are viable options.[87]

We recognize that the application of our exemption and safe harbor is limited to compensatory arrangements. Parties who wish to enter into arrangements that are not compensatory in nature may continue to be reluctant to engage in tender offers. In these situations, parties may choose to engage in a statutory merger, as opposed to a tender offer, to accomplish an acquisition because the litigation risk continues to be too great. While we do not intend for arrangements entered into with security holders that are not compensatory to be presumed to be in violation of the best-price rule,[88] we also believe that it is appropriate to limit our exemption and safe harbor to arrangements that are compensatory in nature.

[83] Under the assumption that the amendments do not have a material impact on the number of overall acquisitions conducted annually, an estimate of the potential increase in tender offers can be obtained from an estimate of the potential decline in statutory mergers, expressed as a fraction of the total. For example, if 5% of the transactions that would otherwise be conducted as statutory mergers will now be conducted as tender offers, an estimated 35.7% increase in the number of tender offers might result annually (based upon the number of statutory mergers and tender offers that have taken place over the last 10 years).

[84] *See, e.g.,* letter from Law Firm Group (citing the benefit of the relatively shorter amount of time that it takes to conduct a tender offer (30 days) as compared to mergers (90–120 days)). Similar support for the fact that tender offers, as compared to mergers, provide the benefit of time can be found in the letters from ABA, Dechert and SIA. Other benefits of tender offers include the fact that management support is not necessary for the bidder to acquire the target company (*i.e.*, individuals make their own investment decision) and control by a bidder may be obtained without necessarily purchasing all of the outstanding securities of the target company. *See* Eleanor M. Fox and Byron E. Fox, *Corporate Acquisitions and Mergers* (2006 ed.) at 5E–6.

[85] *See, e.g.,* letters from ABA and NYCBA.

[86] *See, e.g.*, letters from Dechert; SCSGP; and Shearman.

[87] A disincentive against structuring transactions as tender offers has potential negative consequences to acquirors and security holders. *See* prior note 84 for a discussion of some of the benefits of tender offers.

[88] The rule, as adopted, includes the proposed instruction to this effect.

Depending upon the jurisdiction in which a best-price rule claim has been brought, the potential costs to bidders as a result of certain of the judicial interpretations of the best-price rule have been substantial. An intended benefit of our amendments will be to assist parties in reducing their exposure to potential costs arising from allegations of best-price rule violations. These potential costs include, among others, the cost of litigation to defend against alleged violations of the best-price rule.[89] We believe bidders will be less likely to be subject to a claim because our amendments provide an exception to the best-price rule for compensatory arrangements without the loss of the basic protections that the rule is designed to provide to security holders.

C. Costs

The best-price rule prohibits certain conduct in connection with a tender offer. In this regard, the amendments to the best-price rule do not add any new requirements. Rather, the amendments clarify that certain conduct is not prohibited by the rule and add means by which parties can comply, via an exemption or a safe harbor provision, with the rule. Continued compliance with the best-price rule can be achieved in the same manner and by the same persons responsible for compliance under the rule in effect before our amendments today. Reliance upon the exemption or the safe harbor, however, may entail additional costs. We discuss these additional costs below. We do not believe these costs are substantial.

The amendments seek to modify the language of the existing best-price rule to remove the reference to ''during.'' Some commenters have indicated that the effect of this change would be to expand the potential timeframe in which litigants could argue that a best-price rule violation has occurred.[90] If the commenter's concerns were realized, it is possible claims that the best-price rule has been violated might continue to be brought, only under a different, potentially more expansive, theory. We do not believe that a temporal limitation in the best-price rule is appropriate because such a strict timeframe might lend itself to abuse. Further, we believe that the amendments providing for the exemption and the safe harbor to the best-price rule provide sufficient certainty to parties desiring to engage in a tender offer such that any concern regarding continued litigation under the best-price rule as a result of the removal of ''during'' is reduced.

The exemption and the safe harbor adopted today provide that, presuming certain requirements are met, consideration paid pursuant to certain arrangements will not be prohibited by the best-price rules. Parties may be able to challenge whether the provisions of the exemption or the safe harbor have been met. Complying with the conditions of the exemption and safe harbor, therefore, may be a cost of complying with the best-price rule.

To the extent parties choose to rely upon the safe harbor, bidders and/or subject companies, in the case of third-party tender offers, or issuers and/or affiliates, in the case of issuer tender offers, may need to take extra steps—such as obtaining approval of the compensatory arrangement by directors—to comply with the safe harbor. However, most bidders, issuers, affiliates and subject companies are already required to have a compensation committee or a committee performing similar functions, so the cost of forming, organizing and convening a committee should be a cost that already is being incurred by most bidders, issuers, affiliates or subject companies. Companies without such a committee will incur a cost, most likely in the form of legal fees.

Further, bidders, issuers, affiliates or subject companies may already have their compensation committee or a committee performing similar functions approve specific employment compensation, severance or other employee benefit arrangements in the ordinary course of performing its duties. These bidders, issuers, affiliates or subject companies would not incur additional costs to comply with the amended best-price rule and, even if they are not already engaging their committees to perform this function, the costs should be limited to the time and expense associated with reviewing the specific arrangement and holding a meeting of the committee. With respect to subject company approval, it is possible that subject company directors may already be reviewing arrangements executed in connection with negotiated acquisitions[91] in order to meet their State law fiduciary duties when considering and determining whether to recommend the transaction to the security holders of the subject company.[92]

To the extent parties choose to rely upon the exemption, we recognize there may be similar costs associated with adhering to the exemption. While we have not dictated the manner or method by which we expect the parties to meet the requirements of the exemption, we expect that, at the very least, it will take the parties time to make a determination as to whether the compensatory arrangement meets the requirements of the exemption. The time it takes for the parties to make this determination is a cost but we believe that the cost should be minimal.

Under the amendments, some compensatory arrangements may qualify for the safe harbor provision with approval by a committee of the bidder's board. Since the bidder's board does not typically owe a fiduciary duty to security holders of the subject company, the amendments could impose costs on security holders of the subject company by making it possible for transactions to occur without safeguards associated with directors' fiduciary duties. However, such costs are likely to be limited because they would be dependent upon the ability of security holders of the subject company to anticipate such transactions and contract in advance of the transaction with management, employees, or other security holders of the subject company. In addition, such costs may be limited to the extent that other rights of action, such as litigation in State courts, exist for security holders in the subject company.

Finally, the rule may introduce costs associated with new litigation risks. It is possible that the amended best-price rule will simply shift the litigation to State law; security holders may claim that directors have breached their fiduciary duties in approving the compensatory arrangement.[93] In

[89] In sixteen published judicial opinions over the last ten years, approximately half were decided in favor of the plaintiff with the other half being decided in favor of the defendant. Extrapolating from these opinions, we assume an average of three claims per year are brought, that one claim is settled per year, that the costs of defending all three actions would total no more than $10 million per year (based on the staff's estimate of attorney's fees), and that the costs associated with settling one such action would be $15 million (based on historical data). *See, e.g., Technology Briefing Software: Computer Associates Ordered to Pay $11 Million*, The N.Y. Times, Sept. 6, 2002 at C6 and *$18.25 Million Settlement Approved in Litigation Resulting From Take-Over*, Securities Class Action Reporter, March 15, 2006 at 17. Based on these assumptions, the annual cost savings would be approximately $25 million.

[90] *See, e.g.*, letters from ABA; Dechert; and Law Firm Group.

[91] *See, e.g.*, Item 1012(a) of Regulation M–A (17 CFR 229.1012(a)), which requires a statement as to whether the subject company is advising security holders in a third-party tender offer to accept or reject the tender offer or to take other action.

[92] *See, e.g.*, letters from ABA and SIA.

[93] We requested comment about whether this potential outcome should impact the structure of the amendments to the best-price rule. Certain commenters noted that the fiduciary duties owed by the bidder's directors to the bidder's security holders would guide their actions and, therefore,

Continued

addition, or alternatively, they may claim that the provisions of the exemption or safe harbor were not satisfied. Whether a successful claim can be made against members of the board of directors for breach of their fiduciary duties or for failure to satisfy the provisions of the exemption or safe harbor is uncertain. As a result, the potential costs associated with identifying the alleged illegal behavior and bringing a claim of liability could be imposed on potential plaintiffs. We note that commenters, when asked about shifting litigation to State law issues, did not object, so long as no remedy would be available under the best-price rule.[94]

D. Small Business Issuers

Although the amended rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs, and should find it unnecessary to hire extra personnel. It is possible that the safe harbor, for the reasons mentioned above, will cause small business issuers in particular to incur some cost due to the establishment of an appropriate approving body and the time and expense of reviewing the compensatory arrangement and convening a meeting. This is because small business issuers are less likely to have the pre-existing infrastructure in place. But we do not believe that these costs are unreasonable in order to ensure that the purpose of the best-price rule is met. Further, the exemption and safe harbor available under the amended rules are non-exclusive methods of complying with the best-price rule so any additional costs incurred are voluntary.

The issues of equal treatment among security holders in the context of tender offers affect small business issuers as much as they affect larger issuers. Thus, we do not believe that applying the amendments to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[95] and Section 2(c) of the Investment Company Act[96] require the Commission, whenever it engages in rulemaking, to consider or determine if an action is necessary or appropriate in the public interest and to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[97] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The amendments to the best-price rule are intended to improve market efficiency by providing greater clarity to bidders, subject companies and security holders as to the situations in which compliance with the best-price rule has been met. Courts rendering decisions arising from allegations of a violation of the best-price rule have differed in their approach to resolving these claims and the resulting uncertainty has left parties who want to engage in a tender offer unsure about how to proceed. The amendments are intended to clarify the application of the best-price rule where employment compensation, severance or other employee benefit arrangements have been or are expected to be entered into in contemplation of an acquisition of securities that is structured as a tender offer. Specifically, the amendments provide for an exemption and a safe harbor provision from the best-price rule for certain arrangements that either meet certain requirements or that are approved by independent directors. The resulting clarity should make the determination as to whether to engage in a tender offer a more viable one for bidders, issuers, affiliates and subject companies, resulting in a positive effect upon market efficiency.

As to the impact on competition, the amendments to the best-price rule are intended to have a positive impact on competition among the alternative mechanisms for completing acquisitions. Bidders desiring to acquire another entity by conducting a tender offer would have the benefit of the amendments to the best-price rule that delineate the instances in which the negotiation or execution of employment compensation, severance or other employee benefit arrangements would not run afoul of the requirements of the best-price rule. Previously, the existence of compensatory arrangements might have caused parties to hesitate before engaging in a tender offer in order to weigh the potential benefits of the acquisition carefully against the potential for liability for a best-price rule violation. Ultimately, the parties may have declined to pursue a tender offer as an alternative to a statutory merger in completing the transaction. The amendments, however, are designed to alleviate the need to hesitate and, therefore, increase competition between these alternative acquisition mechanisms. Having more acquisition structures available to parties contemplating an acquisition is a positive effect of the rule upon competition.

We acknowledge the possibility that, because bidders, issuers, affiliates and subject companies may desire to take advantage of the safe harbor to the best-price rule where arrangements approved by an appropriate approving body of directors meet the requirements of the safe harbor and therefore consideration paid pursuant to such arrangement are not prohibited by the rule, those bidders, issuers, affiliates and subject companies may need to reevaluate whether they have an approving body and adequate policies and procedures in place to take advantage of the safe harbor. Such an evaluation could place a limitation on the ability of the parties to move quickly and efficiently in pursuing an acquisition, which could diminish the beneficial effect on market efficiency and competition. We believe, however, that the approval of directors is an important step in the availability of the safe harbor and, therefore, any increased efforts or costs that need to be expended to comply with the safe harbor are appropriate to provide equal treatment of security holders. Further, we believe that we have provided sufficient flexibility in the operation of the safe harbor to ease this potential impact. We also have provided an exemption that does not require director approval.

The amendments should promote capital formation, as they are intended to significantly reduce the uncertainty caused by the varying judicial interpretations of the best-price rule. The clarifications to the best-price rule are expected to have the effect of alleviating regulatory disincentives to structuring an acquisition of securities as a tender offer, as compared to a statutory merger, where the best-price rule is inapplicable. It is difficult to estimate the magnitude of these effects, if or when they would occur, and the extent to which they will be offset by the costs of the amendments, nor have we received comments on their likely magnitude.

provide some level of protection. *See, e.g.*, the ABA letter.

[94] *See, e.g.*, letters from Law Firm Group and NYCBA.

[95] 15 U.S.C. 78c(f).

[96] 15 U.S.C. 80a–2(c).

[97] 15 U.S.C. 78w(a)(2).

We requested comment on these matters in the Proposing Release. We received no comments in response to these specific requests, but some comments touched on these issues. Commenters generally expressed support for the proposal to amend the best-price rule, given the structural impediments to the use of tender offers as a result of the case law that has developed.[98] They generally believed that the amendments would provide clarity and greater certainty to the tender offer process.[99]

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with the Regulatory Flexibility Act. This analysis relates to proposed revisions to the tender offer best-price rule under the Exchange Act to clarify that the rule applies only with respect to the consideration offered and paid for securities tendered in an issuer or third-party tender offer and should not apply to consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the subject company. The amendments provide an exemption and safe harbor from the strictures of the best-price rule for arrangements that meet certain criteria or that are approved by independent directors, respectively.

A. Reasons for the Proposed Amendments

The best-price rule was adopted originally to provide fair and equal treatment of all security holders of the class of securities that are the subject of a tender offer by requiring that the consideration paid to any security holder is the highest paid to any other security holder in the tender offer. We proposed amendments to the best-price rule on December 16, 2005. The amendments we adopt today are, in most respects, consistent with the proposed amendments but include certain revisions made in response to concerns raised by commenters. The objectives of the changes are as follows:

First, we want to make it clear that compensatory arrangements between security holders and the subject company or bidder are not captured by the application of the best-price rule. We believe that amounts paid pursuant to employment compensation, severance or other employee benefit arrangements should not be included in the consideration paid for tendered securities. These payments are made for a different purpose, to provide compensation in exchange for services rendered or in connection with severance or similar events.

Second, since the adoption of the best-price rule, it has been the basis for litigation brought in connection with tender offers in which it is claimed that the best-price rule was violated as a result of the bidder in a tender offer entering into new, or adopting the subject company's pre-existing, employment compensation, severance or other employee benefit arrangements with security holders of the subject company. In the process of resolving these claims, courts have interpreted the best-price rule in different ways. We are adopting changes to the rule to alleviate the uncertainty that the various interpretations of the best-price rule by courts have produced.

Finally, we want to reduce the regulatory disincentive to structure acquisitions of securities in the form of tender offers, as compared to statutory mergers, to which the best-price rule does not apply. We understand that the prospect of the uncertain application of the best-price rule that has arisen as a result of the case law has made parties averse to the use of tender offers as a means to accomplish extraordinary transactions, and we believe the amendments to the rule will reduce this aversion to the use of tender offers.

B. Significant Issues Raised by Public Comment

An Initial Regulatory Flexibility Analysis was prepared in accordance with the Regulatory Flexibility Act in connection with the Proposing Release, and we solicited comments on any impact the proposed changes might have on any aspect of our IRFA. We did not receive any public comments that responded directly to the IRFA or that dealt directly with the proposal's impact on small business issuers.

C. Small Entities Subject to the Proposed Rules

The changes to the best-price rule will affect issuers that are small businesses. Exchange Act Rule 0–10(a)[100] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is considered to be a ''small business'' or ''small organization'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[101] These are the types of entities that we refer to as small entities in this discussion. We estimate that there are approximately 2,500 public issuers, other than investment companies, that may be considered small businesses. We estimate that there are approximately 230 investment companies that may be considered small businesses. Of these 230 investment companies that may be considered small businesses, we estimate that 94 are closed-end investment companies, including closed-end investment companies electing to be treated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act,[102] that may be affected by the proposed amendments.

The Commission received a total of 412 issuer and 141 third-party tender offer schedules in its 2006 fiscal year. We estimate that half of the 14 issuer tender offer schedules were filed by subject companies that were small business issuers and the other half were filed by investment companies that are small businesses as that term is defined for purposes of the Regulatory Flexibility Act.[103] We further estimate that 18 of the third-party tender offer schedules received by the Commission in its 2006 fiscal year were tender offers where the target companies were small business issuers.[104] We note that our use of small business issuers is a broader category of issuers than small entities. Therefore, we believe that the amendments are likely to affect a limited number of small business issuers and, for the same reason, an even smaller number of small entities that are reporting companies.

We requested comment on the number of small entities that would be impacted by our proposals, including any available empirical data. We received no responses to our request.

D. Reporting, Recordkeeping and Other Compliance Requirements

The amendments to the best-price rule are expected to result in relatively small costs to all bidders and subject companies, large or small. Even before

[98] *See, e.g.,* letter from Law Firm Group.

[99] *See, e.g.,* letters from ABA and NYCBA.

[100] 17 CFR 240.0–10(a).

[101] 17 CFR 270.0–10.

[102] 15 U.S.C. 80a–2(a)(48).

[103] A small business issuer is defined as a company that, among other things, has revenues of less than $25,000,000. *See* Securities Act Rule 405 (17 CFR 230.405).

[104] No investment company that is a small business, as that term is defined for purposes of the Regulatory Flexibility Act, conducted a third-part tender offer in the 2006 fiscal year of the Commission.

our proposed amendments, the best-price rule required bidders to pay any security holder pursuant to the tender offer the highest consideration paid to any other security holder for securities tendered in the tender offer. Therefore, the changes to the best-price rule should not impose significant additional costs, if any, and should not require any specialized professional skills. The task of complying with the changes could be performed by the same person or group of persons responsible for compliance under the rules that were in effect before today's amendments at a minimal incremental cost.

We understand that the exemption and safe harbor from the best-price rule may impose extra steps on the bidder and/or subject company to comply with the exemption and safe harbor, and such compliance could entail new costs. For example, with respect to the safe harbor for compensatory arrangements that are approved by the directors of the bidder or subject company, most bidders and subject companies already are required to have a compensation committee or a committee performing similar functions, so the cost of forming and organizing a committee should be a cost that already is being incurred by the bidder or subject company. This is particularly the case where the bidder or subject company either has a class of securities listed on a registered national securities exchange or on an automated inter-dealer quotation system of a national securities association because the listing standards of each generally impose certain requirements regarding the formation and composition of the members of the board of directors and its committees.

Small entities or organizations may be less likely to have a class of securities listed on a registered national securities exchange or on an automated inter-dealer quotation system of a national securities association. As a result, it is possible that small entities or organizations will be less likely to have the pre-existing infrastructure in place for a compensation committee or a committee performing similar functions to approve employment compensation, severance or other employee benefit arrangements. Such small entities or organizations likely will incur additional costs to take advantage of this safe harbor. The cost, however, should be limited to the expense of organizing a committee, reviewing the specific arrangement and holding a meeting of the committee. We believe these costs are appropriate to promote equal treatment of security holders in the application of the best-price rule.

With respect to the exemption for compensatory arrangements that meet certain requirements, all bidders or subject companies that choose to avail themselves of this exemption will need to make a determination as to whether the arrangement at issue meets the requirements. This determination likely will entail additional costs, even if only in the form of the additional time it will take to make this determination. However, the amendments do not mandate any particular method or procedure that a bidder or subject company must follow in making this determination.

Both the exemption and the safe harbor, however, are optional provisions and serve as non-exclusive methods to ensure compliance with the best-price rule. This means that bidders and subject companies that are small entities or organizations will not be required to take advantage of the provision, so any additional expenses that may be incurred, if any, would be optional on the part of the small entity or organization. We acknowledge, however, that the cost of foregoing the application of the exemption or safe harbor might be significant if there is a risk of potential liability where a compensatory arrangement is found to violate the best-price rule and the cost of that violation is expected to be greater than the cost of complying with the exemption or safe harbor. In that circumstance, entities would be likely to structure transactions as statutory mergers.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives while minimizing any significant adverse impact on small entities or organizations. In connection with the proposals, we considered the following alternatives:

1. Establishing different compliance or reporting requirements or timetables that take into account the resources of small entities;
2. The clarification, consolidation, or simplification of the compliance or reporting requirements for small entities;
3. The use of performance rather than design standards; and
4. An exemption for small entities from coverage of the best-price rule, or any part thereof, for small entities.

We have considered a variety of reforms to achieve our regulatory objectives. However, we believe that the original intent of the best-price rule, to require equal treatment of security holders, would not be served by a best-price rule that applied only to bidders and subject companies of a certain size. Further, we believe that uniform rules applicable to all bidders and subject companies, regardless of size, are necessary to alleviate the uncertainty that the parties to tender offers face. Therefore, the establishment of different requirements for small entities would not be practicable, nor would it be in the public interest. For similar reasons, the clarification, consolidation or simplification of the compliance and reporting requirements for small entities also would not be practicable.

Although the best-price rule generally employs performance standards rather than design standards, the amendments to the rule would implement certain design standards in order to clarify that the rule should not apply where employment compensation, severance or other employee benefit arrangements are made or will be made or have been granted or will be granted, as long as they have been approved by the directors of an appropriate approving body of either the bidder or the subject company. We intend for the implementation of design standards, in this case, to be more useful to bidders and subject companies because the circumstances in which the best-price rule would likely be inapplicable will be delineated clearly. This should provide greater certainty in the application of the rule and the enforcement of the application of the rule. Therefore, implementing design rather than performance standards in the application of the rule appears to be more effective in promoting compliance with the rule, as amended.

As discussed above, most bidders and subject companies that engage in tender offers and are subject to the best-price rule are not small entities or organizations, as defined for purposes of the Regulatory Flexibility Act. Further, where small entities are bidders and/or subject companies in the tender offer, the proposed changes to the best-price rule, in general, and the invocation of the exemption or safe harbor, in particular, impose minimal additional costs or burdens. Therefore, exempting small entities from the best-price rule altogether would not be justified in this context.

VII. Statutory Basis

The amendments to the best-price rule are adopted pursuant to Sections 3(b), 13, 14, 23(a) and 36 of the Exchange Act, as amended, and Section 23(c) of the Investment Company Act, as amended. The amendments to the Rules of Practice are adopted pursuant to

Section 19 of the Securities Act, as amended and Sections 4A, 19 and 23 of the Exchange Act, as amended.

VIII. Text of the Rules and Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure; Authority delegations (Government Agencies).

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The general authority citation for part 200, subpart A is revised to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–1 (e)(11) by removing the phrase ''pursuant to Rule 14d–10(e) (§ 240.14d–10(e) of this chapter)'' and by adding the phrase ''pursuant to Rule 14d–10(f) (§ 240.14d–10(f) of this chapter)'' in its place.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 240.13e–4 by revising paragraph (f)(8)(ii), redesignating paragraph (f)(12) as paragraph (f)(13) and adding new paragraph (f)(12) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(f) * * *

(8) * * *

(ii) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.

* * * * *

(12)(i) Paragraph (f)(8)(ii) of this section shall not prohibit the negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, or payments made or to be made or benefits granted or to be granted according to such an arrangement, with respect to any security holder of the issuer, where the amount payable under the arrangement:

(A) Is being paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the security holder (and matters incidental thereto); and

(B) Is not calculated based on the number of securities tendered or to be tendered in the tender offer by the security holder.

(ii) The provisions of paragraph (f)(12)(i) of this section shall be satisfied and, therefore, pursuant to this non-exclusive safe harbor, the negotiation, execution or amendment of an arrangement and any payments made or to be made or benefits granted or to be granted according to that arrangement shall not be prohibited by paragraph (f)(8)(ii) of this section, if the arrangement is approved as an employment compensation, severance or other employee benefit arrangement solely by independent directors as follows:

(A) The compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the issuer approves the arrangement, regardless of whether the issuer is a party to the arrangement, or, if an affiliate is a party to the arrangement, the compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the affiliate approves the arrangement; or

(B) If the issuer's or affiliate's board of directors, as applicable, does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if none of the members of the issuer's or affiliate's compensation committee or committee that performs functions similar to a compensation committee is independent, a special committee of the board of directors formed to consider and approve the arrangement approves the arrangement; or

(C) If the issuer or affiliate, as applicable, is a foreign private issuer, any or all members of the board of directors or any committee of the board of directors authorized to approve employment compensation, severance or other employee benefit arrangements under the laws or regulations of the home country approves the arrangement.

Instructions to paragraph (f)(12)(ii): For purposes of determining whether the members of the committee approving an arrangement in accordance with the provisions of paragraph (f)(12)(ii) of this section are independent, the following provisions shall apply:

1. If the issuer or affiliate, as applicable, is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed either on a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or in an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has independence requirements for compensation committee members that have been approved by the Commission (as those requirements may be modified or supplemented), apply the issuer's or affiliate's definition of independence that it uses for determining that the members of the compensation committee are independent in compliance with the listing standards applicable to compensation committee members of the listed issuer.

2. If the issuer or affiliate, as applicable, is not a listed issuer (as defined in § 240.10A–3 of this chapter), apply the independence requirements for compensation committee members of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that have been approved by the Commission (as those requirements may be modified or supplemented). Whatever definition the issuer or affiliate, as applicable, chooses, it must apply that definition consistently to all members of the committee approving the arrangement.

3. Notwithstanding Instructions 1 and 2 to paragraph (f)(12)(ii), if the issuer or affiliate, as applicable, is a closed-end investment company registered under the Investment Company Act of 1940, a director is considered to be independent if the director is not, other than in his or her capacity as a member of the board of directors or any board committee, an ''interested person'' of the investment company, as defined in section 2(a)(19)

of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

4. If the issuer or affiliate, as applicable, is a foreign private issuer, apply either the independence standards set forth in Instructions 1 and 2 to paragraph (f)(12)(ii) or the independence requirements of the laws, regulations, codes or standards of the home country of the issuer or affiliate, as applicable, for members of the board of directors or the committee of the board of directors approving the arrangement.

5. A determination by the issuer's or affiliate's board of directors, as applicable, that the members of the board of directors or the committee of the board of directors, as applicable, approving an arrangement in accordance with the provisions of paragraph (f)(12)(ii) are independent in accordance with the provisions of this instruction to paragraph (f)(12)(ii) shall satisfy the independence requirements of paragraph (f)(12)(ii).

Instruction to paragraph (f)(12): The fact that the provisions of paragraph (f)(12) of this section extend only to employment compensation, severance and other employee benefit arrangements and not to other arrangements, such as commercial arrangements, does not raise any inference that a payment under any such other arrangement constitutes consideration paid for securities in a tender offer.

* * * * *

■ 5. Amend § 240.14d–10 by revising paragraph (a)(2), redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and adding new paragraph (d) to read as follows:

§ 240.14d–10 Equal treatment of security holders.

(a) * * *

(2) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.

* * * * *

(d)(1) Paragraph (a)(2) of this section shall not prohibit the negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, or payments made or to be made or benefits granted or to be granted according to such an arrangement, with respect to any security holder of the subject company, where the amount payable under the arrangement:

(i) Is being paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the security holder (and matters incidental thereto); and

(ii) Is not calculated based on the number of securities tendered or to be tendered in the tender offer by the security holder.

(2) The provisions of paragraph (d)(1) of this section shall be satisfied and, therefore, pursuant to this non-exclusive safe harbor, the negotiation, execution or amendment of an arrangement and any payments made or to be made or benefits granted or to be granted according to that arrangement shall not be prohibited by paragraph (a)(2) of this section, if the arrangement is approved as an employment compensation, severance or other employee benefit arrangement solely by independent directors as follows:

(i) The compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the subject company approves the arrangement, regardless of whether the subject company is a party to the arrangement, or, if the bidder is a party to the arrangement, the compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the bidder approves the arrangement; or

(ii) If the subject company's or bidder's board of directors, as applicable, does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if none of the members of the subject company's or bidder's compensation committee or committee that performs functions similar to a compensation committee is independent, a special committee of the board of directors formed to consider and approve the arrangement approves the arrangement; or

(iii) If the subject company or bidder, as applicable, is a foreign private issuer, any or all members of the board of directors or any committee of the board of directors authorized to approve employment compensation, severance or other employee benefit arrangements under the laws or regulations of the home country approves the arrangement.

Instructions to paragraph (d)(2): For purposes of determining whether the members of the committee approving an arrangement in accordance with the provisions of paragraph (d)(2) of this section are independent, the following provisions shall apply:

1. If the bidder or subject company, as applicable, is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed either on a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or in an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has independence requirements for compensation committee members that have been approved by the Commission (as those requirements may be modified or supplemented), apply the bidder's or subject company's definition of independence that it uses for determining that the members of the compensation committee are independent in compliance with the listing standards applicable to compensation committee members of the listed issuer.

2. If the bidder or subject company, as applicable, is not a listed issuer (as defined in § 240.10A–3 of this chapter), apply the independence requirements for compensation committee members of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that have been approved by the Commission (as those requirements may be modified or supplemented). Whatever definition the bidder or subject company, as applicable, chooses, it must apply that definition consistently to all members of the committee approving the arrangement.

3. Notwithstanding Instructions 1 and 2 to paragraph (d)(2), if the bidder or subject company, as applicable, is a closed-end investment company registered under the Investment Company Act of 1940, a director is considered to be independent if the director is not, other than in his or her capacity as a member of the board of directors or any board committee, an ''interested person'' of the investment company, as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

4. If the bidder or the subject company, as applicable, is a foreign private issuer, apply either the independence standards set forth in Instructions 1 and 2 to paragraph (d)(2) or the independence requirements of the laws, regulations, codes or standards of the home country of the bidder or subject company, as applicable, for members of the board of directors or the

committee of the board of directors approving the arrangement.

5. A determination by the bidder's or the subject company's board of directors, as applicable, that the members of the board of directors or the committee of the board of directors, as applicable, approving an arrangement in accordance with the provisions of paragraph (d)(2) are independent in accordance with the provisions of this instruction to paragraph (d)(2) shall satisfy the independence requirements of paragraph (d)(2).

Instruction to paragraph (d): The fact that the provisions of paragraph (d) of this section extend only to employment compensation, severance and other employee benefit arrangements and not to other arrangements, such as commercial arrangements, does not raise any inference that a payment under any such other arrangement constitutes consideration paid for securities in a tender offer.

* * * * *

Dated: November 1, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18815 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–54; Re: Notice No. 54]

RIN 1513–AA89

Establishment of the Tracy Hills Viticultural Area (2003R–508P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 39,200-acre Tracy Hills viticultural area in San Joaquin and Stanislaus Counties, California, approximately 55 miles east-southeast of San Francisco. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Dates:* December 8, 2006.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Tracy Hills Petition and Rulemaking

General Background

TTB received a petition from Sara Schorske of Compliance Service of America, Inc., filed on behalf of the Brown family, owners of a vineyard near Tracy, California. The petition proposed the establishment of the 39,200-acre ''Tracy Hills'' viticultural area south and southwest of the city of Tracy, California, in southern San Joaquin and northern Stanislaus Counties. Located approximately 55 miles east-southeast of San Francisco, the proposed Tracy Hills viticultural area currently encompasses 1,005 acres of vineyards. The proposed area is not within, nor does it include, any other proposed or established viticultural area.

Originally, the petitioner submitted the name ''Mt. Oso'' for this proposed viticultural area. However, after an initial review of the petition, TTB concluded and advised the petitioner that the submitted evidence did not demonstrate, as required by § 9.3(b)(1) of the TTB regulations, that the proposed viticultural area is locally or nationally known as Mt. Oso. In response, the petitioner amended the petition to propose use of the name ''Tracy Hills'' for the proposed viticultural area. The petitioner also revised the proposed viticultural area's western boundary and submitted additional evidence to support the amended petition. We summarize below the information submitted in support of the petition.

Name Evidence

The petitioner states that the name ''Tracy,'' which is used to identify the city of Tracy, California, and its surrounding agricultural land, together with the geographical modifier ''Hills,'' accurately describes and identifies the proposed Tracy Hills viticultural area. Stating that the name ''Tracy Hills'' is ''locally and nationally associated with the proposed area,'' the petition discusses the rationale for the Tracy Hills name and offers examples of its

use for the land within the proposed viticultural area.

The petition includes copies of eight newspaper articles from the Tracy Press featuring petitioner Jeff Brown's Mt. Oso Vineyards or wines made from its grapes. The articles list the vineyard's location as Tracy, demonstrating, according to the petition, the close association between the proposed area's vineyards and the ''Tracy'' name.

However, the petition states that the use of ''Tracy'' alone for the proposed viticultural area does not accurately describe the area and would mislead consumers about the specific location of the area. The proposed viticultural area includes only a small part of the land within the Tracy city limits, and it does not include all the land surrounding the city of Tracy. Due to differences in climate, soil, water table levels, and slope, the land north, east, and southeast of Tracy is excluded from the proposed viticultural area.

Therefore, the petitioner emphasizes that it would be misleading and inaccurate to name the proposed viticultural area ''Tracy,'' without adding ''Hills'' as a modifier. In support of this usage, the petitioner cites the use of ''Valley'' as a modifier in the names of the Napa Valley viticultural area (27 CFR 9.23), which surrounds the city of Napa, and the Temecula Valley viticultural area (27 CFR 9.50), which lies outside the city of Temecula in southern California.

To further support the use of the proposed ''Tracy Hills'' name, the petitioner notes that the foothills of the Coast Range southwest of the city of Tracy are informally called ''the Tracy Hills,'' the lower elevations of which are included within the proposed viticultural area. The petition provides examples of the name's association with the proposed area.

The petition states that ''Tracy Hills'' is the name of a large real estate development located on the southwest side of the city of Tracy along either side of Interstate 580 (I–580). Part of the Tracy Hills development, the petition notes, is within the northern portion of the proposed Tracy Hills viticultural area. In 1998, the city of Tracy annexed the development, according to an article in the Stockton Record of July 7, 2004, ''Council Delays Tracy Hills Vote,'' included in the revised petition. The revised petition also included copies of, or statements from, Federal Government environmental reports from the early 1990's, a 1999 Sierra Club newsletter, and newspaper articles from the Sacramento Bee and the Tracy Press that all discuss the Tracy Hills real estate development and its location, growth, and impact on local water resources.

Also, the petition includes evidence of other references to the Tracy Hills name. For example, the petition includes a map of the proposed Northern California Passenger Rail Network. This map shows a future high-speed railroad line running through Altamont Pass and, east of the pass, a ''Tracy Hills'' station within the Tracy Hills development. The petition also includes information about the ''Tracy Hills Ride,'' sponsored by the San Joaquin Valley Rangers, a family horse/mule club (*http://www.sjvr.org*). This horseback ride begins and ends within the proposed viticultural area along State Highway 132 (Bird Road), according to club information included in the petition. A 1995 NASCAR publication, the petition states, places the reopened Altamont Raceway ''in the Tracy hills,'' while a September 29, 2003, East Bay Business Times article titled ''Sutter, Kaiser Build Up Valley Presence,'' notes that a donor gave 20 acres ''in the Tracy hills'' for a hospital.

Boundary Evidence

Located south and southwest of the city of Tracy in southern San Joaquin and northern Stanislaus Counties, California, the proposed Tracy Hills viticultural area largely lies between State Route 33 to the east and I–580 to the west, with a portion of the area reaching west of the interstate into the foothills of the Diablo Mountains. The proposed area is about 15 miles long northwest to southeast and about 5 miles wide east to west.

The portion of the Tracy Hills real estate development appropriate for viticulture, the petitioner explains, is included in the northern region of the proposed Tracy Hills viticultural area. Other parts of the proposed viticultural area lie within the San Joaquin Valley's rural agricultural lands to the southwest and south of the city of Tracy, according to the provided USGS maps and the California State Automobile Association Central California map of May 2001.

Distinguishing Features

The boundary of the proposed Tracy Hills viticultural area, according to the petitioner, encompasses viticultural features that distinguish the proposed viticultural area from the regions north, east, and southeast of the city of Tracy. According to the petitioner, these distinguishing features include the proposed area's slope, soils, and microclimate.

Slope

The proposed Tracy Hills viticultural area is nestled between the lower elevations of the floor of the San Joaquin River Valley to the east and the steeper terrain of the Diablo Range to the west; it has east-sloping terrain, as shown on the provided USGS maps. The proposed viticultural area boundary encompasses a 400-foot change in elevation and includes streams, most of a northern, east-sloping alluvial fan and part of a southern, east-sloping alluvial fan, and plains along the proposed southern boundary line, according to the petitioner and the provided USGS maps. The alluvial fans are between Lone Tree and Hospital Creeks and between Hospital Creek and Ingram Canyon Road, which parallels an unnamed intermittent creek.

The petitioner notes that the 100-to 500-foot elevation within the proposed Tracy Hills viticultural area is distinct from the surrounding areas. To the west of the proposed boundary line are the significantly higher elevations and steep terrain of the Diablo Range, as noted on USGS maps of the area. To the north and east, nearly at sea level, are the flood plains along the San Joaquin River. The proposed southern boundary line, according to the written boundary description and the Solyo Quadrangle USGS map, includes a straight line connecting the 500-foot elevation, to the southwest, with Hamilton Road on the valley floor. Hamilton Road eventually connects with McCracken Road at the proposed southeast corner.

Soils

The petitioner states that soils in the proposed Tracy Hills viticultural area formed predominantly in alluvium washed from the higher areas in the Diablo Range, beyond the proposed boundary. Although similar to the soils to the south, the petitioner explains, the alluvial soils of the proposed viticultural area are distinct from the soils formed in sedimentary rocks of the mountains to the west, the organic, peat soils to the north, and the heavy clay soils to the east.

Microclimate

The petitioner states that the proposed Tracy Hills viticultural area has a distinctive microclimate, contrasting with the climate of the surrounding region. The proposed viticultural area, the petition states, is located within the rain shadow of Mt. Oso, which is located southwest of the proposed area, in the Diablo Mountains. The effect of the rain shadow is to give the proposed viticultural area a drier

climate with less fog, dew, frost, and hail. Beyond the proposed boundary to the west, north, and south, the distinctive differences in geography and proximity to the Altamont Pass create a wetter, windier climate, according to the petition.

Notice of Proposed Rulemaking and Comments Received

On December 7, 2005, TTB published in the **Federal Register** (70 FR 72733) Notice No. 54 regarding the proposed establishment of the Tracy Hills viticultural area. We received one comment in response to that notice. The comment supported establishment of the Tracy Hills viticultural area, expressing potential increased value for wine grapes grown in the area and prevention of urban sprawl.

TTB Finding

After review of the petition and the comment received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Tracy Hills'' viticultural area in San Joaquin and Stanislaus Counties, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Tracy Hills,'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using ''Tracy Hills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.204 to read as follows:

§ 9. 204 Tracy Hills.

(a) *Tracy Hills.* The name of the viticultural area described in this section is ''Tracy Hills''. For purposes of part 4 of this chapter, ''Tracy Hills'' is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Tracy Hills viticultural area are five USGS 1:24,000-scale, topographic maps. They are titled:

(1) Tracy, Calif., 1954, photorevised 1981;

(2) Vernalis, CA, 1991;

(3) Solyo, Calif., 1953, photorevised 1971, photoinspected 1978;

(4) Lone Tree Creek, Calif., 1955, photorevised 1971; and

(5) Midway Calif., 1953, photorevised 1980.

(c) *Boundary.* The Tracy Hills viticultural area is located in southwestern San Joaquin County and northwestern Stanislaus County in the State of California. The boundary of the Tracy Hills viticultural area is as described below.

(1) The beginning point is on the Tracy map at the intersection of the Delta-Mendota Canal and Lammers Ferry Road, along the western boundary line of section 6, T3S/R5E. From the beginning point, proceed 0.4 mile generally southeast along the Delta-Mendota Canal to its intersection with the Western Pacific Railway line along the southern boundary line of section 6, T3S/R5E (Tracy map); then

(2) Proceed 5.6 miles straight east along the Western Pacific Railway line and then along Linne Road to the intersection of Linne Road and Lehman Road, along the northern boundary line of section 12, T3S/R5E (Vernalis map); then

(3) Proceed 1.5 miles straight south and then east along Lehman Road to its intersection with Bird Road at the southeast corner of section 12, T3S/R5E (Vernalis map); then

(4) Proceed 1 mile straight south along Bird Road to its intersection with Durham Ferry Road at the southeast corner of section 13, T3S/R5E (Vernalis map); then

(5) Proceed 1.9 miles straight east along Durham Ferry Road to its intersection with State Highway 33 along the northern boundary line of section 20, T3S/R6E (Vernalis map); then

(6) Proceed 5.1 miles straight southeast along State Highway 33, passing the hamlet of Vernalis, to the highway's intersection with McCracken Road along the eastern boundary of section 2, T4S/R6E (Solyo map); then

(7) Proceed 3.4 miles straight south along McCracken Road to its

intersection with Hamilton Road at the southeast corner of section 23, T4S/R6E (Solyo map); then

(8) Proceed 2.4 miles straight west along the southern boundary lines of sections 23, 22, and 21, T4S/R6E, crossing the Delta-Mendota Canal and the California Aqueduct, to the junction of the southern boundary of section 21, the 500-foot elevation line, and the westernmost transmission line, (Solyo map); then

(9) Proceed 4.2 miles generally northwest along the meandering 500-foot elevation line to section 18, T4S/R6E, where the 500-foot elevation line crosses all the transmission lines and then continues northwest a short distance to the easternmost transmission line in the northwest quadrant of section 18, T4S/R6E, (Solyo map); then

(10) Proceed 8.45 miles straight northwest along the easternmost transmission line, crossing from the Solyo map, over the Lone Tree Creek map, to the Tracy map, and continue to the transmission line's intersection with the western boundary of section 19, T3S/R5W, about 0.7 mile north-northeast of Black Butte (Tracy map); then

(11) Proceed in a straight line 2 miles northwest to this line's intersection with the 500-foot elevation line, immediately north of an unimproved dirt road, just north of the midpoint of the western boundary line of section 12, T3S/R4E (Tracy map); then

(12) Proceed 0.65 mile straight north along the western boundaries of section 12 and then section 1 to the section 1 line's intersection with Interstate Highway 580 (I–580), section 1, T3S/R4E (Tracy map); then

(13) Proceed 0.8 mile straight northwest along I–580 to its intersection with the Western Pacific Railway line in section 2, T3S/R4E (Midway map); then

(14) Proceed easterly 0.7 mile along the Western Pacific Railway line to its intersection with the eastern boundary line of section 2, T3S/R4E (Tracy map); and

(15) Proceed east for 1 mile in a straight line, returning to the beginning point.

Signed September 7, 2006.

John J. Manfreda,

Administrator.

Approved: September 23, 2006.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. E6–18894 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–019]

RIN 1625–AA09

Drawbridge Operation Regulations; S.E. Third Avenue, Andrews Avenue, Marshall/Seventh Avenue and Davie Boulevard/S.W. Twelfth Street bridges, New River and New River South Fork, Miles 1.4, 2.3, 2.7, and 0.9 at Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing the operation of the SE. Third Avenue, Andrews Avenue and Marshal (Seventh Avenue) bridges across the New River, miles 1.4, 2.3, and 2.7 and the regulations governing the operation of the Davie Boulevard (SW. Twelfth Street) bridge across the New River, South Fork, mile 0.9, Fort Lauderdale, Broward County, Florida.

DATES: This rule is effective December 8, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07–06–019) and are 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. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 22, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; SE. Third Avenue, Andrews Avenue, Marshall/Seventh Avenue and Davie Boulevard/SW. Twelfth Street bridges, New River and New River South Fork, Miles 1.4, 2.3, 2.7, and 0.9 at Fort Lauderdale, FL in the **Federal Register** (71 FR 35852). We received one comment in favor of the proposed rule.

Background and Purpose

The current regulations governing the operation of the S.E. Third Avenue and Andrews Avenue bridges are published in 33 CFR 117.313. They require the draw of the SE. Third Avenue bridge, mile 1.4 at Fort Lauderdale, to open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed at any time. The draw of the Andrews Avenue bridge, mile 2.3 at Fort Lauderdale, is required to open on signal; however, the draw need not be opened for upbound vessels when the draw of the Florida East Coast railroad bridge, mile 2.5 at Fort Lauderdale, is in the closed position for the passage of a train. The current regulation governing the operation of the Davie Boulevard (SW. Twelfth Street) bridge is published in 33 CFR 117.315 and requires the bridge to open on signal except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

The City of Fort Lauderdale requested that the Coast Guard change the operating regulations for four bridges on the New River and New River, South Fork, that we consider adding an additional half-hour to the morning and afternoon curfew hours to the SE. Third Avenue and the Davie Boulevard (SW. Twelfth Street) bridges, and that we change the operating regulations of the Andrews Avenue and Marshal (Seventh Avenue) bridges to include these curfew periods. The City of Fort Lauderdale contended that changing these periods to allow, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw not to be opened for the passage of vessels, will help alleviate the existing vehicle traffic delays.

Discussion of Comments and Changes

The Coast Guard received one response to the Notice of Proposed Rulemaking. This response consisted of a letter from Broward County stating that they believe the change will be beneficial. No changes have been made to this final rule.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of DHS is unnecessary, because the rule will allow for bridge openings before and after the curfew times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because the regulations provide for openings before and after the curfew times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.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.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.313 to read as follows:

§ 117.313 New River.

(a) The draw of the S.E. Third Avenue bridge, mile 1.4 at Fort Lauderdale shall

open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(b) The draw of the Andrews Avenue bridge, mile 2.3 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. The draw need not open for inbound vessels when the draw of the Florida East Coast Railroad bridge, mile 2.5 at Fort Lauderdale is in the closed position for the passage of a train. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

(c) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

■ 3. Revise § 117.315(a) to read as follows:

§ 117.315 New River, South Fork.

(a) The draw of the Davie Boulevard (SW. Twelfth Street) bridge, mile 0.9 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

Dated: October 24, 2006.

D.W. Kunkel,

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

[FR Doc. E6–18801 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0836; FRL–8240–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision will update Code of Federal Regulation (CFR) amendment dates, make a clarification to the state air quality rules for laundry activities listed under construction permit exemptions, and adopt the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD).

The SIP revisions are necessary for consistency with Federal regulations.

DATES: This direct final rule will be effective January 8, 2007, without further notice, unless EPA receives adverse comment by December 8, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0836, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: Hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0836. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* 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 *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide,

nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is being addressed in this document?

EPA is approving revisions to the SIP for the State of Iowa. These revisions became state effective on August 23, 2006.

A revision is being made to amend paragraph 22.1(1)''b'' (New or reconstructed major sources of hazardous air pollutants) to update the reference to the Federal rule in 40 CFR part 63 from April 15, 2002, to April 22, 2004. A clarification is being made to the exemption from construction permitting ((22.1(2)''x''(5)) for laundry activities located at stationary sources. The revision clarifies that laundry activities using dry cleaning equipment or steam boilers are not exempt.

A revision to amend subrule 22.4(1) updates the reference to EPA's modeling guidelines in 40 CFR part 51, Appendix W. This revision changes the Appendix W reference from August 12, 1996, to November 9, 2005. The main purpose of the update is to include the promulgation of the American Meteorological Society/Environment Protection Agency Regulatory Model (AERMOD), which replaces the ISC3 model. Federal regulation requires that AERMOD be implemented by December 9, 2006.

The State of Iowa also submitted revisions to the Iowa Operating Permits program; however, minor corrections need to be made and approved by the Environmental Protection Commission. Therefore, EPA will not act on the Operating Permits program revisions at this time.

Have the requirements for approval of a SIP been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA taking?

EPA is approving revisions to the SIP submitted by the state of Iowa. The Iowa Administrative Code, Chapter 22, subrule 22.1(1)''b'' is changed to update the CFR amendment dates; subrule 22.1(2)''x''(5) is amended to clarify an exemption from construction permitting, and 22.4(1) amends the SIP to include AERMOD as the preferred guideline model.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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. For this reason, 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). 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.*). 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).

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 (65 FR 67249, November 9, 2000). 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 CAA. 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. 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. 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.*).

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 January 8, 2007. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 31, 2006.

John B. Askew,

Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entries for 567–22.1 and 567–22.4 to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
*	*	*	*	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	8/23/06	11/8/2006, [insert FR page number where the document begins].	
*	*	*	*	*
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	8/23/06	11/8/2006, [insert FR page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E6–18845 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–OAR–R05–2005–OH–0005; FRL–8228–2]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on a variety of revisions to particulate matter regulations submitted by Ohio on July 18, 2000. EPA is approving revisions to the form of opacity limits for utility and steel mill storage piles and roadways. EPA is approving a modest realignment of emission limits in the Cleveland area within the constraints of a revised modeled attainment demonstration. EPA is approving formalization of existing requirements for continuous emission monitoring for certain types of facilities, criteria for the state to issue equivalent visible emission limits, and revised limits for stationary internal combustion engines. However, EPA is disapproving authority for revising emission limits for Ford Motor's Cleveland Casting Plant via Title V permit modifications. Also, EPA is deferring action on equivalent visible emission limit rules to solicit comment on certain ramifications of its proposed approval.

DATES: This final rule is effective on December 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–OH–0005. All documents in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *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 Federal holidays. We recommend that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This document is organized as follows:

I. Does This Action Apply to Me?
II. Summary of State Submittal and Proposed Rulemakings
III. Response to Comments
IV. Final EPA Action
V. Statutory and Executive Order Reviews

I. Does This Action Apply to Me?

This action applies to you if you are interested in the emission limitations applicable to airborne particulate matter in the State of Ohio. This action especially applies to you if you are interested in the emission limitations applicable to utility and iron and steel manufacturing sources in Ohio and to Ford Motor Company's Cleveland Casting Plant, to which most of the limit revisions addressed in this notice apply.

II. Summary of State Submittal and Proposed Rulemakings

Ohio adopted major revisions to its particulate matter regulations in 1991, addressing requirements of the Clean Air Act amendments of 1977 and 1990. Ohio has submitted and EPA has approved those regulations (see 59 FR 27464, May 27, 1994, and 61 FR 29662, June 12, 1996). However, several companies appealed those regulations to the State's Environmental Review Board. As a result of lengthy discussions aimed at resolving these appeals, Ohio adopted an assortment of revisions to its particulate matter regulations on December 17, 1997. Ohio submitted the revised regulations to EPA on July 18, 2000.

EPA proposed action in two parts, published respectively on December 2, 2002, at 67 FR 71515, and on August 9, 2005, at 70 FR 46127. The first notice addressed most of the State's submittal. That notice proposed to approve: (1) A redesign of the limits on visible emissions from roadways and storage pile operations at utility storage piles; (2) a similar redesign of the visible emission limits for roadways and storage piles at iron and steel facilities; (3) criteria for determining the appropriate visible emissions limit for cases where a source meets its mass emission limit but cannot comply with the standard visible emissions limit, with provision that the State may establish alternate visible emission limits according to these criteria without need for review by EPA; (4) requirements for continuous emission monitoring systems for a range of sources, and (5) miscellaneous other revisions. This notice proposed to disapprove provisions by which Ford could modify its emission limits via amendments to its Title V permit prior to EPA approval of a State Implementation Plan (SIP) revision.

The second notice of proposed rulemaking proposed to approve modification of the limits for several facilities in Cuyahoga County (the Cleveland area), including Ford, LTV, and General Chemical. Further description of the State submittal and EPA's evaluation of the submittal and its proposed action are provided in the respective notices.

The rules addressed in this rulemaking are rules that were effective in Ohio on January 31, 1998. Ohio subsequently adopted and submitted further revisions to their particulate matter regulations, effective April 14, 2003, which modify the opacity limitations for large coal-fired boilers and which make miscellaneous minor revisions. Those further revisions are being addressed in separate rulemaking, including proposed rulemaking published on June 27, 2005, and are not addressed here.

III. Response to Comments

EPA received one set of comments, from Ford Motor Company dated January 31, 2003. These comments objected to EPA's proposed action, published on December 2, 2002, proposing to disapprove a provision for Ford Motor Company to obtain revised emission limits for its Cleveland Casting Plant by means of Title V permit revisions or by new source permit. EPA received no other comments on either notice of proposed rulemaking. The following paragraphs describe Ford Motor Company's comments and provide EPA's response to those comments. For convenience, the remainder of this notice will refer to the commenter as Ford and will refer to the pertinent facility as the Cleveland Casting Plant.

Comment: Ford described its Cleveland Casting Plant at length. Later in its comment letter, Ford described the plant and its pollution control systems as complex and subject to frequent changes as production demands change. These descriptions support comments that Ford must have an expeditious process to obtain reconfigured emission limits to accommodate periodic plant reconfigurations.

Response: EPA understands the complexity of the Cleveland Casting Plant. A more detailed discussion of Ford's comments and EPA views on the need for expeditious changes in limits is provided below.

Comment: Ford delineates a history of State and federal rulemaking on Ohio particulate matter issues relevant to the Cleveland Casting Plant.

Response: In most respects the history is an accurate chronology of the identified rulemakings. One factual inaccuracy in the chronology is the statement that Ohio adopted the rules adopted in December 1996 and submitted them to EPA ''shortly thereafter''; in fact, the rules were adopted in December 1997 and were not submitted until July 2000.

A few additional elements of the chronology in the comment also warrant note. EPA proposed rulemaking on a portion of Ohio's July 2000 submittal on December 2, 2002. As stated in that notice of proposed rulemaking, at 67 FR 71516, ''[b]ased on discussions with USEPA, Ohio is conducting a further assessment of whether the revised limits in Cuyahoga County suffice to assure attainment of the annual particulate matter standard. USEPA is deferring action on these revisions pending receipt of this further assessment.'' Ohio provided further materials on February 12, 2003, January 7, 2004, February 1, 2005, and April 21, 2005. EPA then proposed to approve the Cuyahoga County limits on August 9, 2005.

This expanded chronology illustrates several points. First, attainment demonstrations can raise significant issues, such that in this case Ohio was providing supplemental material over a period of more than two years. Second, this chronology is directly relevant to the Cleveland Casting Plant, since some of the supplemental material directly pertains to this facility. Third, had EPA taken earlier action, that action presumably would have been to disapprove the limits due to inadequate support, including the limits being sought by Ford.

Comment: Section III.A of Ford's comments states, ''The flexibility in OAC 3745–17–12(I)(50) and (51) is critical to the ongoing viability of the Casting Plant.'' Ford highlights the complexity of its Cleveland Casting Plant. Ford provides a conceptual example involving two processes (labeled Process A and Process B) and two emission control systems (labeled Collector C and Collector D), noting in the example that emissions from Process A may go mostly to Collector C but may also in part to Collector D, and similarly the emissions from Process B may go partly to both collectors. Ford states as part of this example that the emission limits in the SIP reflect the existing configuration of the distribution of emissions from various processes to the various control devices. Ford states that even if, for example, Process B shut down, such that it would be more efficient to shut Collector D down and route all Process A emissions to Collector C, the SIP would prohibit that, and Ford would be required to continue operating Collector D until a SIP revision was completed.

Ford makes a few additional comments in this section of its comment letter. Ford mentions its participation in EPA's Energy Star program for energy efficiency and its commitment to pollution prevention as an implementer of the ISO 14001 program. Ford highlights its view that the revisions made under this process have no detrimental environmental effect, because the revised limits must provide for attainment just as the existing SIP does. Ford further notes that the process in Rule 3745–17–12(I)(50) and (51) do in fact provide for the opportunity for EPA, Ohio EPA, and the public to review and comment on potential revisions, and the process is simply more streamlined than ''traditional SIP revisions.''

Response: EPA does not dispute Ford's statements that the Cleveland Casting Plant is a complex facility with numerous emitting processes connected in a complex array to numerous control systems. EPA also does not dispute Ford's statements that shifts in production demands require periodic reconfigurations in plant processes. However, EPA disagrees with Ford's view that the SIP requires and can only be written in a manner that requires a specific plant configuration, and EPA disagrees with Ford's conclusion that these circumstances warrant a process that circumvents standard SIP review.

The limits for the Cleveland Casting Plant in the Ohio SIP have various formats; some limits regulate pounds per hour for a specific emission unit, some limits regulate pounds per hour for a group of emission units, a few limits regulate mass per cubic foot of exhaust gas for one or multiple emission units, and certain limits regulate the hours per day that selected units may operate. In a handful of cases, the rules specify the control system that shall be used for the identified emission unit(s). As is discussed below, EPA approved these limits but did not and does not mandate the use of any particular format so long as the limit is enforceable and helps provide for attainment.

Ford does not provide a rationale for its statement that the SIP requires a specific mode of operation. In particular, Ford's presentation of its example does not support the claim that the SIP mandates continued operation of Collector D even after shutdown of the Process A that is the principal source of emissions controlled by Collector D. This is a critical shortcoming in Ford's comments, since this statement is a fundamental basis for Ford's argument that an expeditious process for altering SIP limits is needed to accommodate changes in operations at the Cleveland Casting Plant.

Despite Ford's failure to justify its statement that the SIP requires a specific mode of operation, EPA analyzed this statement further. First, EPA examined this statement conceptually in the context of Ford's illustrative example. In the example, Ford claims that the SIP would require continued operation of Collector D even after the shutdown of Process B, and that routing all of Process A emissions to Collector C would violate the SIP. EPA examined the rules it proposed to approve and found no cases in which the rules require operation of a control device that is not receiving emissions. Also, while EPA identified cases in which the rules direct Ford to route emissions from a process to a particular collector, EPA finds no cases in which the rules direct Ford to route emissions from a process to multiple control devices, and EPA found no rules prohibiting Ford from routing zero emissions to a particular collector. Thus, EPA finds no cases in which the rules prohibit routing all emissions from a process to a single collector but instead mandate that a portion of the emissions be routed to a second collector that might otherwise be shut down.

In a few cases, the rules do require that all emissions from identified processes be routed to a particular collector. These cases are discussed below.

Continuing its examination of Ford's example, EPA assessed whether continued operation of Collector D might be indirectly required in order to achieve emission reduction requirements. Two scenarios warrant consideration: (1) Collector C has the capacity to control successfully all of Process A's emissions, and (2) Collector C does not have the capacity to control successfully all of Process A's emissions. (''Control successfully'' here means satisfying the emission limits that apply to Collector C.) In the first scenario, routing all of Process A's emissions to Collector C would create no violation of the SIP. In the second scenario, Ford would be violating the SIP. Ford has several options for remedying such a violation. Ford could improve Collector C so that it can successfully control all of Process A's emissions. Ford could reroute the requisite fraction of Process A's emissions to some other collector with the capacity to control that fraction of Process A's emissions. (Such rerouting is permissible under the SIP in virtually all cases.) Over the longer run, Ford

could propose a control strategy based on highly effective control devices that maximize the company's flexibility to increase operations at individual processes and still remain within emission limits needed to assure attainment. Similarly, unlike prior State rulemakings, Ford could recommend rules that would eliminate those few cases in which emissions from specified processes are directed to be controlled by specified control equipment.

Ford has not addressed these options for increasing its flexibility for operating the Cleveland Casting Plant in compliance with SIP limits. Therefore, Ford has not demonstrated that the desired flexibility in plant operations while complying with SIP limits can only be achieved by being granted an expedited process for revising SIP limits.

In observing that SIP revisions can be time consuming, Ford makes reference to the length of time involved in the present rulemaking completed by today's notice. EPA has several responses. First, as noted previously, and contrary to Ford's chronology, Ohio did not submit the rule package until July 2000. EPA assumes that Ohio used the time between rule adoption and package submittal to prepare materials to support the submittal and justify EPA approval. In fact, EPA's December 2002 rulemaking deferred action on the portion of the submittal addressing Cleveland area limits for the express purpose of soliciting further information regarding these limits. The limits at issue included limits for the Cleveland Casting Plant, and the supporting information that Ohio provided in January 2004 for the Cleveland Casting Plant (along with information for other facilities that Ohio provided in February 2005) provided critical justification for the August 2005 proposed action and today's final action to approve the revisions to emission limits at the Cleveland Casting Plant that are included in Ohio's submittal.

EPA commends Ford for implementing the ISO 14001 program and participating in EPA's Energy Star program. However, these actions by Ford do not support allowing changes to applicable limits without proper SIP review. Regarding the brief comments here on the review process, a later section of this notice reviews these comments together with the more elaborate comments on the subject that Ford made elsewhere in its letter.

Comment: Ford provides several comments under the heading ''US EPA's rationale for the proposed disapproval is unsupported by the text of the preamble.'' Ford characterizes EPA's concern as being ''based almost exclusively on two interrelated points: (1) A concern that authorizing revisions to the applicable emission limitations by the mechanism specified in OAC 3745–17–12(I)(50) and (51) would not satisfy the criteria in section 110 of the Act, and (2) a belief that issuing a Title V permit with an alternative emission limit would somehow revise the SIP.'' Ford states, ''Both of these concerns are unfounded.''

As a subheading under the above heading, Ford states ''Both OAC 3745–17–12(I)(50) and (51) meet the criteria of section 110 of the Clean Air Act for inclusion in the SIP. If OAC 3745–17–12(I)(50) is approved as part of the SIP, the establishment of alternative emission limits pursuant to that rule does not modify the SIP.''

Ford summarizes the SIP requirements under Clean Air Act section 110(a)(2). Ford states, ''The language in OAC 3745–17–12(I)(50) and (51) satisfies all of these requirements.'' Ford finds that EPA's notice of proposed rulemaking does not disagree; Ford observes that ''Instead, the preamble focuses on permits to be issued under OAC 3745–17–12(I)(50) * * * [and] expresses a concern that [such a permit] would somehow impermissibly revise the SIP.''

Ford continues, ''Nothing in the regulations at issue allows Ohio EPA or Ford to deviate from the Section 110 requirements concerning SIP revisions * * *. [I]f OAC 3745–17–12(I)(50) is approved as part of the SIP, the SIP would expressly permit the creation of alternative emission limits. Establishing alternative emission limits * * * pursuant to the requirements of OAC 3745–17–12(I)(50) *would not be a revision of the SIP.*'' [emphasis in original]

Response: Possibly the most important requirement of section 110 is the requirement that the SIP provide for attainment of the air quality standards. This action approves a set of specific limits for the Cleveland Casting Plant and other Cleveland area facilities that EPA is satisfied will assure attainment of the applicable particulate matter standards (specifically the standards for particles nominally 10 micrometers and smaller, known as PM_{10}). The provisions of OAC 3745–17–12(I)(50) that Ford supports state, ''Compliance with an alternative emission limitation or control requirement in effect pursuant to this paragraph shall not constitute a violation of paragraph (I) of this rule * * *.'' That is, the rule supported by Ford would allow the facility to violate limits that help assure that Cleveland will attain the air quality standards. Although the rule dictates that the alternative limits must have been demonstrated to provide for attainment, the rule provides a process that shortchanges EPA's statutory role in reviewing whether the alternate limits in fact assure attainment. Indeed, this rule must be considered to authorize establishment of alternative limits that EPA after proper review would find inadequate to assure attainment. Consequently, approval of this rule would result in a SIP that no longer assures attainment of the air quality standards, in clear contravention of section 110 of the Clean Air Act.

Ford argues at length that upon approval of OAC 3745–17–12(I)(50), the establishment of alternative limits in accordance with that paragraph would not revise the SIP. This argument is not germane, because it disputes a mischaracterized, transformed version of EPA's rationale. EPA's notice of proposed rulemaking focuses on the changes to emission limitations that would be involved in use of the rule which Ford supports. In substantive terms, OAC 3745–17–12(I)(50) would authorize Ohio to permit Ford to violate some of the limits in the SIP, so long as Ford is complying with alternate limits established by permit. In Title V terms, the emission limits are quintessential ''applicable requirements'' that must be identified in the Title V permit. EPA's notice of proposed rulemaking in a few places uses a shorthand description of the problem, describing the Ohio rule as in effect revising the SIP through use of Title V permits. Ford's objection to this shorthand description of the problem overlooks the substantive point that Ohio's rule would impermissibly use Title V permits to alter SIP emission limits, or more precisely would use Title V permits to render moot some of the emission limits in the SIP and to establish alternative limits that effectively replace the SIP limits. Under the Clean Air Act, this is not allowable.

Ford is addressing a hypothetical question, i.e., with a hypothesized SIP that contains the provisions of OAC 3745–17–12(I)(50), whether use of those provisions to establish new limitations and render moot some of the existing SIP emission limitations would constitute a revision to the SIP. Ford's question is tantamount to asking, ''If provisions in the SIP authorized revision of core SIP elements (i.e. emission limitations), would it constitute a SIP revision to implement those provisions to revise those SIP elements?'' EPA need not resolve this hypothetical question, because EPA may not approve provisions that would authorize Ohio to make unenforceable

some of the limitations established to help assure attainment.

By extension, Ford's rationale could be interpreted to suggest that rules approved into the SIP need not contain any specific emission limitations, and that it should suffice for all of the specific emission limitations to be established as part of a Title V permit, so long as a requirement exists for such limits to be demonstrated to provide for attainment. EPA clearly objects to such an approach. The Clean Air Act requires SIPs to contain specific, enforceable emission limits providing for attainment, and EPA may not approve a plan that mandates but does not specify such limits. Furthermore, the Clean Air Act clearly delineates the process by which such limits are to be established and revised, a process that OAC 3745–17–12(I)(50) would shortchange.

Comment: Ford states, ''US EPA has recognized the need for 'SIP Flexibility.' '' Ford attached a letter from EPA to Ohio that addresses negotiations regarding SIP flexibility that ultimately led to Ohio's adoption of OAC 3745–17–12(I)(50). Ford quotes from this letter to demonstrate that EPA acknowledges the need for flexibility for Ford to obtain alternative limits ''following relatively expeditious U.S. EPA review.'' Ford states, ''While U.S. EPA indicated that the Ford-Ohio EPA approach to providing flexibility deviated slightly from U.S. EPA's 'traditional policy' on 'director's discretion,' U.S. EPA never indicated that the approach did not meet the criteria of Section 110.'' Ford notes that EPA anticipated issuing a SIP Flexibility Policy offering such expeditious limit revisions, observes that the policy was apparently never issued, but nevertheless urges EPA to approve OAC 3745–17–12(I)(50) for purposes of providing such flexibility.

Response: As Ford suspects, EPA has not issued the revised policy on SIP flexibility that the quoted letter anticipated. Thus, EPA reviewed OAC 3745–17–12(I)(50) in light of existing policy, including ''traditional policy'' on ''director's discretion.'' The term ''director's discretion'' denotes state rule provisions which authorize state agencies to establish or revise source requirements in the SIP without needing approval from EPA. This term is generally applied in cases where the source requirements are significant, and EPA policy states that such provisions shortchange necessary EPA review and cannot be approved.

Ford mischaracterizes EPA's statements regarding director's discretion. Far from indicating that the deviations from director's discretion policy are ''slight,'' EPA's letter stated: ''Ford's proposal deviates from USEPA's traditional policy on 'director's discretion' in several important respects.'' EPA then identified three specific deficiencies, in brief that the proposal allows revisions without affirmative EPA concurrence, allows only a short review period, and does not address various identified issues regarding enforcement of revised limits. Since OAC 3745–17–12(I)(50) fundamentally retains the same pertinent features as the proposal (with only a modest lengthening of the still brief EPA review period), OAC 3745–17–12(I)(50) contains these same deficiencies. Ford does not comment on these identified deficiencies, and EPA continues to believe that these deficiencies warrant disapproval of OAC 3745–17–12(I)(50).

The history of the limits in OAC 3745–17–12(I) provides perspective on the degree of operational flexibility inherent in these limits. OAC 3745–17–12(I), as adopted in May 1991, included three options recommended by Ford. One of these options was labeled ''the cupola dust collection upgrade plan'' and involved improvements in pollution control equipment which would accommodate expanded production by the Cleveland Casting Plant. The other two options involved less production and less aggressive efforts at emissions control. The option ultimately recommended by Ford, and adopted by Ohio in November 1991, reflects one of these latter options. All three options involve numerous limits on the number of hours of operation of major processes at the Cleveland Casting Plant, presumably designed to match the alternate projections of plant operations. Since EPA's guidance for PM_{10} attainment demonstrations mandates assuring attainment even with full allowable emissions, limits on operating hours serve as an alternative to tighter limits on emissions as a means of requiring attainment level daily emission rates. Thus, the attainment plan that Ford recommended may be viewed as reflecting Ford's preferences as to the mix of limits on emission control levels and limits on operations.

EPA's letter identifies various means by which Ford could obtain the desired flexibility without bypassing EPA's statutory SIP review process. The letter states:

> For example, Ford should investigate strategies that apply a more uniform set of limitations that would address a broader range of operational configurations. Similarly, Ford should investigate strategies that mix further controls with less restrictive sets of operation limitations. Such approaches should be fully investigated as means of allowing Ford the flexibility to make modest operational changes while still providing adequate review of changes that could significantly affect air quality.

Ford does not comment on these approaches. EPA remains convinced that Ford has multiple options for obtaining the flexibility it desires without bypassing EPA's statutory process for reviewing revisions to limits established to assure attainment.

Comment: Ford makes a series of comments under the heading ''US EPA's White Paper Number 2 Supports the Creation of Alternative Emission Limits.'' Ford observes that this white paper provides for inclusion of alternative emission limits in Title V operating permits. Ford quotes from the white paper:

> States may revise their SIP's to provide for establishing equally stringent alternatives to specific requirements set forth in the SIP without the need for additional source-specific SIP revisions. To allow alternatives to the otherwise-applicable SIP requirements (*i.e.*, emissions limitations, test methods, monitoring, and recordkeeping) the State would include language in SIP's to provide substantive criteria governing the State's exercise of the alternative requirement authority.

Ford further quotes language from the white paper that describes a sample set of SIP language that would provide the process for implementing such a provision. Ford observes that the process in OAC 3745–17–12(I)(50) parallels this approach suggested in EPA's white paper.

Ford notes that EPA's Title V permit rules, specifically at 40 CFR 70.6(a)(1)(iii), ''provide a mechanism for states to establish alternative emission limits.'' Ford quotes language in Ohio's Title V rules (at OAC 3745–77–0(A)(1)(c)) that it believes ''tracks 40 CFR 70.6(a)'' and authorizes Ohio to establish alternative emission limits ''[i]f the applicable implementation plan so provides''. Given that EPA approved these Ohio Title V rules, and given that EPA ''advocated alternative emission limits in White Paper 2,'' Ford finds EPA's proposed disapproval of OAC 3745–17–12(I)(50) and (51) to be ''arbitrary and unreasonable.''

Response: White Paper Number 2 indeed provides the options for states to use Title V permits to ''establish *equally stringent alternatives to specific requirements set forth in the SIP*'' (emphasis added). However, Ford is seeking for Ohio to have broader authority to make more revisions than is contemplated in the white paper. If Ford were merely seeking the option to establish replacement limits that for each emission point were equally

stringent to the existing SIP limit, then there would be no need for OAC 3745–17–12(I)(50) to require modeling to demonstrate that the alternatives provide for attainment. Instead, Ford is clearly seeking for Ohio to have the authority to use Title V permits to set less stringent limits for some emission points and more stringent limits on other sources. Indeed, OAC 3745–17–12(I)(50) expressly provides that Ford need not meet the existing SIP limits so long as it is meeting the alternative limits in a permit, a provision that clearly anticipates some replacement limits being less stringent than the corresponding specific requirements of the current SIP. Thus, the language of White Paper Number 2 as quoted by Ford does not provide for the types of revisions to limits that Ford is contemplating.

Ford may believe that White Paper Number 2 may be construed to encourage use of Title V permits to establish sets of limits that collectively are equivalent to a set of limits in the SIP. Ford would presumably argue that any combination of limits for the Cleveland Casting Plant that suitable modeling shows to provide for attainment may be considered equivalent to the attainment plan limits in the SIP. However, the language of the white paper as quoted by Ford makes clear that revisions that may arguably be collectively equivalent but do not provide equivalence for each individual limit are outside the scope of this white paper.

Conceptually, the Clean Air Act provides complementary but distinct roles and processes for establishing limits under Title I and compiling limits under Title V. Title I establishes a variety of requirements, including the requirement for emission limits and other limitations sufficient to provide for attainment. Title I further provides a process by which states must submit such limitations to EPA, EPA is to evaluate the completeness of submittals, and then EPA is granted 12 months to review and rulemaking on complete submittals. Title V, by contrast, provides for permits that tabulate the existing SIP requirements that apply to an existing source, following a more expedited process based on the statutory presumption that these permits will not be altering the limitations or other provisions by which the state has met Title I requirements. EPA believes that Title V permits provide a suitable mechanism for certain limited housekeeping operations such as clarification of existing limits or recordkeeping requirements for a specific site, and establishing periodic compliance monitoring. OAC 3745–17–12(I)(50) is fundamentally contrary to the Clean Air Act in seeking to authorize potentially sweeping revisions in the limitations Ford is subject to for Title I purposes based on a process designed for the far more narrow purposes of Title V.

Ford's comments focus on the timetable for review of SIP revisions versus for review of Title V and new source permits, and so this was a focus of EPA's review of Ford's comments. However, another important distinction between these two review processes is the consequences of EPA inaction. In permit review, if EPA chooses not to review a permit, the state may issue the permit. However, under Section 110(k), if EPA takes no action on a SIP revision request, the SIP is not revised. This contrast reflects a statutory distinction between the level of review needed to compile applicable requirements (or, for new sources, to set specific limitations in accordance with established rule requirements) and the level of review needed to establish or revise those requirements. Thus, the fact that OAC 3745–17–12(I)(50) would provide for revisions to take effect unless EPA acts to object is a serious deficiency of this rule.

Comment: Ford states that it undertakes frequent alterations of the Cleveland Casting Plant that, if OAC 3745–17–12(I)(50) is disapproved, would require SIP revisions. To illustrate this point, Ford provided as an attachment to its comments an annotated copy of OAC 3745–17–12(I) that delineates relevant revisions to the facility.

Response: An examination of the alterations identified by Ford shows that a majority of the identified changes are shutdowns of specific emission units. Clearly, emission units that are shut down and have zero emissions are complying with the applicable emission limits. Thus, Ford has no need of a SIP revision to accommodate these plant alterations.

The next most common type of alteration identified by Ford in this comment is a change in the description of an emission unit. For example, the emission unit identified in the rule as P909 is apparently now identified as P413, with no change and no apparent request for a change in the emission limit. For other examples as well, Ford provides no evidence that changes in the unit description signify any increase in emissions or any kind of violation of any emissions limit or other limitation.

Some of the noted alterations are modifications of sources, which presumably were subject to the new source review process. New source review provides its own process for assuring that plant modifications do not cause violations of air quality standards, a process that maintains or if necessary lowers the limit on other sources to provide continued attainment. Ford does not need a separate process to address such source modifications. Furthermore, Ford's descriptions suggest that even in these cases there was no increase in emissions or emission limits at any emission point.

Ford identifies a handful of additional plant alterations in the comment. Some alterations involve control of previously uncontrolled emissions, which as expected apparently does not result in Ford exceeding any emission limits or otherwise emitting more at any emission point. Other alterations involve rerouting of emissions, again with no apparent increase in allowable emissions at any emission point or violation of any limitations.

In summary, none of the plant changes identified by Ford appears to result in any emission increase at any location or to make compliance with any limit any more difficult. Also, Ford has not identified any other plant alterations that they have foregone due to concerns about complying with existing limits. Thus, Ford's information on plant alterations indicated no need for revisions of the SIP limits that are being approved today. Therefore, it appears the information on plant alterations does not support Ford's claim that frequent modifications of the Cleveland Casting Plant require an expedited process for revising applicable emission limits.

Comment: Ford makes a series of comments under a heading ''US EPA's proposed disapproval would create significant practical difficulties for all involved.'' First, Ford states, ''Since Ohio EPA adopted OAC 3745–17–12(I)(50) and (51) in 1996, Ford has availed itself of the flexibility provisions in that rule many times.'' Ford asserts that ''[d]isapproving this rule results in the need to revise the SIP to address these changes [in operations at the Cleveland Casting Plant].'' Ford comments that it ''prepared its Title V permit application based on the revised emissions limits that have resulted * * *.'' Finally, Ford expresses the view that ''site-specific SIP requirements, such as the ones applicable to Ford, should not require more scrutiny than is given to a typical new source construction permit or a facility-wide Title V operating permit.'' Ford recommends instead that EPA accept use of these permitting approaches that would apply the ''same

level scrutiny'' to revisions of limits for the Cleveland Casting Plant.

Response: As discussed above, although Ford provided an extensive delineation of plant alterations that do not require limit revisions, Ford has not identified any specific SIP limits that the Cleveland Casting Plant, operated as Ford would like to operate it, would violate in the absence of a SIP revision. Thus, even if EPA were to accept Ford's view that an intended operational mode that violates SIP limits translates into a need for a SIP revision, it appears that operation in such a mode has not occurred in the last several years.

Ford presumably understands that in the absence of a SIP revision, EPA judges compliance with the existing SIP. By claiming to have availed itself of ''flexibility'' in the State rule, Ford would appear to be claiming that it is violating the SIP. However, given the nature of the plant alterations described by Ford, it is not clear that such violations have occurred.

Ford makes an interesting recommendation, for EPA to address site-specific SIP revisions according to the same process as new source permits or Title V permits. However, this recommendation overlooks the distinctions in the nature of the issues that arise in these varying contexts. Title V permits are intended primarily simply to compile existing applicable requirements, so that these permits are expected not to raise fundamental issues about how the state is assuring attainment. While new source permits occasionally raise issues about assurance of attainment, these permits generally focus on other requirements, notably including control technology requirements and offset requirements (in nonattainment areas), that minimize the potential for attainment planning issues to arise. It is for this reason that the Clean Air Act and EPA's implementing regulations identify distinct review processes for existing source and new source permits versus for attainment plans, allowing permit review under an expedited timetable and allowing issuance in the absence of EPA objection but authorizing much longer review of attainment plans and providing that such revisions occur only with affirmative EPA action.

Comment: Ford concludes that establishment of a streamlined mechanism for establishing alternate emission limits ''is what White Paper 2 anticipated.'' Further, ''[i]t is what the Title V rules provide for. It is logical and reasonable, and is supported by both science and law.'' Ford continues: ''Conservative modeling analyses and available ambient air quality monitoring data confirm that the PM–10 emission limits applicable to Ford's operations will ensure ongoing attainment.'' Under these circumstances, Ford urges that EPA approve OAC 3745–17–12(I) in its entirety.

Response: EPA concludes that actions that alter the emission limits must be subject to the full SIP review provided for in Clean Air Act section 110(k). The existence of a requirement for a modeled attainment demonstration does not lessen the need for EPA to review each attainment demonstration on a case by case basis. EPA may not shortchange this review by allowing alteration of the applicable limits by a Title V or a new source permitting process.

IV. Final EPA Action

EPA is approving most elements of Ohio's particulate matter SIP revisions submitted July 18, 2000. EPA is approving revisions in Rule 3745–17–01 and 3745–17–11 that revise limits for stationary internal combustion engines. EPA is approving revisions to Rule 3745–17–03, which include revisions to test methods associated with various rules identified in the paragraphs that follow. This rule, in particular Rule 3745–17–03(C), also requires that sources subject to Appendix P of 40 CFR 51 install, satisfactorily operate, and report results from continuous emission monitoring systems. In conjunction with this action, EPA is removing from the SIP the now-expired permits that Ohio previously submitted to satisfy Appendix P.

EPA is approving revisions to Rule 3745–17–04, requiring immediate compliance with the newly adopted limitations in other rules being approved. EPA is approving revisions to Rule 3745–17–07 which, in combination with test method revisions in Rule 3745–17–03, provide a reformulated but equivalent set of limitations on fugitive dust from iron and steel and from utility facilities. EPA is also approving revisions in Rule 3745–17–07(B)(9) and (B)(10), related provisions in Rule 3745–17–08 (providing revised limits on fugitive dust at the Ford facility), and Rule 3745–17–11(B)(6) that specify emission limits for the Cleveland Casting Plant and for the ISG facility. EPA is approving most of the revisions in Rule 3745–17–12, including all of the Cuyahoga County emission limits contained in this rule. EPA is approving revisions to Rule 3745–17–13, which replace fugitive emission limitations for the Wheeling-Pittsburgh Steel Company facility with requirements that the facility follow specified practices to limit fugitive emissions. EPA is approving revisions to Rule 3745–17–14 that bring this rule into conformance with the approved contingency plan. (The approved rule also excludes a guidance statement that was not previously part of the SIP.)

EPA is disapproving Rule 3745–17–12(I)(50) and 3745–17–12(I)(51), which would allow Ohio to incorporate a revised set of emission limits for Ford Motor Company's Cleveland Casting Plant into either a Title V permit or a new source permit. EPA has concluded that this type of revision to applicable limitations must be subject to the review process under section 110 of the Clean Air Act for revisions to state implementation plans. Final disapproval of these paragraphs does not start any sanctions clock. This submittal was not needed to meet any provision of the Clean Air Act. Disapproval of these paragraphs simply prevents the addition of these paragraphs to Ohio's state implementation plan and does not constitute a plan deficiency that under section 179 of the Clean Air Act would need to be remedied to avoid sanctions.

EPA is deferring action on revisions in Rule 3745–17–07 relating to equivalent visible emissions limits. These revisions provide detailed criteria for issuance of such limits, and provide that limits that Ohio issues in accordance with these criteria need not be subject to formal EPA review to alter the federally enforceable limits. EPA intends to publish a separate proposed rulemaking notice soliciting comment on the ramifications of these revisions for previously approved equivalent visible emission limits.

V. 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 Concerning Regulations 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 (65 FR 67249, 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 Risks 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 January 8, 2007. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 19, 2006.

Gary Gulezian,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, 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 KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(134) and removing and reserving paragraph (c)(88) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(134) On July 18, 2000, the Ohio Environmental Protection Agency submitted revised rules for particulate matter. Ohio adopted these revisions to address State-level appeals by various industry groups of rules that the State adopted in 1995 that EPA approved in 1996. The revisions provide reformulated limitations on fugitive emissions from storage piles and plant roadways, selected revisions to emission limits in the Cleveland area, provisions for Ohio to follow specified criteria to issue replicable equivalent visible emission limits, the correction of limits for stationary combustion engines, and requirements for continuous emissions monitoring as mandated by 40 CFR part 51, Appendix P. The State's submittal also included modeling to demonstrate that the revised Cleveland area emission limits continue to provide for attainment of the PM_{10} standards. EPA is disapproving two paragraphs that would allow revision of limits applicable to Ford Motor Company's Cleveland Casting Plant through permit revisions without the full EPA review provided in the Clean Air Act. EPA is also deferring action on revisions relating to equivalent visible emission limits.

(i) Incorporation by reference.

(A) The following rules in Ohio Administrative Code Chapter 3745–17 as effective January 31, 1998: Rule OAC 3745–17–01, entitled Definitions, Rule OAC 3745–17–03, entitled Measurement methods and procedures, Rule OAC 3745–17–04, entitled Compliance time schedules, Rule OAC 3745–17–07, entitled Control of visible particulate emissions from stationary sources (except for revisions to paragraphs C and D), Rule OAC 3745–17–08, entitled

Restriction of emission of fugitive dust, Rule OAC 3745–17–11, entitled Restrictions on particulate emissions from industrial processes, Rule OAC 3745–17–13, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and OAC 3745–17–14, entitled Contingency plan requirements for Cuyahoga and Jefferson counties.

(B) Rule OAC 3745–17–12, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, as effective on January 31, 1998, except for paragraphs (I)(50) and (I)(51).

(ii) Additional material.

(A) Letter from Robert Hodanbosi, Chief of Ohio EPA's Division of Air Pollution Control, to EPA, dated February 12, 2003.

(B) Telefax from Tom Kalman, Ohio EPA, to EPA, dated January 7, 2004, providing supplemental documentation of emissions estimates for Ford's Cleveland Casting Plant.

(C) Memorandum from Tom Kalman, Ohio EPA to EPA, dated February 1, 2005, providing further supplemental documentation of emission estimates.

(D) E-mail from Bill Spires, Ohio EPA to EPA, dated April 21, 2005, providing further modeling analyses.

[FR Doc. E6–18788 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 06–132, FCC 06–132]

Petition of Mid-Rivers Telephone Cooperative, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission concludes that Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) should be treated as an incumbent local exchange carrier (LEC) in the Terry, Montana local exchange (Terry exchange). The Commission also concludes that Mid-Rivers' operations in the Terry exchange should remain subject to existing competitive LEC regulation for interstate purposes pending further Commission action. In addition, the Commission concludes that Qwest, the legacy incumbent LEC in the Terry exchange, should be subject to non-dominant regulation for its interstate telecommunications services in that exchange pending further action.

DATES: Effective October 11, 2006.

FOR FURTHER INFORMATION CONTACT: Adam Kirschenbaum, (202) 418–7280, Competition Policy Division, Wireline Competition Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 02–78, adopted August 31, 2006, and released October 11, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

People with Disabilities: Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Synopsis of the Report and Order

The Commission concludes that Mid-Rivers satisfies the three-part test in section 251(h)(2) and should be treated as an incumbent LEC for purposes of section 251. Specifically, the Commission finds that the Terry exchange is the appropriate area for consideration under section 251(h)(2)(A), that Mid-Rivers occupies a market position comparable to that of a traditional legacy incumbent LEC in the Terry exchange, that Mid-Rivers has ''substantially replaced'' Qwest in the Terry exchange, and that treating Mid-Rivers as an incumbent LEC for purposes of section 251 in the Terry exchange is consistent with the public interest. The Commission expects that the treatment of Mid-Rivers as an incumbent LEC for purposes of access charges, universal service support and other purposes will be addressed, as appropriate, in conjunction with the study area boundary waiver request that Mid-Rivers has stated it plans to file. Thus, Mid-Rivers remains subject to existing competitive LEC non-dominant regulation for its interstate telecommunications services pending further Commission action.

Further, the Commission reduces the extent of regulation applicable to Qwest's interstate services in the Terry exchange. In the Notice of Proposed Rulemaking, 69 FR 69573, November 30, 2004, the Commission sought comment on the appropriate regulatory treatment of Qwest if the Commission found Mid-Rivers to be an incumbent LEC under section 251(h)(2). In light of the record in the proceeding, the Commission concludes that Qwest should be treated as a non-dominant carrier in the Terry exchange for purposes of its interstate service offerings. If Qwest chooses, however, it may continue to operate pursuant to dominant carrier regulation since this might be more convenient for administrative purposes given the very small number of lines involved. If Qwest operates under non-dominant carrier regulation in the Terry exchange, to preserve the status quo pending further agency action, the Commission caps Qwest's carrier-to-carrier interstate switched exchange access rates in the Terry exchange at their level on the date the Commission adopted this Order. Qwest may, however, lower these rates subject to compliance with non-dominant carrier regulatory requirements. Additionally, Qwest may request additional deregulation in the Terry exchange by filing a formal petition for forbearance consistent with the relevant Commission rules, although it has not yet done so.

Paperwork Reduction Act

This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking, 69 FR 69573, November 30, 2004. The Commission received no comments regarding the IRFA.

In conformance with the RFA, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Our rule treating Mid-Rivers as an incumbent LEC pursuant to section 251(h)(2) will

affect only Mid-Rivers directly. Even if Mid-Rivers can be classified as a small entity, it does not constitute a ''substantial number of small entities'' for purposes of the RFA. In addition, we accord non-dominant carrier status to Qwest's interstate telecommunications operations in the Terry exchange and cap Qwest's carrier-to-carrier switched access rates in the Terry exchange at their levels as of the date of adoption of this Order. We note that Qwest is not a small entity. In addition, it appears that our actions with regard to Qwest fall outside the scope of the RFA because they are rules of particular applicability involving rates and pricing. See generally 5 U.S.C. 601(2).

Ordering Clauses

Accordingly, *It is ordered,* pursuant to section 251(h)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 251(h)(2), and § 51.223 of the Commission's rules, 47 CFR 51.2223, that Mid-Rivers Telephone Cooperative, Inc. will be treated as an incumbent local exchange carrier for purposes of section 251 in the Terry, Montana exchange, as described herein.

It is Further Ordered that Qwest is relieved of its dominant carrier status for its interstate telecommunications services in the Terry exchange as described herein.

It is Further Ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18770 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2061; MB Docket No. 06–50; RM–11316]

Radio Broadcasting Services; Carrizo Springs, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for rulemaking filed by Jeraldine Anderson d/b/a Carrizo Springs Broadcasting requesting the allotment of Channel 295A at Carrizo Springs, Texas. The coordinates for Channel 295A at Carrizo Springs, Texas, are 28–27–00 NL and 99–50–30 WL. There is a site restriction 8.1 kilometers (5.1 miles) south of the community. A counterproposal filed by Linda Crawford is dismissed as defective.

DATES: Effective December 4, 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. 06–50, adopted October 18, 2006, and released October 20, 2006. The *Notice of Proposed Rulemaking* proposed the allotment of Channel 295A at Carrizo Springs, Texas. 71 FR 14444, March 22, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed 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 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 295A at Carrizo Springs, Texas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18693 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 71, No. 216
Wednesday, November 8, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV05–373]

RIN 0581–AC53

Amendments to Regulations Under the Perishable Agricultural Commodities Act (PACA) To Ensure Trust Protection for Produce Sellers When Using Electronic Invoicing or Other Billing Statements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA) to ensure that the status of sellers of perishable agricultural commodities as trust creditors is protected when electronic data interchange (EDI) or other forms of electronic commerce are used to invoice buyers. Specifically, the proposed amendments would require a buyer licensed under the PACA or his third party representative to accept the PACA trust notice submitted to it by a seller on a paper, electronic invoice, or other billing statement. In addition, the buyer must allow sufficient data space for the required trust language regardless of the billing medium. Finally, any failure, act or omission inconsistent with this responsibility is unlawful and a violation of the PACA. Comments are being sought from the public, but in particular, from buyers and sellers of fruit and vegetables and vendors/software developers of electronic billing systems.

DATES: Written or electronic comments received by January 8, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA Trust Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington, DC 20250–0242

(2) Fax: 202–720–8868.

(3) E-mail comments to *Dexter.Thomas@usda.gov*.

(4) Internet: *http://www.regulations.gov*.

Instructions: All comments will become a matter of public record and should be identified as ''PACA Trust Comments.'' Comments will be available for public inspection at the Agricultural Marketing Service at the above address or over the Agency's Web site at: *http://www.ams.usda.gov/paca*. Web site questions can be addressed to the PACA Webmaster, *Dexter.Thomas@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Karla Whalen, Section Head, Trade Practices Section, or Phyllis Hall, Senior Marketing Specialist, Trade Practices Section, 202–720–6873.

SUPPLEMENTARY INFORMATION:

Background of PACA and Trust Provisions

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. The law also provides a forum to adjudicate or mediate commercial disputes. Licensees who violate the PACA may have their license suspended or revoked, and principals of such a licensee are restricted from employment or operating in the produce industry for a period of time.

The PACA also imposes a statutory trust for the benefit of unpaid suppliers or sellers on perishable agricultural commodities received and accepted but not yet paid for, and may encumber products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

In the case of a business failure or bankruptcy of an entity subject to PACA, the debtor's inventory and receivables (PACA trust assets) are not property of the estate and are not available for general distribution until the claims of PACA creditors who have preserved their trust rights have been satisfied. Because of the statutory trust provision, PACA trust creditors who have preserved their trust rights with the appropriate written notices, including sellers outside of the United States, have a far greater chance of recovering the money owed to them should an entity subject to PACA go out of business. The PACA trust provisions protect producers and the majority of firms trading in fruits and vegetables as each buyer of perishable agricultural commodities in the marketing chain becomes a seller in its own turn.

In 1995, the PACA was amended to provide that licensed sellers of fresh and frozen fruits and vegetables may provide notice to buyers of their intention to preserve trust benefits by including specific language on invoice and billing documentation. The required language reads: ''The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.'' (7 U.S.C. 499e(c)(4)).

Amendment of PACA Regulations To Allow for Electronic Invoicing

The PACA regulations (7 CFR 46.46(a)(5)) were amended in 1997 to state that electronic transmissions are considered ''ordinary and usual billing and invoicing statements'' within the meaning of Section 5(c)(4) of the PACA. Under current regulations, unpaid PACA licensed sellers or suppliers of fresh and frozen fruits and vegetables may provide notice to buyers of their intention to preserve their trust rights by including the specified language contained in Section 5(c)(4) of the PACA on their billing or invoice statements, whether paper documentation or electronic transmissions. Alternatively, as provided in the PACA and regulations, sellers (licensed or non-licensed) may satisfy the notice requirement by

sending the buyer a separate detailed notice of their intent to preserve trust benefits within thirty (30) days of payment default. Whichever method of notice is used to preserve trust benefits, in order to claim the benefit of the trust, payment terms may not exceed 30 days from date of acceptance.

Since the amendment to the regulations, a number of produce sellers have voiced concern that their PACA trust rights may not be preserved if: (1) The buyer/buyer's agent either willfully or through oversight does not receive the entire electronic transmission (*i.e.*, electronic invoice); (2) the buyer/buyer's agent does not download the trust information; (3) the buyer/buyer's agent does not opt to receive the information; (4) the buyer/buyer's agent does not buy the data field that allows the inclusion of the trust language; or (5) the EDI service provider does not translate the field that contains the trust language. Additional concerns have been expressed that the alternate method of trust notice (*i.e.*, separate trust notice letter) is not being accepted by some buyers who require electronic invoicing. Others in the industry have expressed concern about being charged a fee by the buyer to accept the notice to preserve their trust benefits with an electronic invoice, a paper invoice, or separate trust notice.

Advanced Notice of Proposed Rulemaking

AMS published an Advanced Notice of Proposed Rulemaking in the **Federal Register** on January 30, 2006, (71 FR 4831) seeking comments on whether, and if so, how to amend the PACA regulations to address industry concerns regarding electronic invoicing. The Advance Notice of Proposed Rulemaking invited comments on: (1) The types of problems that may need to be addressed by new regulatory language; (2) any technological barriers and solutions; (3) any additional costs likely to be associated with appropriate regulations, and opinions regarding who should bear such costs; (4) whether the Agency should by regulation define electronic invoicing methods that must be made available by licensed buyers, (*e.g.*, creating a separate field for trust notice language in electronic invoices); (5) whether buyers should be required to accept separate notices (*i.e.*, electronic or paper PACA trust) without restriction or charge; and (6) other related issues and suggestions. The comment period ended on March 16, 2006.

Discussion of Comments

During the comment period, AMS received 65 comments. Sixty-two comments favor amending the regulations to clarify electronic invoicing practices so that sellers have the same protection when using electronic invoicing as that afforded through traditional paper invoices. Two comments suggest creating a blanket trust notice. One comment did not believe that regulatory action was necessary. The major subject areas of these comments are discussed below.

Modifying Regulations Necessary To Preserve Trust Protection

Of the sixty-two comments in favor of amending the regulations, fifty-one comments were basically identical in form and substance. These comments were submitted by growers/shippers of fresh fruits and vegetables. They encourage AMS to amend the regulations to clarify that shippers have the same statutory trust protections when invoicing electronically as when invoicing using traditional paper invoices. Comments also state that the regulations need to be changed to adapt to evolving industry practices and provide protection to shippers when invoicing electronically. These commentors did not give suggestions on how to modify the regulations.

There has been uncertainty industry-wide about electronic billing and the assurance of statutory trust protection. The 1997 amendment to the PACA regulations serves to accommodate changes in the marketplace as well as advances in technology. However, the industry has continued to express concern about the potential danger that a notice seeking to perfect trust rights may not be effective if the shipper/seller is invoicing electronically. There is strong industry support for changing the regulations to eliminate this perceived risk and to avoid a potential challenge to trust protection in light of recent produce company bankruptcies in the tens of millions of dollars. AMS agrees with the commentors that the regulations should be modified to clarify that shippers are provided the same statutory trust protection whether they invoice electronically or use paper documentation and to ensure that buyers/receivers do not hinder the sellers' claim of trust protection.

Mandatory Acceptance of Trust Language

Another issue addressed by a number of commentors is whether the buyer must be required to accept, or should be deemed to have accepted the trust language in its electronic transactions. Comments from fifty-one growers/shippers of fresh fruit and vegetables support modifying the regulations so that it is mandatory and not discretionary for a buyer to accept the trust notifications received from its sellers. Specific comments are detailed below.

One trade association supports modifying the regulations to protect sellers who invoice electronically and to allow coverage under the trust on all electronic transmissions. This commentor further states that it should be mandatory, not discretionary, for the buyer to accept the notice to preserve trust benefits whether received on paper or electronically.

One trade association believes that any new regulation should ensure that the trust protection language included on an electronic invoice be considered as accepted whether or not the customer or a third party service provider elects to receive, relay or download such language and that all of the seller's electronic invoices to its customer shall be subject to trust protection. This commentor believes a new regulation need only establish a mechanism for the seller to notify the buyer of its intent to preserve its trust rights.

Another trade association explains that a seller cannot be sure the trust notice transmits to the buyer when using electronic invoices because some buyers have expressed a desire to avoid including the required language in the electronic billing format. This commentor states that the PACA requires growers' agents to preserve trust benefits but that they are confronted with billing systems that fail to provide assurance of the transmission of the trust notice.

One shipper maintains that its buyers require it to exclusively invoice electronically and will not accept paper invoices. This commentor believes the trust language is being dropped or excluded at the buyer's discretion from the electronic invoice program.

One law firm explains that while current PACA regulations provide that sellers can preserve their trust rights by including the trust language on their electronic invoices, some purchasers are not allowing a field for the trust language in their electronic format. This commentor further explains that a few buyers are not allowing the sellers to send any paper documentation related to the sales and are charging the sellers a fee if paper documents are sent, thus inhibiting the sellers from preserving their trust rights.

Finally, one trade association noted that the intent of Congress when

creating the PACA trust was to protect the sellers of produce.

We agree that the PACA requires any buyer operating subject to the Act to accept the trust notifications received from its seller/supplier whether they be in paper or electronic format. However, the seller must meet the statute's requirements for preserving its trust benefit, including using the specific language required by the statute. If invoicing electronically, the seller must be able to verify that the electronic invoice was sent to the buyer and that it contained the PACA trust notice.

The amended regulations provide assurance to the sellers that they will have the same protection when invoicing electronically as through traditional paper invoices whether or not the buyer accepts the trust notice.

Failure To Accept Trust Notices Is an Unfair Practice

Another issue raised by a number of commentors is that the buyer's failure to accept the trust language should be considered an unfair trade practice. Some specific comments on this topic follow.

One trade association believes that since electronic billing serves as an ordinary and usual billing method, action to defeat the trust by blocking the transmission of the trust language would be a violation of a buyer's duty.

One trade association asserts that a buyer's attempt to inhibit the seller's effort to preserve PACA rights by creating a billing system that does not accept the mandated language, would be an unfair trade practice.

Another trade association believes that attempts at trust avoidance should be considered failure to maintain the trust or failure to perform other express or implied specifications or duties. Further, this commentor states that actions which attempt to undermine perfection of the trust should be considered a failure to maintain the trust as much as dissolution of trust assets.

We agree that any attempt to preclude the seller from preserving its trust rights is an unfair trade practice and a violation of Section 2(4) of the PACA. The requirements of the PACA trust cannot be lawfully circumvented through the use of a technological change in how a business invoices for the purchase and sale of fruits and vegetables. As one commentor states:

''No technology should impair the trust or change the way buyers and sellers use the trust.''

This commentor further states that:

''* * * technologies must enable sellers to notify buyers of trust benefits preservation, and they must do so in such a way that sellers can comply fully, including being able to show that they have filed a notice (either electronically or documentary) to preserve trust rights with the buyers.''

Trust Protection When Using a Third Party

An additional subject addressed in a few comments was the effectiveness of enforcing the trust when either the buyer or the seller uses a third party agent or service provider.

Since all of the information contained on the electronic invoice is not flowing directly from the seller to the buyer when a seller is using a third party vendor, one commentor expressed concern that the buyer could argue that the seller did not preserve its trust rights because the trust language was not sent directly to the buyer. This commentor also asserts that some buyers or their third party vendors may be stripping out the statutory trust language from electronic invoices. Therefore, the commentor argues that when the sellers send the trust preservation notice electronically to the third party vendor, the buyer could potentially argue that the seller did not preserve its trust rights because the buyer did not actually receive the trust language.

When a buyer uses a third party vendor or agent on its behalf to facilitate the electronic invoicing process, the third party vendor, acting as the buyer's agent receives the trust notice on behalf of the purchaser. Trust protection logically flows to and from the principals directing the transactions. The law requires certain actions of the seller to preserve its rights and obligates the buyer to hold all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment has been received. Although buyers may generally hold these trust assets in a floating trust without specific identification, sellers may seek the establishment of a trust account to prevent dissipation of the trust upon a proper showing in a court action brought on the trust. As both buyer and seller often use agents in produce transactions, the proposed amendment to the regulation permits the giving and receiving of the required notice through such third party agents or electronic service providers. Thus, the proposed amendment to the regulation assures that a purchaser utilizing a third party agent or service provider does not negate the perfection of the trust, because the purchaser itself does not receive the notice. If the purchaser's agent, acting for and on behalf of the purchaser receives the notice, then the purchaser has received the notice.

Trading Partner Agreements

A few comments suggest that to facilitate the preservation of trust protection through electronic commerce, the regulation should allow for a trading partner agreement to cover all transactions between the parties under the trust.

For instance, one commentor suggests creating a blanket trust notice in a Trading Partner Agreement (TPA). The commentor explains that this type of agreement is signed before parties begin exchanging information electronically and essentially takes care of the language found on various documents (including invoices) and therefore would reduce costs on electronic transactions since the charges are based on the number of characters transmitted. This commentor wants USDA to determine if a TPA can be considered binding under the PACA and applicable to all electronic transactions.

Another commentor suggests that USDA create a TPA drafted specifically to preserve the seller's trust rights. The commentor explains that the content of the TPA should be developed by USDA with no clause in it for renewal. The commentor suggests the regulation be clear that the receiver does not have the right to refuse to enter into a TPA.

This blanket trust notice or Trading Partner Agreement suggestion may not be adopted, however, since the statutory language that creates the PACA trust expressly sets forth the two permitted methods of preserving trust interests by written notice. (See 7 U.S.C. 499e(c)(3)(4).) Either the required language must be on each sales invoice or other billing statement issued by a PACA licensee, or there must be a written notice filed after single or multiple transactions that is timely [within 30 days of the date payment is due in transactions without extended payment terms] to each transaction for all transactions to be protected.

Financial Impact/Costs

Several commentors point out that protection under the trust is critical to the financial well-being of sellers.

The issue of the cost of trust protection through electronic commerce was addressed by a number of commentors.

One of the commentors believes it is critical that AMS become actively

involved in proposing new regulatory language that provides a secure, predictable and consistent manner by which sellers may preserve their trust rights. This commentor states that it is critically important that businesses have a clear-cut, low-cost method of preserving PACA trust rights in electronic transactions and sees no technological barriers and no increased costs to buyers or sellers since the technology is already in place. This commentor believes that no financial barriers should be placed upon sellers either through regulation or from buyers in order to preserve their PACA trust rights.

Another commentor asserts that PACA must set forth clear and unambiguous rules and regulations to protect the seller. This commentor argues that this clarity will then lower costs. This and other commentors believe that Congress intended the trust to favor sellers over buyers, in effect, imposing costs on buyers to protect sellers.

AMS believes it is unwise for the amended regulation to define for the industry how to manage the cost of their business dealings. Each business and transacting party must make its own decision as to when to enter into a transaction and how best to cover the costs of such a deal.

Suggested Language for Amending the Regulations

Comments by three trade associations and two distributors offer strong support for modifying and streamlining the regulations for electronic invoicing practices. They advocate keeping the regulations as simple as possible. They suggest almost identical language to amend the regulations at Section 46.46(f)(3). The first is as follows:

''Licensees may choose an alternative method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, whether documentary or electronic, contain the following statement at the time of mailing or transmission to the buyer, irrespective of whether or not the buyer downloads, receives, or accepts such statement.''

The other suggestion is as follows:

''Licensees may choose an alternative method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, whether documentary or electronic, contain the following statement at the time of mailing or transmission to the buyer, irrespective of whether or not the buyer provides a field for including such statement or downloads, receives, or accepts such statement.''

Another commentor suggests amending the regulations as follows:

''* * * the licensee's invoice or other billing statement, whether documentary or electronic, contain the following statement at the time of mailing or transmission to the buyer, regardless of whether or not the buyer downloads, receives, or accepts such statement.''

While each of these suggested amendments to the regulatios has merit, USDA is suggesting slightly different language as noted in the proposed revisions to follow.

Executive Orders 12866 and 12988

This proposed 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.

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

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. There are approximately 15,000 firms licensed under the PACA, many of which could be classified as small entities.

The proposed regulation clarifies how to preserve the trust benefit when using electronic invoicing. The use of electronic invoicing would provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights, thereby reducing the time and expense associated with preserving trust rights under the PACA.

Given the preceding discussion, AMS has made an initial determination that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this proposed rule were approved under OMB number 0581–0031 on October 5, 2004, and expire on October 31, 2007.

E-Government Act Compliance

AMS 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.

Proposed Changes

Under the Act it is the responsibility of the seller to preserve its trust benefits, and we agree that the buyer must accept the trust language if the seller attempts to preserve its trust rights. Based upon full consideration of the comments received during the comment period, the concerns of industry members and AMS about enforceability of trust protection through electronic commerce, changes in the technological nature of produce transactions, as well as the desire to avoid enforcement problems if a produce firm using an electronic billing system goes bankrupt, AMS is proposing to amend the PACA regulations to require buyers or their intermediaries to accept the PACA trust statement submitted by a seller on a paper or electronic invoice or other billing statement. Further, any failure, act or omission which is inconsistent with this responsibility is unlawful and a violation of Section 2 of the PACA.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Investigations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 46 as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.46, paragraph (f)(3) introductory text is revised and new paragraphs (f)(4) and (5) are added to read as follows:

§ 46.46 Statutory trust.

* * * * *

(f) * * *

(3) Licensees may choose an alternate method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement as defined in paragraph (a)(5) of this section, whether in documentary or electronic form, to preserve trust benefits. Alternately, the licensee's invoice or other billing statement, given to the buyer, must contain:

* * * * *

(4) If the invoice or other billing statement is in electronic form, the licensee has met its requirement of giving the buyer notice of intent to preserve trust benefits on the face of the invoice or other billing statement if the electronic invoice or other billing statement containing the statement set forth in paragraph (f)(3)(i) is sent to the buyer and the electronic transmission can be verified. The licensee will be deemed to have given notice to the buyer of its intent to preserve trust benefits if the licensee can verify that the electronic invoice or other billing statement was sent to a third party electronic transaction vendor designated by the buyer. The licensee will have met the requirement of giving the buyer written notice of intent to preserve trust benefits using electronic means if it can verify that the electronic data invoice or other billing statement was transmitted to the buyer, or its designated electronic transaction vendor, irrespective of whether or not the buyer or third party vendor downloads or accepts the trust statement.

(5) If a buyer conducts its transactions in perishable agricultural commodities using an electronic system, the buyer or its third party electronic vendor must allow sufficient space for the seller to include the required trust statement of intent to preserve trust benefits in the buyer's electronic invoices or other billing statement forms. A buyer or its designated third party electronic vendor must accept a seller's notice of intent to preserve benefits under the trust using the required trust statement, whether in documentary or electronic form, as set forth in paragraphs (d) and (f) of this section. Any act or omission which is inconsistent with this responsibility is unlawful and in violation of Section 2 of the Act (7 U.S.C. 499b).

Dated: November 3, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–18826 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshaft Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines. That AD currently requires replacing certain O-rings on the check valve piston in the lubrication unit, at repetitive intervals. This proposed AD would require the same actions except reduce the applicability from all Turbomeca S.A. Arrius 2F turboshaft engines, to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. This proposed AD results from Turbomeca S.A. introducing a check valve piston design requiring no O-ring. We are proposing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

DATES: We must receive any comments on this proposed AD by January 8, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available

in the AD docket shortly after the DMS receives them.

Discussion

On August 17, 2005, we issued AD 2005–17–17, Amendment 39–14328 (70 FR 50164, August 26, 2005). That AD requires replacing certain O-rings on the check valve piston in the lubrication unit, at repetitive intervals. That AD resulted from an uncommanded in-flight engine shutdown (IFSD) of an Arrius 2F engine, resulting in the forced landing of a Eurocopter EC120B helicopter. Investigation of the engine found that an interruption of engine lubrication due to excessive swelling of the check valve O-ring in the lubrication unit caused the IFSD. The amount of swelling of the O-ring depends on the class of oil used, standard (STD) or high-thermal stability (HTS), and the engine operating time.

Actions Since AD 2005–17–17 Was Issued

Since AD 2005–17–17 was issued, Turbomeca S.A. issued Service Bulletin (SB) No. 319 79 4075, dated February 27, 2006, that introduces modification Tf75. That modification replaces the check valve piston with a piston not requiring the O-ring. Arrius 2F engines with modification Tf75 incorporated, no longer need repetitive replacements of a check-valve piston O-ring, because there is no O-ring installed.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca S.A. SB No. 319 79 4802, dated April 3, 2006, that describes procedures for replacing the O-ring on the check valve piston in the lubrication unit on Arrius 2F engines that have not incorporated modification Tf75. EASA classified this service bulletin as mandatory and issued AD No. 2006–0141, dated May 29, 2006, in order to ensure the airworthiness of these engines in Europe.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, EASA kept us informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing certain O-rings on the check valve piston in the lubrication unit, at repetitive intervals on Arrius 2F turboshaft engines that have not incorporated modification Tf75. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect about 124 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $100 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators, for one O-ring replacement to be $22,320 for the fleet, or $180 per engine.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14238 (70 FR 50164, August 26, 2005) and by adding a new airworthiness directive, to read as follows:

Turbomeca S.A.: Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 8, 2007.

Affected ADs

(b) This AD revises AD 2005–17–17.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from Turbomeca S.A. introducing a check valve piston design requiring no O-ring. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

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.

O-Ring Replacement

(f) Replace the O-ring on the check valve piston in the lubrication unit at the intervals specified in Table 1 of this AD. Use the ''Instructions to be Incorporated,'' 2.A. through 2.C. (2) of Turbomeca Alert Service Bulletin No. A319 79 4802, dated April 3, 2006, to replace the O-ring.

TABLE 1.—COMPLIANCE TIMES FOR O-RING REPLACEMENT

If the class of oil is . . .*	Then replace the O-ring by the later of . . .	Thereafter, replace the O-ring within . . .
(1) HTS or unknown	300 hours time-since-new (TSN) or 50 hours after the effective date of this AD.	300 hours time-since-last replacement (TSR).
(2) STD	450 hours TSN or 50 hours after the effective date of this AD.	500 hours TSR.

Alternative Methods of Compliance

(g) 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

(h) European Aviation Safety Agency airworthiness directive No. 2006–0141, dated May 29, 2006, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on November 1, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–18839 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 68]

RIN 1513–AB26

Proposed Establishment of the Tulocay Viticultural Area (2006R–009P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 11,200-acre Tulocay viticultural area in Napa County, California. The proposed viticultural area lies totally within the Napa Valley viticultural area and the larger, multi-county North Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before January 8, 2007.

ADDRESSES: You may send comments to any of the following addresses:

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 68, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features,

that distinguish the proposed viticultural area from surrounding areas;

- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Tulocay Petition

TTB received a petition from Aaron Pott, a winemaker in Quintessa, and Marshall Newman of Newman Communications, on behalf of the vintners and grape growers in the Tulocay region of Napa Valley, California, proposing the establishment of the Tulocay viticultural area. The proposed Tulocay viticultural area, according to regional maps and petition information, lies 45 miles east of the Pacific Ocean and 16 miles north of San Pablo Bay. It encompasses 11,200 acres—900 acres of which are dedicated to commercial vineyards, according to the petitioners. The proposed Tulocay viticultural area is located between four established viticultural areas: The Oak Knoll District of Napa Valley viticultural area to the northwest, the Wild Horse Valley and Solano County Green Valley viticultural areas to the east, and the Los Carneros viticultural area to the southwest. The proposed Tulocay boundary does not overlap any of these four viticultural areas and is totally within the boundaries of the Napa Valley and North Coast viticultural areas.

We summarize below the supporting evidence submitted with the petition.

Name Evidence

Both the ''Tulocay'' and ''Tulucay'' spellings have been used since the middle 1800s and, according to the petitioners, reflect the same geographical place name in Napa County. The petitioners use the ''Tulocay'' spelling for this viticultural area petition.

The history of the ''Tulocay'' name, the petitioners explain, originates with an American Indian village in the area. ''California Place Names,'' by Erwin G. Gudde, originally published in 1949 and revised in 1998, spells the name as ''Tulucay'' and refers to ''tulkays'' and ''ulucas'' as names of inhabitants of the American Indian village. ''Old Napa Valley—The History to 1900,'' by Lin Weber, published in 1998, states that the ''Tulucay'' name comes from an old Wintun American Indian settlement in the area.

In 1841, Cayetano Juarez named his 8,866-acre Napa area land grant as ''Tulucay Rancho.'' ''Tulucay, the Past is Father of the Present,'' by Viviene Juarez Rose, includes a description of the 1844 Tulocay adobe construction, as provided by Domitila Juarez Metcalf, who was the daughter of Cayetano Juarez. The Juarez Adobe, according to the petitioners, remains standing today and is used as a restaurant. Also, Tulocay Creek, thought to be named by Cayetano Juarez, runs south of the Juarez Adobe.

In 1858, according to the Napa Record newspaper, Juarez deeded 48 acres of his land grant for a cemetery in Tulocay. Today the Tulocay Cemetery serves as a Napa Valley non-sectarian cemetery. The cemetery name, the petitioners explain, reflects the historical significance of the ''Tulocay'' name to the region.

A County of Napa, California, map dated 1876 identifies ''Rancho Tulucay'' to the east of the town of Napa. Also, a 1902 United States Coast and Geodetic Survey regional topographic map shows the Tulucay land grant. Further, three USGS topographic maps label the region as ''Tulocay:'' The 1:100,000-scale metric of Napa, California, dated 1983; the Mt. George Quadrangle map, photoinspected in 1973; and the Napa Quadrangle map, photorevised in 1980.

Boundary Evidence

The history of winemaking in the Tulocay region dates to the 1860s, according to documentation provided in the petition. ''The Historical and Descriptive Sketchbook of Napa, Sonoma, Lake and Mendocino,'' written by C.A. Menefee and published in 1873, describes a large vineyard area four miles northeast of the City of Napa, to the east of the Tulocay land grant. The vineyard, the petitioners explain, passed through several ownerships, and continued producing grapes until at least 1954. Also, Palaz Vineyard and Silverado Vineyards more recently replanted grapes in the same vineyard area.

The modern revival of grape growing in the Tulocay region, the petitioners state, started in 1968 with the Hayes Vineyard near the center of the proposed Tulocay viticultural area. Other Tulocay region vineyard plantings include Olive Hill in 1973, Farella-Park in 1979, Caldwell in 1982, and Sarco in 1992.

The boundaries of the proposed Tulocay viticultural area, according to the petitioners, include about 65 percent of the original Tulocay land grant. The petitioners explain that the long viticultural history and distinctive geography of the Tulocay region fail to coincide exactly with the boundaries of the original Tulocay land grant. The petitioners include only the Tulocay lands that meet historic and distinguishing features criteria appropriate for the proposed viticultural area. The proposed viticultural area boundary line, according to the petitioners, safeguards the viticultural integrity and uniformity of the distinguishing features of the Tulocay grape-growing region.

The proposed Tulocay viticultural area is nestled in the southeastern region of the Napa Valley viticultural area, between the City of Napa at the Napa River and the western Solano County line along the western ridgeline of the Vaca Range. The boundary line determination for the proposed Tulocay viticultural area includes careful petitioner consideration of surrounding established viticultural areas, each with a distinctive name, history, and set of distinguishing features.

The eastern proposed Tulocay viticultural area boundary line incorporates a combination of generally straight lines between unnamed western Vaca Range peaks and portions of the Napa-Solano County line, as noted in the written boundary description. With two small modifications to keep the proposed Tulocay viticultural area totally within Napa County, the proposed boundary line corresponds closely to, without overlapping, the Wild Horse Valley and Solano County Green Valley viticultural areas' western boundary lines, according to the written boundary descriptions. The proposed Tulocay eastern boundary line defines the extent of the ''Tulocay'' geographical name recognition, the petitioners explain. Also, the proposed line includes all the vineyards on the historic Woodward/Hagen/Cedar Knoll property and the Farella-Park Vineyard, which are important to Tulocay's modern viticultural claim.

The southern proposed Tulocay viticultural area boundary line, as noted in the written boundary description, uses a straight southeast-to-northwest line from an unnamed 1,686-foot peak to Imola Avenue, and then continues west on Imola Avenue to the Napa River. The proposed southern boundary line takes in Caldwell Vineyards, a part of Tulocay's modern viticultural history, according to the petitioners. Also, immediately beyond the proposed southern boundary line sits an imposing east-west transverse ridge that climatically isolates the Tulocay region from the full impact of the marine influence of San Pablo Bay. The transverse ridge also separates Tulocay from a floodplain with differing soils and climate, and from the Napa River's

transition to a broad slough. The petitioners note that it is difficult to use the complex terrain of the transverse ridge to develop a precise and sensible southern boundary line for the proposed Tulocay viticultural area. Accordingly, the petitioners use a straight line between two map points and a portion of Imola Avenue to define the southern limits of the proposed area.

The western proposed Tulocay viticultural area boundary line relies on the Napa River and Milliken Creek to connect Imola Avenue on the south to Monticello Road on the north, according to the written boundary description and the Napa USGS map. Also, the proposed western boundary line closely reflects the western Tulocay land grant line, and includes the historic Tulocay Cemetery and the Juarez Adobe.

The northern proposed Tulocay viticultural area boundary line uses Monticello Road and a straight line from the road's intersection with a 400-foot contour line to the peak of Mt. George, as noted in the written boundary description. Much of the length of the proposed north boundary line follows the ridge line separating Sarco Creek on the south from Milliken Creek on the north, the petitioners explain. Also, the proposed northern boundary line includes Tulocay's historical vineyards and the northernmost limit of its distinctive climate.

Distinguishing Features

The proposed Tulocay viticultural area's distinguishing features, as described in the petition, include climate, soil, and geography. Steve Newman, a meteorologist at Earth Environment Service, prepared documentation for the climate section of this petition. Sidney W. Davis, a professional soil scientist at Davis Consulting Earth Scientists, prepared documentation for the geology, geography, and soil sections of the petition.

Climate

The geographical location and terrain configuration of the proposed Tulocay viticultural area create a unique microclimate within Napa Valley. The Tulocay region growing season climate gets more sun and sustained heat than the foggy Napa Valley flatlands to the south and west, but less than the more northern areas of Napa Valley. Also, in the Napa Valley area, the daily summer heating and cooling patterns are based on the cold marine air and fog drawn onshore and north from the San Pablo Bay through the flatlands, small valleys, and gaps in higher terrain.

Tulocay, which climatically contrasts to its southern neighbors, the Los Carneros and Suscol Creek regions within Napa Valley, sits apart in a fog-protected partial basin with high ridges. The Los Carneros and Suscol Creek terrains include predominantly flat, open topography, allowing unprotected and full summertime exposures to the cooling fog influence of San Pablo Bay, the petitioners explain. Also, the open terrain geographically contrasts with the protective ridges that partially surround Tulocay's basin landform.

The Tulocay viticultural Climate Region II classification averages between 2,750 and 3,000 total degree-days annually, based on a heat summation system. (One degree day accumulates for each degree that a day's mean temperature is above 50 degrees Fahrenheit, which is the minimum temperature required for grapevine growth; see ''General Viticulture,'' Albert J. Winkler, University of California Press, 1975.)

Documentation by Mr. Newman and information from ''General Viticulture'' provide a basis for the climate tables below. The first table defines each of the five climate regions by annual number of degree-days. The second table shows the heat summation range of Napa Valley by climate region, comparing the Tulocay area to other Napa Valley regions.

Climate region	Heat summations by degree-days
I	Less than 2,500.
II	2,501 to 3,000.
III	3,001 to 3,500.
IV	3,501 to 4,000.
V	4,001 or more.

Climatic region	Area of Napa Valley	Location in Napa Valley
I	Los Carneros	South.
I	Suscol Creek	South.
II	Tulocay	Southeast.
II	Oak Knoll	South central.
III	Oakville	North central.
III	St. Helena	Northwest.
III	Calistoga	Northwest.

The table above shows Napa Valley growing season temperatures, south to north, that span from Climate Region I to Region III. Mr. Newman's documentation demonstrates the climatic variability of the Napa Valley viticultural area based on distances from the cooling influence of the San Pablo Bay and the varying open or protective topography.

In the morning, the cooling marine fog in the Tulocay region usually burns off by about 10 a.m. giving way to sunshine, which occurs one to two hours earlier than in the foggier Los Carneros and Suscol Creek areas to the south and west. The transverse ridge south of Tulocay serves as a dividing line between the geographic isolation of Tulocay and the cooler and foggier open terrain to its south and west in the Los Carneros region, Mr. Newman explains.

In the afternoon the inland heat of the Napa Valley region draws the foggy, marine air off the Pacific Ocean, through the Golden Gate and San Francisco Bay, and north across San Pablo Bay into Napa Valley, according to Mr. Newman's description. The Bay's cooling marine influence, wind, and fog permeate the Los Carneros and Suscol Creek areas before traveling north and up the Napa Valley. Between 2:30 p.m. and 3 p.m., the cooling breezes draw over Tulocay's western low ridge and southwest gap. Mr. Newman explains that the Tulocay region remains breezy, cool and sunny in the later afternoon, with fog developing in the evening hours. Also, the rest of Napa Valley to the north receives the cooling marine air later in the afternoon than the Tulocay region.

In summary, Mr. Newman states that Tulocay enjoys a warmer and sunnier summer growing season than the cooler and foggier neighboring areas to the south and west, but a cooler, less sunny growing season than areas to the north. Also, the Tulocay fog gives way to sunshine earlier in the day, and the cooling marine winds arrive later in the day than the fogs in the Los Carneros and Suscol Creek regions to the south and west. Tulocay's ample sunshine, moderate warmth, and brief durations of the maximum temperatures during the summer, combine to create a unique grape-growing climate.

Geology

The western ridge of the Vaca Range, which is also the eastern proposed Tulocay viticultural area boundary line, consists of Sonoma Volcanics (pyroclastic rocks), according to the ''Geologic Map of the Santa Rosa Quadrangle,'' by Wagner and Bortugno, published in 1982. The Sonoma Volcanics, according to the geologic map, extend both north and south of the proposed Tulocay viticultural area boundary line. Mr. Davis adds that valley fill is superimposed on top of the volcanic materials to the west, with predominantly uplifted and folded marine sediments to the east.

The center of the proposed Tulocay viticultural area, according to Mr. Davis, sits on a horseshoe-shaped valley cut into volcanic rock and backfilled with alluvial deposits. Also, the western-

most part of the proposed viticultural area includes a remnant island, or highland of volcanic rock, to the east of the Napa River.

Geography

The Tulocay area sits in a partial basin landform. The basin geography includes a low ridge along Monticello Road at the proposed north boundary line; a high ridge from the Vaca Range along the proposed east boundary line; a high transverse ridge to the immediate south of the proposed boundary line; a small, low elevation opening to the southwest for Tulocay Creek; and a river and adjoining creek along the proposed western boundary line, according to Mr. Davis' description. The elevations of the proposed Tulocay viticultural area, according to USGS maps of the region, vary from about 10 feet at the Napa River shoreline to 1,800 feet at the northeast corner of the proposed viticultural area along the western ridge of the Vaca Range.

The Tulocay crescent-shaped landform, an area with low and gentle topography, faces erosion from small watersheds, according to the petitioners. The Sarco, Kreuse, and Tulocay creeks flow east to west and through the proposed viticultural area into the Napa River, according to the USGS maps. The Tulocay area slopes are generally west-southwest, Mr. Davis states, with a lesser number of east-northeast facing slopes that provide for variability in soil development.

Soils

Soils in the proposed Tulocay viticultural area develop primarily from the volcanic parent materials and related weathering products, according to Mr. Davis. The soils form through stream deposition and gravitational processes, possibly from a combination of river terraces and landslide deposits. Also, the soils develop in a xeric climate, noted for moist, cool winters and warm, dry summers.

The proposed Tulocay viticultural area includes 17 soils map units, representing a combination of 10 individual soil series, according to the ''Soil Survey of Napa County,'' published in 1978 by the United States Department of Agriculture (USDA), Soil Conservation Service (SCS). The table below lists the predominant parent materials, landforms and soil series' associations of the proposed Tulocay viticultural area.

Parent materials	Landform	Soil series association
Alluvial	Flood plains	Bale-Cole-Yolo (deeper than 60 inches, poorly to well-drained).
Alluvial	Terraces	Haire-Coombs (deeper than 60 inches, well-drained with moderately acid topsoil over strongly acid subsoil).
Volcanic	Uplands	Kidd-Hambright-Sobrante-Guenoc-Forward (depth ranges from less than 12 inches to more than 60 inches, well-drained, and moderately acid).

The proposed Tulocay viticultural area dominant soils associations include terrace soils (Haire-Coombs association) and upland soils (Kidd-Hambright-Sobrante-Guenoc-Forward association) in almost equal percentages. Also, the low-lying alluvial soils (Bale-Cole-Yolo association) exist to a minor extent in the Tulocay area.

Prominent soil features of the proposed Tulocay viticultural area include significant amounts of allophone, imoglolite, and ferrihydrite with high phosphate retention, according to Mr. Davis. Also, andic soil properties, found in the residual soils, come from the weathering of volcanic parent materials. Thick and dark topsoil (Mollisols) prominently blankets the area with high organic carbon content, providing soil fertility and a nutrient reservoir for sustainable and reliable long-term viticulture, Mr. Davis explains.

Mr. Davis states that the regions surrounding the proposed Tulocay viticultural area include soil types different from those found within the proposed boundary. To the north the soils predominantly include residual upland types, with a small percentage of alluvial soils. To the east, along the west-facing steep mountain slopes of the Vaca Range, the shallow soils cover hard bedrock. To the south the soils include heavy texture clays derived from marine, feldspar-rich sandstone. To the west, the Napa River and Milliken Creek create an environment of low-lying flood plain soils.

The Tulocay soils composition develops entirely from residual volcanic parent material and its secondary weathering products, a rare occurrence in a California viticultural area, according to Mr. Davis. Also, the unique Tulocay soils include well-drained, volcanically-influenced, and organic matter-rich properties. Mr. Davis concludes that the Tulocay dominant soil characteristics and prevalent properties distinguish the proposed viticultural area from other areas of the region.

Comparison of the Proposed Tulocay Viticultural Area to the Established Napa Valley Viticultural Area

The 11,200-acre proposed Tulocay viticultural area sits entirely within the larger Napa Valley viticultural area, according to the petitioners. The Tulocay proposed boundary land space occupies about three percent of the Napa Valley viticultural area.

The climate of the Tulocay region, according to Mr. Newman, includes the lack of degree-day variation, in contrast to the larger Napa Valley viticultural area. Mr. Newman explains that the Tulocay area experiences Climate Region II degree-days during the growing season, while Napa Valley areas to the south, and closer to the San Pablo Bay, experience cooler Climate Region I degree-days. Napa Valley regions to the north of Tulocay and the City of Napa experience warmer Climate Region III degree-days.

The partial basin geography of the Tulocay region, according to Mr. Newman, provides protective climatic boundaries. Also, to the southwest of the Tulocay region lies the relatively flat Los Carneros area in close proximity to the San Pablo Bay. The northern regions of the Napa Valley, according to topographical maps of the area, include a relatively flat, narrow valley floor and mountain ranges on the east and west sides.

The soils of the Tulocay region, Mr. Davis explains, include residual volcanic parent material and secondary weathering products. Also, the soil features include well-drained, volcanically-influenced and organic matter-rich properties that create a growing environment for nutrient-rich, sustainable viticulture.

The petitioner emphasizes that the Tulocay viticultural area petition documents the history, geographical name identification, and distinguishing viticultural features of the small Tulocay region without detracting from the well-known Napa Valley name and distinctive winegrowing elements. TTB

believes that the previous establishment of 14 other viticultural areas completely or partially within the boundary of the 400,000-acre Napa Valley viticultural area provides evidence of its wide spectrum of distinguishing features. TTB concludes that this petition to establish the 11,200-acre Tulocay viticultural area merits consideration and public comment as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioners provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Tulocay,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Tulocay'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. The proposed part 9 regulatory text set forth in this document specifies the ''Tulocay'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

Additionally, because an alternate spelling of ''Tulocay'' appears in the petition and is cited in this notice as evidence of the area name, TTB wishes to clarify that the establishment of this viticultural area as ''Tulocay'' precludes the use of the alternate spelling ''Tulucay.'' Thus, the name ''Tulucay'' will not be permitted in any reference as to the origin of the wine.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or other term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Tulocay'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Tulocay viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We also are interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Tulocay viticultural area on wine labels that includes the word ''Tulocay'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names, including any brand names using the alternative spelling ''Tulucay.'' If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5- by 11-inch paper.
- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we

receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this notice and the submitted comments, visit *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9._____ to read as follows:

§ 9._____ Tulocay.

(a) *Name.* The name of the viticultural area described in this section is ''Tulocay''. For purposes of part 4 of this chapter, ''Tulocay'' is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Tulocay viticultural area are two United States Geological Survey 1:24,000 scale topographic maps. They are titled:

(1) Mt. George Quadrangle, California, 1951, Photoinspected 1973; and

(2) Napa Quadrangle, California-Napa Co., 1951, Photorevised 1980.

(c) *Boundary.* The Tulocay viticultural area is located in Napa County, California. The boundary of the Tulocay viticultural area is as described below:

(1) The beginning point is on the Mt. George map at the 1,877-foot peak of Mt George, section 29, T6N/R3W;

(2) From the beginning point, proceed 0.4 mile straight southeast to the intersection of the 1,400-foot elevation line and an unnamed intermittent creek, feeding northeast into Leonia Lakes, section 29, T6N/R3W; then

(3) Proceed 0.45 mile straight east-southeast to the intersection of the 1,380-foot elevation line and an unnamed, unimproved dirt road and then continue in the same straight line of direction to the section 29 east boundary line, T6N/R3W, Mt. George Quadrangle; then

(4) Proceed 0.6 mile straight south-southeast to the unnamed 1,804-foot elevation point in the northwest quadrant of section 33, T6N/R3W, Mt. George Quadrangle; then

(5) Proceed southerly in a straight line for 0.95 mile to the corner of the Napa-Solano County line at the 1,731-foot elevation point on the T6N/T5N boundary line, R3W, Mt. George Quadrangle; then

(6) Proceed southerly for 0.3 mile along the Napa-Solano County line to its intersection with a 1,600-foot pinnacle that straddles the county line, section 4, T5N/R3W, Mt. George Quadrangle; then

(7) Proceed southerly in a straight line for 0.9 mile to the 1,480-foot elevation point along the section 9 north boundary line, T5N/R3W, Mt. George Quadrangle; then

(8) Continue southerly in a straight line for 1.3 miles to the 1,351-foot elevation point, section 16, T5N/R3W, Mt. George Quadrangle; then

(9) Proceed 0.85 mile straight southwest to the corner of the Napa-Solano County line immediately inside of the section 17 south boundary line, T5N/R3W, Mt. George Quadrangle; then

(10) Proceed southwesterly for 0.7 mile along the Napa-Solano County line to its intersection with the 1,686-foot elevation peak, east of Sugarloaf, section 20, T5N/R3W, Mt. George Quadrangle; then

(11) Proceed northwesterly in a straight line for 2.1 miles to the 90-degree turn of Imola Avenue at the 136-foot elevation point, section 13, T5N/R4W, Mt. George Quadrangle; then

(12) Proceed west for 2.1 miles along Imola Avenue, crossing onto the Napa map, to its intersection with the Napa River at the Maxwell Bridge, T5N/R4W, Napa Quadrangle;

(13) Proceed northerly (upstream) for 3.2 miles along the Napa River to its intersection with Milliken Creek, T6N/R4W, Napa Quadrangle; then

(14) Continue northerly (upstream) for 0.75 mile along Milliken Creek to its intersection with Monticello Road, T6N/R4W, Napa Quadrangle; then

(15) Proceed northeasterly for 2.4 miles along Monticello Road, crossing onto the Mt. George map, to its intersection with the section 19 west boundary line, T6N/R3W; and

(16) Proceed east-southeasterly in a straight line for 1.4 miles and return to the beginning point at the 1,877-foot peak of Mt. George.

Signed: October 13, 2006.

John J. Manfreda,

Administrator.

[FR Doc. E6–18891 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 67]

RIN 1513–AB19

Proposed Establishment of the Lehigh Valley Viticultural Area (2005R–415P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 1,888 square mile Lehigh Valley viticultural area in southeastern Pennsylvania in portions of Lehigh, Northampton, Berks, Schuylkill, Carbon, and Monroe Counties. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before January 8, 2007.

ADDRESSES: You may send comments to any of the following addresses:

• Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, *Attn:* Notice No. 67, P.O.

Box 14412, Washington, DC 20044–4412.

- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/wine/wine_rulemaking.shtml.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/wine/wine_rulemaking.shtml.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Lehigh Valley Petition

John Skrip III, chairman of the Lehigh Wine Trail Appellation Committee submitted a petition to TTB proposing the establishment of the 1,888 square mile ''Lehigh Valley'' viticultural area in southeastern Pennsylvania. The proposed area is located approximately 45 miles north-northwest of Philadelphia and includes portions of Lehigh, Northampton, Berks, Schuylkill, Carbon, and Monroe Counties. TTB notes that the proposed Lehigh Valley viticultural area does not overlap any other viticultural area. As of 2005, the proposed viticultural area included 9 wineries and 13 vineyards with 220 acres devoted to viticulture, according to the petitioner. The petitioner notes that the distinguishing features of the proposed viticultural area include its rolling hills and a similar agricultural climate throughout.

The evidence submitted with the petition is summarized below.

Name Evidence

The petitioner explains that Lehigh Valley derives its name from the Lehigh River, which flows through the proposed viticultural area and into the Delaware River at Easton, Pennsylvania. The petitioner states that the word ''Lehigh'' originated with the Delaware Indians in the 1600s, who named the area ''Lechauwekink,'' meaning an area with river forks. The petitioner notes that through a series of translations of the original Indian name, the name ''Lehigh'' now identifies the area. The petitioner also notes that the ''Lehigh Valley'' name applies to a much larger area than the immediate region bordering the Lehigh River and is, in fact, associated with the entire proposed viticultural area.

The petitioner provides evidence for the use of the Lehigh or Lehigh Valley name throughout the proposed viticultural area by cities, schools, the National Highway System, and businesses. For example, Lehigh Street is a major thoroughfare in the city of Allentown, Lehigh University is located on the outskirts of Bethlehem, and the Lehigh Tunnel was constructed on the Northeast Extension of the Pennsylvania Turnpike, just north of the Lehigh County line. Also, two pages of the Lehigh Valley telephone book include nine columns of businesses located within the proposed viticultural area the use ''Lehigh Valley'' as part of the company name. The petition also includes brochures for inns, golf courses, covered bridges, a chamber orchestra, and a wine trail that use the Lehigh Valley name.

The January 11, 2005, edition of the Bethlehem, Pennsylvania, Express-Times newspaper claims on its front page that it is ''The Lehigh Valley's fastest growing newspaper.'' An article in the business section of the March 31, 2002, edition of the Allentown Morning Call newspaper discusses the economic development of the Lehigh Valley area. The article notes that six community organizations incorporated ''Lehigh Valley'' in their names between 1984 and 2002, including the Lehigh Valley Convention and Visitors Bureau, American Red Cross of the Greater Lehigh Valley, United Way of Greater Lehigh Valley, and the Lehigh Valley Chamber of Commerce.

In addition, the petitioner provides copies of two regional magazines, ''Lehigh Valley Style,'' dated March/April 2003, and ''Lehigh Valley,'' dated

July/August 2004. The ''Lehigh Valley'' magazine includes a full page advertisement for the Lehigh Valley Hospital in Allentown, Pennsylvania. Other petitioner evidence includes a toll receipt for the Lehigh Valley exit of the Pennsylvania Turnpike extension (Interstate 476) and a copy of the home page from the Lehigh Valley International Airport Web site. A U.S. post office and mail distribution center located off Route 22 between Allentown and Bethlehem is referred to as the Lehigh Valley Post Office, according to the petitioner.

Boundary Evidence

The proposed Lehigh Valley viticultural area encompasses the Lehigh River valley from the town of Jim Thorpe to the river's mouth at Easton, as well as the regions to the northeast and southwest of the immediate river valley. In addition to the Lehigh River valley, the proposed viticultural area includes portions of the Schuylkill River valley in the southwest and the Brodhead River valley in the northeast. The proposed area also includes all or portions of the cities of Stroudsburg, Easton, Bethlehem, Allentown, and Reading, Pennsylvania.

Commercial grape growing started in the proposed Lehigh Valley viticultural area in 1974, the petitioner explains, when Vynecrest Winery and Clover Hill Winery started planting grapes. Two years later, Franklin Hill Winery planted grapes near Bangor in Northampton County.

In shape, the proposed viticultural area is a southwest to northeast oriented rectangle. The petitioner states that the proposed boundary is 92 miles along its northern side, 24 miles along its eastern side, 56 miles along its southern side, and 28 miles along its western side.

Along the proposed viticultural area's northern boundary, a long Appalachian ridge, including Second Mountain and Wildcat Mountain in Schuylkill County, Mauch Chunk Ridge, Bear Mountain, and Call Mountain in Carbon County, and a series of lower hills in Monroe County, separates the proposed area from the cooler mountains of northeastern Pennsylvania. To the east, between Stroudsburg and Easton, the Delaware River separates Pennsylvania from New Jersey and marks the eastern limit of the proposed Lehigh Valley viticultural area. The petitioner notes that the region of northwestern New Jersey bordering the proposed area is not considered part of the Lehigh Valley region. To the southeast, another long Appalachian mountain ridge, South Mountain separates the proposed viticultural area from the immediate Philadelphia region.

To the west, the southwestern Berks County and Schuylkill County lines separate the Lehigh Valley region from the counties of south-central Pennsylvania, which is considered a separate geographical region of the State according to the petitioner.

Distinguishing Features

The distinguishing features of the proposed Lehigh Valley viticultural area, according to the petitioner, include its rolling hills and a similar agricultural climate throughout. These features contrast with the regions to the north and south of the proposed viticultural area, according to the petitioner. To document these differences, the petitioner uses data collected from 1961 to 1996 by the United States Department of Agriculture (USDA) and its Natural Resources Conservation Service (NRCS). In addition, the petitioner submitted maps of Pennsylvania with information on soil moisture, soil temperature, frost-free periods, and agro-climatic regions.

Climate

The agricultural-climatic features of the proposed Lehigh Valley viticultural area include heat accumulation measurements of 2,601 to 3,000 annual degree days and an annual moisture surplus of 351 to 450 millimeters of water, as shown on the Agro-Climate Regions of Pennsylvania map submitted with the petition. (As a measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's average temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.)

The USGS and the NRCS integrates degree-days and annual moisture surplus data to identify regions of relatively homogeneous heat and moisture characteristics related to crop production. This information is shown on the Agro-Climate Regions of Pennsylvania map submitted with the petition and is summarized in the table below.

LEHIGH VALLEY AREA DEGREE DAY AND WATER BALANCES

	North of Lehigh Valley Region	Lehigh Valley Area	South of Lehigh Valley Region
Growing season degree-days	1,801–2,600	2,601–3,000	3,001–3,400
Annual water balance (surplus)	451–550	351–450	351–450

The petitioner presents annual temperature data collected from 1975 to 2004 at three airports—one to the north of the proposed viticultural area, one to the south of the proposed area, and one within the proposed area. The data, as summarized in the table below, shows differences in average annual precipitation and temperatures, with a warming trend from north to south.

LEHIGH VALLEY AREA CLIMATIC TEMPERATURE DATA AVERAGES 1975–2004

Fahrenheit temperatures	Wilkes-Barre Scranton Airport (25 miles north of Lehigh Valley)	Lehigh Valley Airport (within the proposed viticultural area)	Philadelphia International Airport (45 miles south of Lehigh Valley)
Average High	58.8°	61.5°	64.4°
Average Mean	49.7°	51.7°	55.4°
Average Low	40.6°	42°	46.6°
Maximum High	94.4°	96.5°	97.3°

LEHIGH VALLEY AREA CLIMATIC TEMPERATURE DATA AVERAGES 1975–2004—Continued

Fahrenheit temperatures	Wilkes-Barre Scranton Airport (25 miles north of Lehigh Valley)	Lehigh Valley Airport (within the proposed viticultural area)	Philadelphia International Airport (45 miles south of Lehigh Valley)
Minimum Low	−4.2°	0.7°	5.2°
Frequency of days below 5°	14	7	3
Average rain in inches	37.5″	43.6″	41.6″

The proposed Lehigh Valley viticultural area's warmer growing season ranges from 161 to 180 consecutive frost-free days, with the proposed area's southern portion having fewer days with frost than its northern portion, according to the Frost-Free Period of Pennsylvania Landscapes map submitted with the petition. A frost-free period, based on 32 degrees Fahrenheit or above, the petitioner explains, represents the consecutive days from the final killing frost in the spring to the first killing frost in the fall. This 161- to 180-day timeframe defines the length of the regional growing season for most agronomic crops.

The region north of the proposed viticultural area, the petitioner states, is cooler during the growing season, with 1,801 to 2,600 degree days of heat accumulation. The region to the north also is wetter, with an annual moisture surplus of 451 to 550 millimeters of water. The higher elevations to the north of the Lehigh Valley region create a climate with cooler temperatures and more soil moisture retention. As evidence, the petitioner submitted the Agro-Climate Regions of Pennsylvania map, which shows a distinctively cooler and wetter climate north of the proposed Lehigh Valley viticultural area. Also, the meteorological data collected during the years 1975 to 2004 from the Wilkes-Barre Scranton International Airport, located 25 miles north of the proposed viticultural area, shows consistently lower temperatures than are found in the proposed viticultural area, with twice as many days dipping below 5 degrees Fahrenheit annually.

The petitioner describes the area to the south of the proposed viticultural area as marginally, yet consistently, warmer. Meteorological information included in the petition from the Philadelphia International Airport, 45 miles south of the Lehigh Valley, confirms that temperatures to the south of the proposed area are warmer by an average of 4 degrees Fahrenheit. The petitioner also explains that to the south of the proposed area the warmer temperatures, combined with different soils, create a longer grape-growing season and mature grapes with lower acidities and different flavors than those of the proposed Lehigh Valley viticultural area.

Areas to the east and west of the proposed Lehigh Valley viticultural area are, for geopolitical and social reasons, considered to be outside of the Lehigh Valley. Across the Delaware River to the east of the proposed viticultural area is the State of New Jersey. The petitioner states that the residents of this New Jersey region do not consider themselves to be a part of the Lehigh Valley region of Pennsylvania. The region to the west of the proposed viticultural area also is not considered to be part of the Lehigh Valley, according to the petitioner. The counties to the west of the proposed area considered by most to be part of south-central Pennsylvania, which is often called ''Pennsylvania Dutch Country.''

Topography

The topography of the proposed Lehigh Valley viticultural area largely consists of rolling hills with elevations generally between 500 feet and 1000 feet, according to the petitioner and the USGS maps provided. Creeks and several rivers meander through the region, while lakes dot the landscape, as shown on the USGS maps of the region. Also, a small portion of the proposed northeastern boundary area, along the foothills of the Blue Mountain range, rises to the 1,600-foot contour line. The Appalachian National Scenic Trail meanders through the proposed area's higher elevations, as shown on the USGS maps.

Beyond the northern boundary of the proposed viticultural area, the terrain transitions from the lower, rolling hills of the Lehigh Valley to higher foothills and mountains with elevations ranging from 1,000 feet to 1,900 feet. While the region southeast of the proposed viticultural area begins on the heights of South Mountain, the region quickly falls to the lower and flatter elevations of the Delaware River valley.

Soils

The petitioner states that the soils within the proposed Lehigh Valley viticultural area are mainly based on shale, sandstone, and siltstone. A 1972 Soil Conservation Service publication, General Soil Map—Pennsylvania, verifies that the area contains shale, sandstone, and siltstone. Soils to the south of the proposed area, according to the petitioner, are based on schist, gneiss, and porcelanite, rather than shale, limestone, and sandstone.

According to data submitted by the petitioner, a lack of soil moisture during the growing season puts the proposed Lehigh Valley viticultural area in the Typic Udic moisture regime (less than 90 days of drying), as determined by USGS and NRCS data and shown on the Soil Moistures Regimes of Pennsylvania Landscapes map. The petitioner explains that the region typically has a June through August dry season when the grape vines rely on stored moisture rather than rain.

The estimated annual mean soil temperature of the proposed viticultural area is Typic Mesic, ranging from 10.5 degrees Centigrade, or 50.9 degrees Fahrenheit, to 12.0 degrees Centigrade, or 54 degrees Fahrenheit. This information is based on temperatures at 20 inches below the soil surface and shown on the Soil Moistures Regimes of Pennsylvania Landscapes map.

Geology

The geology of the proposed Lehigh Valley viticultural area, as depicted on the Geologic Map of Pennsylvania, Commonwealth of Pennsylvania, Conservation and Natural Resources, Bureau of Topographic and Geologic Survey, revised in 2000, includes Ordovician features in the south and Permian features in the north. The Ordovician geology, predominantly shale, limestone, dolomite, and sandstone, dates back 430 million to 500 million years. The Permian geology, dating back 250 million to 290 million years, consists of coal, in addition to the sandstone, shale, and limestone that is similar to that found in the Ordovician

geology to the south of the proposed viticultural area.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Lehigh Valley,'' will be recognized as a name of viticultural significance. Also, based on the evidence available to us, we find that ''Lehigh'' alone is locally and/or nationally known as referring to the area in the State of Pennsylvania encompassed by the proposed Lehigh Valley viticultural area. (See 27 CFR 4.39(i)(3), which provides that a name has viticultural significance when determined by a TTB officer.)

Therefore, the proposed part 9 regulatory text set forth in this document specifies both ''Lehigh Valley'' and ''Lehigh'' as terms of viticultural significance for purposes of part 4 of the TTB regulations. If this proposed text is adopted as a final rule, wine bottlers using ''Lehigh Valley'' or ''Lehigh'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to claim the proposed Lehigh Valley viticultural area as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use as an appellation of origin a viticultural area name or other viticulturally significant term that appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Lehigh Valley'' or ''Lehigh'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Lehigh Valley viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We also are interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

In addition, we are interested in receiving comments on the proposal to identify ''Lehigh'' standing alone as a term of viticultural significance. Because of the potential impact on approved wine labels from the proposed establishment of the Lehigh Valley viticultural area and the determination that ''Lehigh'' standing alone is viticulturally significant, as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding potential conflicts between ''Lehigh Valley'' or ''Lehigh'' and existing brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We also invite suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5- by 11-inch paper.
- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

We will post this notice and any comments we receive on this proposal on the TTB Web site. All name and address information submitted with comments will be posted, including e-mail addresses. We may omit

voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this notice and the submitted comments, visit *http://www.ttb.gov/wine/wine_rulemaking.shtml.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9._____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9._____ Lehigh Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Lehigh Valley''. For purposes of part 4 of this chapter, ''Lehigh Valley'' and ''Lehigh'' are terms of viticultural significance.

(b) *Approved maps.* The seven United Stages Geological Survey 1:50,000 scale topographic maps used to determine the boundary of the Lehigh Valley viticultural area are titled:

(1) Berks County, Pennsylvania, 1978;

(2) Schuylkill County (West Half), Pennsylvania, 1979;

(3) Schuylkill County (East Half), Pennsylvania, 1979;

(4) Carbon County, Pennsylvania, 1991;

(5) Monroe County, Pennsylvania, 1980;

(6) Northampton County, Pennsylvania, 1981; and

(7) Lehigh County, Pennsylvania, 1987.

(c) *Boundary.* The Lehigh Valley viticultural area is located in portions of Lehigh, Northampton, Berks, Schuylkill, Carbon, and Monroe Counties, Pennsylvania. The boundary of the proposed Lehigh Valley viticultural area is as described below:

(1) The beginning point is on the Berks County map at the intersection of the Berks-Lancaster County line and the single-track Conrail rail line located near Cacoosing Creek in South Heidelberg Township;

(2) From the beginning point, proceed northwest along the Berks County line and, crossing onto the Schuylkill County (West Half) map, continue northwest along the Schuylkill-Lebanon County line to the county line's intersection with the northern boundary of Pine Grove township; then

(3) Proceed northeast along the northern boundary of Pine Grove, Washington, and Wayne townships and, crossing onto the Schuylkill County (East Half) map, continue along the township boundary to the northeast corner of Wayne township, then

(4) Proceed east-northeasterly in a straight line to the confluence of Beaver Creek and Cold Run at the northeast corner of State Game Lands No. 222 in Walker township; then

(5) Proceed north-northeasterly in a straight line to the 1,402-foot elevation point on Wildcat Mountain in Walker township; then

(6) Proceed easterly in a straight line, crossing onto the Carbon County map, and continue to Bench Mark (BM) 1032 located on Highway 902, south of the village of Bloomingdale; then

(7) Proceed east-northeasterly in a straight line to BM 555 located immediately east of the Lehigh River in the city of Jim Thorpe; then

(8) Proceed east-northeasterly in a straight line to the northern most point of Lehighton Reservoir; then

(9) Proceed east-northeasterly in a straight line to the western end of the dam at the Penn Forest Reservoir; then

(10) Proceed easterly in a straight line and, crossing onto the Monroe County map, continue to the 847-foot elevation point located at the intersection of Highway 534 and an unnamed road locally known as Dotters Corner Road in Polk township; then

(11) Proceed east-northeasterly in a straight line to the intersection of Highway 115 and an unnamed secondary road locally known as Astolat Road immediately north of the village of Effort; then

(12) Proceed east-northeasterly in a straight line to St. Johns Cemetery, located along Appenzell Creek northwest of the village of Neola; then

(13) Proceed straight northeast to the intersection of Interstate 80 and an unnamed road locally known as Hamilton Turnpike at the town of Bartonsville; then

(14) Proceed east-southeast along Interstate 80 through Stroudsburg to the west bank of the Delaware River; then

(15) Proceed south (downstream) along the west bank of the Delaware River, and, crossing onto the Northampton map, continue south along the west bank of the Delaware River to the mouth of Lehigh River at Easton; then

(16) Proceed southwesterly (upstream) along the south bank of the Lehigh River, and crossing onto the Lehigh County map, continue along the south bank of the Lehigh River to the mouth of Jordan Creek in Allentown; then

(17) Proceed westerly (upstream) along Jordan Creek to the first railroad bridge over the creek, and then, following the Conrail rail line on that bridge, proceed southerly along the Conrail rail line (paralleling Trout Creek at first) through Emmaus, Macungie, and Alburtis, and continue along the rail line to the Lehigh-Berks County line; then

(18) Crossing onto the Berks County map, continue southerly along the Conrail rail line through Mertztown, Topton, Lyons, Fleetwood, Blandon, and Muhlenburg to the Conrail rail bridge across the Schuylkill river in Reading; then

(19) Following the Conrail rail line on the Schuylkill River bridge, proceed southerly along the rail line through Wyomissing to the rail line's junction with a single-track Conrail rail line in Sinking Springs; then

(20) From the Conrail rail line junction in Sinking Springs, follow the single track Conrail rail line through Montello, Fritztown, and Vinemont, and return to the beginning point.

Signed: October 5, 2006.

John J. Manfreda,

Administrator.

[FR Doc. E6–18895 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–097]

RIN 1625–AA09

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Anna Maria, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a supplemental change to its notice of proposed rulemaking for modifying the Cortez and Anna Maria drawbridge operating regulations. This supplemental notice of proposed rulemaking is necessary to address written concerns from the public regarding the original notice of proposed rulemaking and oral comments received during a public meeting. Additionally, city officials from Anna Maria, Brandenton Beach and Longboat Key contributed their input to this rulemaking in an effort to relieve vehicular congestion on the above bridges.

DATES: Comments and related material must reach the Coast Guard on or before December 8, 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 this docket 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. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6744.

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 [CGD07–05–097], 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 8 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 another 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

The existing regulations of the Cortez (SR 684) Bridge, mile 87.4, and Anna Maria (SR 64) Bridge, mile 89.2 at Anna Maria, published in 33 CFR 117.287(d)(1) and (2) require the draws to open on signal, except that from 7 a.m. to 6 p.m., the draws need open only on the hour, twenty minutes past the hour and forty minutes past the hour if vessels are present.

On June 1, 2005, the city officials of Holmes Beach, in cooperation with the cities of Anna Maria and Bradenton Beach and the Town of Longboat Key, requested that the Coast Guard review the existing regulations governing the operation of the Cortez and Anna Maria Bridges due to their concern that the current drawbridge regulations were not meeting the needs of vehicle traffic.

On August 16, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Anna Maria, FL in the **Federal Register** (70 FR 48091). We received 30 comments on the proposed rule. A public meeting was held on March 29, 2006, in Holmes Beach, Florida. Approximately 40 people attended the meeting and 15 people provided oral comments.

On May 15, 2006, based on comments received from the public, the Mayors of the Cities of Anna Maria, Bradenton Beach and Holmes Beach unanimously agreed to request the bridge openings be restricted to half-hour openings from January 15th through May 15th each year.

Discussion of Comments and Changes

The Coast Guard received a total of 45 comments to the Notice of Proposed Rulemaking and the Public Meeting. The responses were supplied by 30 written comments and 15 oral comments. A few of the commenters, both verbal and written, commented on several different aspects of the proposed regulation.

We received 18 responses in favor of the proposal, 7 comments against the morning and afternoon curfew hours, 6 comments against the nighttime closures, 2 comments requested staggered hours between the two bridges rather than both opening on the same schedule, 6 comments for changes in the winter season only and 9 comments against the proposed 30-minute schedules. Two comments suggested that there should be no regulations on these bridges and they should open on demand.

Discussion of Proposed Rule

This proposed rule would require the Cortez (SR 684) and Anna Maria (SR 64) bridges, miles 87.4 and 89.2, at Anna Maria to open on signal, except that from May 16 through January 14, from 6 a.m. to 7 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. From January 15 through May 15, the draws need open only on the hour and half-hour from 6 a.m. to 7 p.m. The objective of this revision is to improve vehicle traffic flow on SR 684 and SR 64, especially during peak periods of increased road congestion.

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 is unnecessary. This is because vessel traffic will still be able to transit the Intracoastal Waterway in the vicinity of the Cortez and Anna Maria bridges pursuant to the revised openings schedule.

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 Cortez and Anna Maria bridges, persons intending to drive over the bridges, and nearby business owners. The revision to the openings schedule would not have a significant impact on a substantial number of small entities. Vehicle traffic and small business owners in the area might benefit from the improved traffic flow that regularly scheduled openings will offer this area. Although bridge openings will be less frequent, vessel traffic will still be able to transit the Intracoastal Waterway in the vicinity of the Cortez and Anna Maria bridges pursuant to the revised openings schedule.

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 to the Seventh Coast Guard District Bridge Branch at the address under **ADDRESSES** explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (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 Seventh Coast Guard District Bridge Branch at the address under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule 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, 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 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. However, comments on this section will be considered before the final rule.

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; 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.

2. Revise § 117.287(d)(1) and (2) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d)(1) Cortez (SR 684) Bridge, mile 87.4. The draw shall open on signal, except that from 6 a.m. to 7 p.m., the draw need only open on the hour, 20-minutes after the hour, and 40-minutes after the hour. From January 15 to May 15, from 6 a.m. to 7 p.m., the draw need only open on the hour and half-hour.

(2) Anna Maria (SR 64) (Manatee Avenue West) Bridge, mile 89.2. The draw shall open on signal, except that from 6 a.m. to 7 p.m., the draw need only open on the hour, 20-minutes after the hour, and 40-minutes after the hour. From January 15 to May 15, from 6 a.m. to 7 p.m., the draw need only open on the hour and half-hour.

* * * * *

Dated: October 24, 2006.

D.W. Kunkel,

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

[FR Doc. E6–18799 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2006–26136]

Potential Revision of Mandatory Ballast Water Management Reporting Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comments.

SUMMARY: The Coast Guard requests public comments on our current ballast water management reporting and recordkeeping requirements. To provide additional opportunity for public comment, public meetings will be held in the Great Lakes and Gulf of Mexico regions. All stakeholders and interested parties are encouraged to submit comments to the docket and to attend a public meeting in or near their region.

DATES: Comments and related material must reach the Docket Management Facility on or before March 16, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–26136 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Heather St. Pierre, Project Manager, Environmental Standards Division, Coast Guard, via telephone at 202–372–1432 or via e-mail at *Heather.J.St.Pierre@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2006–26136) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this notice, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

In accordance with the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as reauthorized and amended by the National Invasive Species Act of 1996 (NISA)), the Coast Guard promulgated ballast water management (BWM) regulations in 33 CFR part 151, subparts C and D. As part of NISA, Congress authorized the Coast Guard to require BWM reporting and recordkeeping so that we can monitor discharge trends and practices as well as monitor compliance with BWM regulations.

Subpart C of 33 CFR part 151 applies to vessels carrying ballast water after operating outside of the U.S. Exclusive Economic Zone (EEZ) that enter the Snell Lock at Massena, New York, or vessels that navigate north of the George Washington Bridge on the Hudson River. In accordance with 33 CFR 151.1516 and 151.2041(b)(1)–(2), vessels entering the Great Lakes or Hudson River, north of the George Washington Bridge, must submit BWM reports at least 24 hours prior to arrival.

The regulations in subpart D apply to all vessels, foreign and domestic, equipped with ballast tanks that operate in U.S. waters and are bound for U.S. ports or places. 33 CFR 151.2041 contains specific BWM reporting requirements. To accompany these regulations, we also published

Navigation and Vessel Inspection Circular (NVIC) 07–04, entitled ''Ballast Water Management for the Control of Aquatic Nuisance Species in the Waters of the United States'' and change 1 to this guidance document. NVIC 07–04 also provides additional guidance on the equivalent reporting program for vessels operating exclusively within the EEZ (as established in 33 CFR 151.2043), allowing approved vessels to submit reports on a monthly basis, as opposed to the standard schedule required by 33 CFR 151.2041.

These BWM reporting requirements are currently being reviewed for potential revisions. In this review process, the Coast Guard is interested in receiving comments on current reporting and recordkeeping requirements contained in the mandatory BWM regulations in 33 CFR part 151, subparts C and D. Specifically, the Coast Guard is seeking public comments on the current ballast water management reporting submission requirements, including comments on vessel types currently required to submit ballast water management reporting forms. Also, the Coast Guard is seeking comments on the ballast water reporting form itself to determine whether or not the form should be updated. Comments submitted to the docket may or may not be used to amend these ballast water management reporting requirements.

The Coast Guard plans to hold two public meetings associated with this notice to provide additional opportunities for public comment. These meetings are planned to be held during the week of March 12, 2007; one meeting will be held in the Great Lakes region and the other in the Gulf of Mexico. Specific information on these meetings will be published in the **Federal Register** as a separate follow-on notice. All stakeholders and interested parties are encouraged to submit comments to the docket and to attend a public meeting in or near their region.

Dated: November 3, 2006.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention, U.S. Coast Guard.

[FR Doc. E6–18903 Filed 11–7–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter 1

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

ACTION: Notice of meeting cancellation.

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), of cancellation of the Wednesday, November 8, 2006 meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNRA) beginning at 3 p.m. in the Conference Center at Fort Mason Center in San Francisco which was published in the **Federal Register** on Wednesday, October 11, 2006, 71 FR 59697.

The meeting is cancelled due to a change in schedule of the Negotiated Rulemaking Advisory Committee and will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Go to the *www.parkplanning.nps.gov.goga* and select *Negotiated Rulemaking for Dog Management at GGNRA* or call the project information line at 415–561–4728.

Dated: October 31, 2006.

Bernard C. Fagan,

Acting Chief, Office of Policy.

[FR Doc. 06–9109 Filed 11–7–06; 8:45 am]

BILLING CODE 4312–FN–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0836; FRL–8240–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision proposes updates to Code of Federal Regulation (CFR) amendment dates, makes a clarification to the state air quality rules for laundry activities listed under construction permit exemptions, and adopts American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD).

The proposed SIP revisions are necessary for consistency with Federal regulations.

DATES: Comments on this proposed action must be received in writing by December 8, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0836 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *hamilton.heather@epa.gov.*
3. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS 66101.
4. Hand Delivery or Courier. Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal 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: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's revision to the SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts 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: October 31, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–18843 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2062; MB Docket No. 05–13; RM–11078]

Radio Broadcasting Services; Groveland, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: We dismiss the petition for rule making filed by 105 Mountain Air, Inc., proposing the allotment of Channel 264A at Groveland, California, for failure to file a continuing expression of interest. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–13, adopted October 18, 2006, and released October 20, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18694 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 00–48; FCC 06–129]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) furthers its ongoing efforts to ensure that its rules governing the Maritime Radio Services continue to promote maritime safety, maximize effective and efficient use of the spectrum available for maritime communications, accommodate technological innovation, avoid unnecessary regulatory burdens, and maintain consistency with international maritime standards to the extent consistent with the United States public interest. The Commission also seeks in this proceeding to ensure that it regulates the Maritime Radio Services in a manner that advances our Nation's homeland security.

DATES: Submit comments on or before January 8, 2007, and reply comments are due on or before February 6, 2007.

ADDRESSES: You may submit comments, identified by WT Docket No. 00–48; FCC 06–129, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov,* Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Further Notice of Proposed Rule Making (Third FNPRM)* in WT Docket No. 00–48, FCC 06–129, adopted on August 29, 2006, and released on September 8, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The WT Docket No. 00–48 rulemaking proceeding was established to develop rules for domestic implementation of the Global Maritime Distress and Safety System (GMDSS), a ship-to-shore and ship-to-ship distress communications system using satellite and digital selective calling (DSC) technology. The Commission takes the following significant actions in the Third FNPRM in WT Docket No. 00–48: (i) Proposes to cease authorizing INMARSAT–E emergency position indicating radiobeacons (EPIRBs) due to Inmarsat's planned cessation of service to such EPIRBs; (ii) requests comment on whether to require Global Positioning System (GPS) capability in VHF–DSC handheld units; (iii) requests comment on whether to require the carriage of at least one VHF handheld marine radio transceiver on all small passenger vessels that do not have a reserve power supply; (iv) requests comment on whether there is a need to make additional spectrum available for ship station facsimile communications, or to permit the transmission of data on VHF maritime voice channels; (v) requests comment on whether there is any need to continue limiting the number of frequencies that may be assigned to any particular private coast station; (vi) requests comment on updating the standards for ship radar equipment; and (vii) proposes to add a rule clarifying that GMDSS vessels subject to subpart W are required to test GMDSS radiotelephone equipment on a daily basis.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments on or before January 8, 2007 and reply comments on or before February 6, 2007. All filings related to this *Third FNPRM* should refer to WT Docket No. 00–48.

4. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

5. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

6. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

7. 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, filers must submit two additional copies for each additional docket or rulemaking number.

8. 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission's contractor 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.

10. 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.

11. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

12. 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 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.*

13. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, may be reached by e-mail at *fcc@bcpiweb.com* or via BCPI's Web site at *http://www.bcpiweb.com*. 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).

C. Paperwork Reduction Act

14. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Third FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third FNPRM* as provided in paragraph 82 of the item. The Commission will send a copy of the *Third FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *Third FNPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

16. In the *Third FNPRM*, we seek comment on rule amendments that are intended to enhance maritime safety, promote the efficient use of the maritime radio spectrum, and, to the extent consistent with these first two objectives, remove unnecessary regulatory burdens. We also seek to conform the Commission's part 80 rules with international standards where doing so will not undermine domestic regulatory objectives. In the *Third FNPRM*, we first request comment on whether we should remove part 80 regulatory provisions providing for the certification and authorizing the use of INMARSAT–E EPIRBs in light of the planned cessation of service to such EPIRBs as of December 1, 2006. Second, we invite comment on a Coast Guard recommendation to require that VHF DSC handheld radios include an integral GPS capability to ensure that distress calls include accurate location information. Third, we ask commenters to consider whether small passenger vessels that do not have a reserve power supply should be required to carry at least one VHF marine radio transceiver. Fourth, we request comment on whether additional frequencies should be made available for ship station facsimile use, and whether the Commission should permit the transmission of data on VHF maritime voice channels. Fifth, we request comment on whether we should remove certain restrictions on the assignment of frequencies to private coast stations and marine utility stations in light of the current demand for such frequencies. Sixth, we solicit comment on updating the standards for ship radar equipment. Finally, we request comment on the proposed addition of a rule to subpart W of part 80 to clarify the continued applicability of a daily radiotelephone testing requirement to GMDSS vessels subject to subpart W.

Legal Basis for Proposed Rules

17. The proposed action is authorized under sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a)(2).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by adoption of rules discussed in the *Third FNPRM*.

19. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this IRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a ''small entity'' for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 of fewer persons. 13 CFR 121.201 (NAICS Code 517212).

20. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

21. *VHF Public Coast Stations.* Some of the rules proposed herein affect VHF public coast station licensees. The Commission has defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322).

22. *Marine Radio Equipment Manufacturers.* Some of the rules proposed herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. We believe three of the possible rule changes discussed in the *Third FNPRM* may potentially have a direct, significant economic impact on a substantial number of small entities. As noted, we have requested comment on whether to require GPS capability in VHF–DSC handheld radios, on whether to require that small passenger vessels carry at least one VHF handheld marine radio transceiver, and on whether to update the standards for ship radar equipment. We invite interested parties to address the economic impact of these possible rule changes on small vessel operators, small marine radio equipment manufacturers and other small businesses that may be subject to the new requirements. We seek information on whether the compliance costs may outweigh the safety benefits of these rule changes, and whether there are alternative means of securing the safety benefits of these requirements through means that are less burdensome to regulatees.

24. We do not believe any of the other matters discussed in the *Third FNPRM* would have a direct, significant economic impact on a substantial number of small entities. However, any commenters that disagree with that

tentative conclusion are asked to explain the basis of that disagreement.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

26. In the *Third FNPRM*, we ask that commenters provide information on the incremental cost to manufacturers and consumers if the Commission were to adopt a requirement for GPS capability in VHF–DSC handheld units. We describe here, and seek comment on, possible alternatives to imposing such a requirement that might minimize the economic impact on small entities. First, we ask commenters to consider whether it would be appropriate to exempt any class of small entities from such a requirement. Commenters advocating such an exemption should propose criteria for identifying entities that should be exempt, and should explain why they believe such an exemption represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. In addition, if we do determine to impose a new requirement for GPS capability in VHF–DSC handheld radio equipment, we would consider whether we should continue to certify VHF–DSC equipment without such capability for a specified additional period of time, and/or whether we should adopt grandfathering protections to allow the continued sale and use of such non-GPS VHF–DSC handheld equipment for a specified period of time or indefinitely. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative, less costly equipment requirement could adequately address the concern that distress communications include accurate coordinates for the vessel in distress.

27. In the *Third FNPRM*, we also seek comment on whether the Commission should require carriage of at least one VHF handheld marine radio transceiver on small passenger vessels that do not carry a reserve power supply. Our understanding is that such handheld radio equipment can be purchased for under fifty dollars at retail, making it a far less expensive proposition for small vessel owners and operators than would expanding the reserve power supply requirement to all small passenger vessels, regardless of size. Notwithstanding the relative inexpensiveness of VHF handheld marine radios, and the important safety benefits that would accrue from imposing such a carriage requirement, we request that interested parties address whether the costs of such a requirement would outweigh the safety benefits, and to suggest any alternatives, exemptions or phased-in implementation schedules that the Commission might adopt to reduce the compliance burden of such a requirement on small entities.

28. In the *Third FNPRM*, we also invite comment on revising the standards for ship radar equipment. We seek comment on the impact of such a revision on radar equipment manufacturers and on the owners and operators of vessels required to be fitted with radar equipment. Given that we contemplate amending our rules only to reflect the most up-to-date international standards for ship radar equipment, we question whether such an amendment would impose any new compliance burden on small entities, since they may already be required to, or have decided it is prudent to, manufacture and use equipment that conforms to those international standards. To the extent such an amendment would be deemed to create a new compliance burden, we ask interested parties whether and how that burden can be eliminated or mitigated for small entities, both small manufacturers and small owners and operators of vessels fitted with radar equipment. Commenters should consider the possibility of retaining the existing part 80 radar standards, incorporating by reference only some of the newer international radar standards, exempting certain entities from the requirement to comply with the newer international radar standards, and/or providing transition periods before compliance is required (so that, *e.g.*, radar equipment can still be certified based on compliance with the current standards for a specified period of time) and grandfathering protection (to permit the continued manufacture, sale, importation, and use of radar equipment certified under the old standards, either for a specified period of years or indefinitely). Commenters are also invited to suggest alternatives other than those discussed here.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

29. None.

III. Ordering Clauses

30. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 403, this *Third FNPRM* is adopted.

31. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments on this *Third FNPRM* on or before January 8, 2007 and reply comments on or before February 6, 2007.

32. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Third FNPRM* and also the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18755 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 71, No. 216

Wednesday, November 8, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0142]

Notice of Request for Extension of Approval of an Information Collection; Importation of Live Swine, Pork, and Pork Products From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live swine, pork, and pork products from Chile into the United States.

DATES: We will consider all comments that we receive on or before January 8, 2007.

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

Federal eRulemaking Portal: Go to *http://regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0142 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–2006–0142, 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–2006–0142.

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: For information regarding regulations for the importation of live swine, pork, and pork products from Chile, contact Dr. Bob Bokma, Regional Trade Director, Sanitary Trade Issues Team, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737; (301) 734–8066. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine, Pork, and Pork Products from Chile.

OMB Number: 0579–0235.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is authorized, among other things, to prohibit the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations.

Part 94, § 94.25, allows the importation, subject to certain conditions, of live swine, pork, and pork products from certain regions, including Chile, that are free of classical swine fever. Among the conditions is a requirement for a certificate that must be completed by Chilean veterinary authorities prior to export. The certificate must identify both the region of export and the region of origin as regions designated in §§ 94.9 and 94.10 as free of classical swine fever at the time the live swine, pork, or pork products were in the regions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Full-time salaried veterinarians employed by the national government of Chile.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 50.

Estimated total annual burden on respondents: 50 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.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–18855 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0156]

Notice of Request for Extension of Approval of an Information Collection; Importation of Clementines, Mandarins, and Tangerines From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of clementines, marndarins, and tangerines from Chile.

DATES: We will consider all comments that we receive on or before January 8, 2007.

ADDRESSES: You may submit comments by either of the following methods: Federal eRulemaking Portal: Go to *http://regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0156 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–2006–0156, 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–2006–0156.

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: For information on regulations associated with the importation of clementines, mandarins, and tangerines from Chile, contact Mr. Tony Roman, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–3818. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Clementines, Mandarins, and Tangerines from Chile.

OMB Number: 0579–0242.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The regulations in Subpart—Fruits and Vegetables (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Under these regulations, clementines, mandarins, and tangerines from Chile are subject to certain conditions before entering the United States. These requirements include that production sites participating in an export program from Chile to the United States must register with the national plant protection organization (NPPO) of Chile and be certified as low prevalence production sites. Each consignment of clementines, mandarins, and tangerines must be inspected by APHIS and the NPPO of Chile, and a phytosanitary certificate must be issued before the consignment may leave Chile. In addition, Chile must enter into a trust fund agreement with the United States before beginning any export program.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.249575 hours per response.

Respondents: Growers, shippers, and Chilean health officials.

Estimated annual number of respondents: 19.

Estimated annual number of responses per respondent: 31.

Estimated annual number of responses: 589.

Estimated total annual burden on respondents: 147 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.) All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–18857 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0165]

Notice of Request for Reinstatement of an Information Collection; Dairy 2007 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection to support the National Animal Health Monitoring System's national Dairy 2007 Study.

DATES: We will consider all comments that we receive on or before January 8, 2007.

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

Federal eRulemaking Portal: Go to *http://regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0165 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–2006–0165, 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–2006–0165.

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: For information on the Dairy 2007 Study, contact Ms. Sandra Warnken, Management and Program Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7193. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Dairy 2007 Study.

OMB Number: 0579–0205.

Type of Request: Reinstatement of an information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry disease risk factors.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting national data on livestock health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to conduct the Dairy 2007 Study as part of an ongoing series of NAHMS studies on the U.S. dairy population. The purpose of this fourth dairy study is to collect information, through questionnaires and biologic sampling, to:

Describe trends in dairy cattle health and management practices.

Evaluate management factors related to cow comfort and removal rates.

Describe dairy calf health and nutrition from birth to weaning and evaluate heifer disease prevention practices.

Estimate the prevalence of herds infected with bovine viral diarrhea virus.

Describe current milking procedures and estimate the prevalence of contagious mastitis pathogens.

Estimate the herd-level prevalence and associated costs of *Mycobacterium paratuberculosis*.

Describe current biosecurity practices and determine producer motivation for implementing or not implementing biosecurity practices.

Determine the prevalence of specific food safety pathogens and describe antimicrobial resistance patterns.

This information will help the United States detect trends in the management, production, and health status of the nation's dairy industry over time.

The study will take place in the top 17 dairy producing States: California, Idaho, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New Mexico, New York, Ohio, Pennsylvania, Texas, Vermont, Virginia, Washington, and Wisconsin. The study will consist of a series of on-farm questionnaires, with biologic sampling, which will be administered by APHIS-designated data collectors. The information collected through the Dairy 2007 Study will be analyzed and organized into descriptive reports. Information sheets will be derived from these reports, and the data will be disseminated to and used by a variety of constituents, including producers, veterinarians, stakeholders, academia, and others. The data will help APHIS address emerging issues and examine the economic impact of selected health management practices.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.9137215 hours per response.

Respondents: Dairy producers in 17 States.

Estimated annual number of respondents: 4,000.

Estimated annual number of responses per respondent: 2.46875.

Estimated annual number of responses: 9,875.

Estimated total annual burden on respondents: 9,023 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.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–18859 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0172]

Interstate Movement of Garbage From Hawaii; Availability of an Environmental Assessment and a Pest Risk Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a site-specific environmental assessment and a pest risk assessment relative to a request to allow the interstate movement of garbage from Hawaii to a landfill in the State of Washington. The environmental assessment contains a general assessment of the potential environmental effects associated with moving garbage interstate from Hawaii to Washington, subject to certain pest risk mitigation measures and documents our review and analysis of the environmental impacts associated with, and alternatives to, the proposed action. The pest risk assessment evaluates the risks associated with the interstate movement of garbage from Hawaii to Washington. We are making these assessments available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 8, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select Docket No. APHIS–2006–0172 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–2006–0172, 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–2006–0172.

Reading Room: You may read any comments that we receive on the assessments 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: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 (referred to below as the regulations) in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

APHIS is advising the public that we have prepared a site-specific environmental assessment and a pest risk assessment relative to a request to allow the interstate movement of garbage from Hawaii to the State of Washington.

The environmental assessment, titled ''Movement of Plastic-baled Municipal Solid Waste from Honolulu, Hawaii to Roosevelt Regional Landfill, Washington'' (October 2006), contains a general assessment of the potential environmental effects associated with moving garbage interstate from Hawaii to the Roosevelt Regional Landfill in Klickitat County, WA, subject to certain pest risk mitigation measures. The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action.

The pest risk assessment, titled ''The Risk of Introduction of Pests to Washington State via Plastic-Baled Municipal Solid Waste from Hawaii'' (September 2006), evaluates the plant pest risks associated with the interstate movement of garbage from Hawaii to the Roosevelt Regional Landfill.

We are making these assessments available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The environmental assessment and pest risk assessment may be viewed on the Internet on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document(s) you wish to receive when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19027 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this Notice invites the general public and other interested parties to comment on a proposed information collection by the Economic Research Service (ERS). This information collection will provide data needed to develop questionnaires and related instruments capable of collecting reliable and valid information on topics including stress and food-related behavior, cognitive load and food-related behavior, and self-control and food-related behavior. ERS plans to conduct data collections that involve formative research, including such methods as cognitive interviews (individuals), and pre-testing and field testing of survey items (in person, telephone).

DATES: Comments on this Notice must be received by January 12, 2007 to be assured of consideration.

ADDRESSES: Requests for additional information regarding this Notice should be directed to Dr. Mark Denbaly, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Room S2078, Washington, DC 20036–5831. Submit electronic comments to *mdenbaly@ers.usda.gov* or fax to 202–694–5390.

SUPPLEMENTARY INFORMATION:

Title: Formative Research for Development and Testing of Questionnaires on the Psychological Determinants of Food Consumption Behavior.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval to collect information from civilian, non-institutionalized population, especially low-income individuals and households targeted by USDA food assistance programs.

Abstract: Diet-related health conditions account for a large fraction of morbidity and mortality in the United States. Significant sections of the U.S. population consume sub-optimal diets characterized by overconsumption and poor diet quality. Diet-related health conditions such as obesity have increased rapidly among all population groups, including the low-income and food assistance program recipients. Health care costs related to poor diets and obesity are placing a growing burden on the health insurance system. Poor diets and the growing rate of obesity among children imply that such costs will continue to increase unless dietary behaviors become more healthful. A growing body of research suggests standard economic models modified to account for systematic errors, cognitive biases, and self control problems in decision making may offer a more complete explanation of the persistence of poor dietary choices and offer a wider array of public policy solutions. While such new behavioral economics research has examined decision making in other domains of consumer choice, there has been limited research on food consumption and dietary habits. In particular, there is a lack of reliable, valid questionnaires or other short, practical population measures capable of collecting valid information on topics including stress and food-related behavior, cognitive load and food-related behavior, and self-control and food-related behavior. Dietary assessment through 24-hour dietary recall is well-established. However, development of new questionnaires for assessing stress, cognitive load, and self-control as they relate to dietary behavior and the assessment of their reliability and validity will require formative research. Formative research methods such as cognitive interviewing and field testing will assist ERS to develop questionnaires and related measures that are understandable and yield reliable, valid information on psychological and behavioral underpinnings of food choice. Findings from all subsequent data collections will be included in summary reports submitted to OMB. The reports will describe the data collection methods used in the formative research, findings, conclusions, implications, and recommendations for the development of reliable, valid questionnaires and related measures. There will be no attempt to generalize the findings to be nationally representative.

Methods of Collection: The data will be collected using a combination of methodologies appropriate to each formative research activity. These methodologies could include cognitive interviews and pretest/field tests.

ESTIMATED NUMBER OF RESPONDENTS AND TOTAL ANNUAL BURDEN ON RESPONDENTS:

Type of data collection	Number of respondents	Average respondent burden (minutes)	Total hours of burden
Cognitive Interviews/Pretesting	24	20	8
Field Test	800	120	1,600
Totals	824	N/A	1,608

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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments on this Notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: October 19, 2006.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. E6–18797 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny National Forest, Pennsylvania, Brush Creek Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Allegheny National Forest is canceling its published notice of intent to prepare an environmental impact statement for the Brush Creek Project on the Marienville Ranger District (FR Document 99–5430, March 4, 1999) published in the **Federal Register**, Volume 64, No. 43, Friday March 5, 1999, pages 10618–19 and (FR Document 03–5253 filed March 6, 2003) published in the **Federal Register**, Volume 68, No. 45, Friday March 7, 2003, pages 11033–35. This project has been started and delayed twice. It has now been redesigned and the level of impact is no longer anticipated to require an Environment Impact Statement. An Environmental Assessment will be prepared to determine whether an Environmental Impact Statement is needed.

FOR FURTHER INFORMATION CONTACT: Kevin Treese, District NEPA Coordinator, Marienville Ranger District, HC 2 Box 130, Marienville, PA 16239 or by telephone at 814–927–6628.

Responsible Official

Robert T. Fallon, District Ranger, Marienville Ranger District, HC 2 Box 130, Marienville, PA 16239 or by telephone at 814–927–6628.

Dated: October 26, 2006.

Kathleen S. Morse,

Forest Supervisor.

[FR Doc. 06–9108 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rockhouse Creek Watershed, Leslie County, KY

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Mr. Jacob Kuhn, responsible Federal official for the project administered under the provision of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Kentucky, is hereby providing notification that a record of decision (ROD) to proceed with the installation of the Rockhouse Creek Watershed project is now available. Single copies of the record of decision may be obtained at the address below. For further information contact: Jacob Kuhn, Acting State Conservationist, Natural Resources Conservation Service, Rockhouse Creek Project, Suite 210, 771 Corporate Drive, Lexington, KY 40503, #859–224–7350.

Dated: October 27, 2006.

Jacob Kuhn,

Acting State Conservationist.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904 Watershed Protection and Flood Prevention, and is subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

[FR Doc. E6–18893 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Observer Providers Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0546.

Type of Request: Regular submission.

Burden Hours: 611.

Number of Respondents: 805.

Average Hours per Response: New permit application for observer provider, 10 hours; response to denial of application, 10 hours; request for observer training, 30 minutes; observer service provider reports and samples, 30 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel trip notification requirements, 20 minutes.

Needs and Uses: National Marine Fisheries Service (NMFS) plans to extend the industry-funded observer program in the Atlantic Sea Scallop Fishery Management Plan, wherein scallop vessels would be required to procure observer coverage from an approved observer service provider. The observer service providers would be required to submit an application to NMFS for approval, and once approved, would be required to submit various information to support the observer program. Scallop vessel owners or operators would be required to contact approved observer service providers in order to procure an observer for trips on which an observer is required.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion and one time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–18864 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0204.

Type of Request: Regular submission.

Burden Hours: 143.

Number of Respondents: 1,270.

Average Hours per Response: Highly Migratory Species new permits, 1 hour; renewals, 6 minutes; Coastal Pelagic Fishery permit renewals, 15 minutes; transfers, 30 minutes; appeals, 2 hours; experimental permits, 1 hour.

Needs and Uses: Permits are required for persons to participate in Federally-managed fisheries off the West Coast. The permit application forms provide basic information about permit holders and the vessels and gear being used.

This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids enforcement of regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually, biennially and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–18902 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 061017269–6269–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals Through Calendar Year 2006

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals through calendar year 2006. This notice of inquiry is part of an effort to collect information to assist BIS in its preparation of the annual certification required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments must be received by December 8, 2006.

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

- *E-mail: wfisher@bis.doc.gov*. Include the phrase ''Schedule 1 Notice of Inquiry'' in the subject line;
- *Fax:* (202) 482–3355 (Attn: Willard Fisher);
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact Marcia Brisson, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Chemical Weapons Convention (the Convention), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification of the Convention. Condition 9, titled ''Protection of Advanced Biotechnology,'' provides that the President shall certify to the Congress on an annual basis that ''* * * the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 * * *''. On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC), is an international arms control treaty that establishes the Organization for the Prohibition of Chemical Weapons (OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority for liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

''Schedule 1'' chemicals are those toxic chemicals and precursors identified in the Convention as posing a high risk to the object and purpose of the Convention. The ''Schedule 1'' chemicals are set forth in the Convention's ''Annex on Chemicals,'' as well as in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (15 CFR part 712).

The ''Schedule 1'' provisions of the Convention that affect commercial activities are implemented through part 712 of the Chemical Weapons Convention Regulations and parts 742 and 745 of the Export Administration Regulations, both administered by the Bureau of Industry and Security. These regulations:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (i.e., declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(f));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals through calendar year 2006.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 8, 2006. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: November 1, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E6–18904 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from United States Steel Corporation (petitioner), and Nucor Corporation (Nucor), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. This administrative review covers imports of subject merchandise produced and exported by Nakornthai Strip Mill Public Co., Ltd. (NSM), Sahaviriya Steel Industries Public Co., Ltd. (SSI), and G Steel Public Co., Ltd. (G Steel).

We preliminarily determine that sales of subject merchandise by NSM have been made at not less than normal value (NV). In addition, we are preliminarily rescinding this review with respect to G Steel because it reported, and we confirmed, that it did not make shipments of subject merchandise to the United States during the period of review (POR). *See Partial Rescission of Administrative Review* below. Further, on April 28, 2006, the Department rescinded this review with respect to SSI in accordance with 19 CFR 351.213(d)(1) because petitioner and Nucor withdrew their requests for administrative review within the 90-day deadline and no other party requested a review of SSI. *See Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 71 FR 25148 (April 28, 2006).

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: November 8, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Richard Weible, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–1103, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from Thailand. *See Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (*Hot-Rolled Steel Order*). On November 1, 2005, the Department published the opportunity to request administrative review of, *inter alia*, hot-rolled steel from Thailand for the period November 1, 2004, through October 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005).

In accordance with 19 CFR 351.213(b)(1), on November 30, 2005, petitioner and Nucor requested that we conduct an administrative review of SSI's sales of the subject merchandise, while in the same letter petitioner requested that we also review sales of NSM and G Steel. On December 22, 2005, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2004, through October 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005).

On January 3, 2006, the Department issued its antidumping duty questionnaire to NSM, SSI, and G Steel. On January 13, 2006, G Steel submitted a no-shipment certification letter to the Department indicating that it had no sales of subject merchandise during the POR and requested a rescission of the administrative review. NSM submitted its section A questionnaire response (section A response) on February 14, 2006, and its sections B & C questionnaire responses on February 21, 2006 (sections B&C response). On March 7, 2006, the Department informed NSM by telephone that because a below cost allegation had not been made against NSM, and NSM did not participate in any previous administrative review or

the original investigation of the antidumping duty order, NSM was not required to submit a Section D response at that time. *See* section 773(b)(2)(A)(i)(ii) of the Tariff Act of 1930, as amended (the Act), and § 351.406 of the Department's Regulations. During this same telephone conversation, NSM informed the Department that it still intended to submit a section D response on behalf of NSM and did so on March 7, 2006 (section D response).[1]

On March 22, 2006, petitioner and Nucor withdrew their requests for administrative review with respect to SSI. Because petitioner and Nucor withdrew their requests for an administrative review for SSI on March 22, 2006, which was within the 90-day deadline mandated by 19 CFR 351.213(d)(1), and no other party requested a review of SSI, the Department rescinded the administrative review with respect to SSI.[2] *See Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 71 FR 25148 (April 28, 2006).

On March 27, 2006, petitioner and Nucor requested that the Department initiate a sales-below-cost investigation of home market sales made by NSM, which the Department did on April 24, 2006. *See* the Department's April 24, 2006 Memorandum to the File from Stephen Bailey, Case Analyst, to Richard Weible, Office Director, (Cost Initiation Memorandum).

The Department issued a supplemental sections A through C questionnaire to NSM on April 10, 2006, and received NSM's response (sections A through C supplemental response) on May 1, 2006. The Department issued a second sections A through C supplemental questionnaire on May 23, 2006, and NSM submitted its response (second sections A through C supplemental response) on June 6, 2006. The Department issued a third section C supplemental questionnaire on July 26, 2006, and NSM submitted its response on August 7, 2006 (third section C supplemental response).

On May 11, 2006, David M. Spooner, Assistant Secretary for Import Administration, issued a letter to Jason Ahern, Assistant Commissioner of the Office of Field Operations for United States Customs and Border Protection (CBP), detailing the Department's concerns regarding the premature liquidation of certain entries that affect the present administrative review. In a letter dated June 8, 2006, Mr. Ahern replied to Mr. Spooner's letter, explaining that the importer of the subject merchandise may file a customs protest, with the entries in question held open until CBP receives liquidation instructions.

The Department issued a supplemental section D questionnaire to NSM on June 5, 2006, and NSM submitted its response on June 30, 2006 (section D supplemental response). The Department issued a second section D supplemental questionnaire on August 9, 2006, and NSM submitted its response on September 1, 2006 (second section D supplemental response). On July 21, 2006, NSM submitted its sales reconciliation.

On August 3, 2006, the Department extended the due date for the preliminary results 60 days from August 2, 2006 until October 1, 2006. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 71 FR 44019 (August 3, 2006). On October 6, 2006, the Department extended the due date for the preliminary results by an additional 30 days from October 1, 2006, until October 31, 2006. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 71 FR 59073 (October 6, 2006).

On August 15, 2006, NSM submitted a letter to the Department in which it requested that the Department determine whether there is a reviewable entry in the current administrative review.[3] In brief, the Department preliminarily finds that NSM has reviewable entrie(s) in the current administrative review. For the Department's analysis of this issue see pages 4–5 of the memorandum Preliminary Results Analysis for Nakornthai Strip Mill Public Company Limited (NSM), from Stephen Bailey, Case Analyst, to the File, dated October 31, 2006 (Sales Analysis Memorandum).

On September 14, 2006, petitioner requested that the Department rescind this administrative review with request to NSM pursuant to section 351.213(d)(1) of the Department's regulations. On September 15, 2006, NSM submitted comments regarding petitioner's request for rescission. Additionally, on September 20, 2006, Nucor submitted comments regarding petitioner's request for rescission. For a complete discussion of this issue *see Petitioner's Request for Rescission of NSM* section below. On October 17, 2006, petitioner again submitted a request for the Department to rescind this administrative review with respect to NSM.

Period of Review

The period of review is November 1, 2004, through October 31, 2005.

Scope of the Order

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements

[1] *See* the Department's Memorandum to the File dated March 9, 2006.

[2] On November 30, 2005, pursuant to § 351.213(j), Nucor requested that the Department determine whether SSI absorbed antidumping duties during the POR. Because the Department has rescinded this administrative review with respect to SSI, this issue is moot.

[3] The Department notes that NSM made a similar argument in its Section A response at pages A–1 through A–2.

listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
—Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
—Ball bearing steels, as defined in the HTSUS.
—Tool steels, as defined in the HTSUS.
—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
—ASTM specifications A710 and A736.
—USS abrasion-resistant steels (USS AR 400, USS AR 500).
—All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
—Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Petitioner's Request for Rescission of NSM

In its September 14, 2006, and October 17, 2006, letters to the Department, petitioner requests that the Department rescind this administrative review with respect to NSM. In both requests, petitioner argues that even though the 90-day deadline imposed by 19 CFR 351.213(d)(1) to request a rescission of the administrative review has passed, the Department has yet to issue preliminary results and has not conducted a verification of NSM's submissions. Petitioner maintains that if the administrative review goes forth, the Department will expend valuable resources including analyzing case and rebuttal briefs, conduct a hearing and prepare final results. Additionally, petitioner contends that the Department will expend its resources for a proceeding in which the only party to request the review does not wish it to proceed. Therefore, petitioner argues that it would not be unreasonable to extend the deadline imposed by 19 CFR 351.213(d)(1) and rescind the review.

In response to petitioner's rescission request of September 14, 2006, NSM contends that petitioner did not offer a single legitimate reason or justification for terminating this review and that it would be unreasonable to rescind the review at this late date. NSM argues that petitioner's rescission request came 266 days after initiation, and five and one half months after the 90 days allowed by law under 19 CFR 351.213(d)(1). NSM also contends that the Department had to extend the preliminary results 60 days due to the submission of deficiency comments by petitioner. Further, NSM maintains that the only reason petitioner has chosen to withdraw at such a late date is that petitioner has determined that NSM would have a *de minimis* margin and petitioner is trying to ''game'' the system. *See* page 3 of NSM's September 15, 2006 submission. NSM contends that both it and the Department have committed an enormous amount of time and resources to this administrative review. Citing the preamble to the Department's regulations, NSM maintains that the Department has the ability to deny rescission requests when it determines that a party withdraws its review request ''once it ascertains that the results of the review are not likely to be in its favor.'' *See* Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27317 (May 19, 1997). Additionally, NSM cites *Huaiyang Hongda Dehydrated Vegetable Co.* v. *United States*, in which the U.S. Court of International Trade (CIT) recognized the interests of a party that had not requested a review but had devoted considerable time and resources. See *Huaiyang Hongda Dehydrated Vegetable Co.* v. *United States*, Court No. 03–00636, Slip Op. at 15 (Ct Int'l Trade 2004) (*Huaiyang*). In that case, NSM argues, the CIT reasoned that the participation of the respondent amounted to a ''sufficient expression of interest in completing the administrative review that its rescission would be unlawful.'' NSM argues that the same situation exists in the present case as it has already expended an enormous amount of time and resources necessary to fully cooperate with the Department's information requests. In sum, NSM believes that to rescind at this point in the proceeding would violate its right to fundamental fairness and, therefore, contends that the Department should continue with this administrative review.

Section 315.213(d)(1) of the Department's regulations states that the Department will rescind an administrative review if the party that requested the review withdraws the request within 90-days of initiation of the review. The Department may extend this period if it determines that it is reasonable to do so, and will evaluate the resources it has expended in the review in making its ''reasonable'' determination. While the petitioner's request was received prior to the issuance of the preliminary results and the Department did not conduct verification, the Department issued multiple supplemental questionnaires, initiated a sales below cost investigation, and committed valuable time and resources in conducting this review. Additionally, as a result of both petitioner's and Nucor's supplemental

questionnaire comments, including Nucor's March 10, 2006, comments regarding possible affiliation, the Department determined it was not practicable to complete this review by the August 2, 2006, deadline.[4]

For all of the above reasons, the Department determines that to end the process now would be unreasonable in light of the time and resources already put forth by all parties involved. Therefore, the Department denies petitioner's request because it has already expended considerable resources for this administrative review.

Partial Rescission of Administrative Review

As explained above, on January 13, 2006, G Steel submitted a letter claiming it had no sales to the United States during the POR. The Department conducted a query of U.S. Customs and Border Protection (CBP) data on entries of hot-rolled steel from Thailand made during the POR, and confirmed that G Steel made no entries during this period. Therefore, we are preliminarily rescinding this review with respect to G Steel in accordance with section 351.213(d)(3) of the Department's regulations.

Affiliation

On March 10, 2006, Nucor submitted comments in which it claimed that NSM is affiliated with the Thai conglomerate Siam Cement Group (Siam). Along with its comments Nucor also submitted documentation (*e.g.*, annual reports and internet company profiles) in support of its claim of affiliation between NSM and Siam. Specifically, Nucor argues that affiliation exists between NSM and Siam because Siam (also referred to as Cementhai in the internet profile from *MBendi Information for Africa: Mines and Money 2005* (MBendi) provided in Nucor's attachments) ''has a share'' in Millennium Steel Public Company Limited (Millennium). *See* Attachment B at page 1 of Nucor's March 10, 2006, submission. In turn, Millennium owns 99.66 percent of the shares of NTS Steel Group Public Company Limited (NTS), which has the same corporate address as NSM. *See* Attachment C at page 1 of Nucor's March 10, 2006, submission for ownership percentages; and page 8 of NSM's section A response and Attachment E at page 1 of Nucor's March 10, 2006, submission for company addresses. Additionally, Mr. Sawasdi Horrungruang is a chairman of Millennium and a director of NSM and was quoted in a publication as saying that NSM is part of the NTS Steel Group. *See* Exhibit 4 of NSM's section A response; and pages 3 through 5 of Nucor's March 10, 2006, submission. Based on these relationships, Nucor contends that NSM is affiliated with Siam and should be reported to the Department as such by NSM.

Section 771(33) of the Act, explains that the following shall be considered ''affiliated'' or ''affiliated persons'':

(A) Member of a family, including brothers and sisters, spouse, ancestors, and lineal descendants;

(B) Any office or directors of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

The Department preliminarily finds that NSM and Siam are not affiliated companies within the meaning of section 771(33).

As explained by NSM on pages 8 through 11 of its May 1, 2006, sections A through C supplemental response, NSM is not listed as a related company in the notes to Siam's 2004–2005 Financial Statements. NSM also does not consider Siam to be a related company as demonstrated by Siam's absence from NSM's list of related companies in exhibit 4 of its section A response. Additionally, Siam and NSM do not share common directors or board members, also demonstrated in Siam's 2005 Annual Report contained in exhibit S1A–4 of NSM's May 1, 2006, sections A through C supplemental response. Further, Siam and NSM do not have common shareholders as demonstrated in exhibit S1A–4 of NSM's May 1, 2006, sections A through C supplemental response, nor is there evidence of shared family members, directors, partners, or employees between Siam and Millennium. Absent evidence to the contrary, the Department finds no link and thus no evidence of direct affiliation between NSM and Siam to satisfy the requirements of section 771(33).

With regard to possible indirect affiliation between Siam and NSM through Millennium or NTS, the Department does not have enough information on the record to make a determination at this time. Pending the publication of these preliminary results, the Department will solicit additional information from NSM regarding the issue of affiliation and make its determination in the final results.

Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated EP and compared these prices to weighted-average normal values or constructed values (CV), as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by NSM covered by the descriptions in the ''Scope of the Order'' section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to NSM's U.S. sales of the subject merchandise.

We have relied on the following eleven criteria to match U.S. sales of the subject merchandise to sales in Thailand of the foreign like product: Paint, quality, carbon, yield strength, thickness, width, cut-to-length vs. coil, temper rolled, pickled, edge trim, and patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 3, 2006, questionnaire.

Export Price

In accordance with section 772 of the Act, we calculate either an EP or a constructed export price (CEP), depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We have preliminarily determined that all of NSM's U.S. sales during the POR were EP sales.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date

[4] The Department notes that it disagrees with NSM's interpretation of *Huaiyang*. The Court in *Huaiyang* noted that Commerce's determination to rescind an administrative review over the objection of a respondent, which has not filed its own request for a review is not without precedent. Slip op. at 13.

as the date of sale.[5] We based EP on the packed freight on board (FOB) prices to the first unaffiliated purchasers outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight and foreign brokerage and handling.

Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP shall be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.'' The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that (1) the import duty and the rebate are directly linked to, and dependent upon, one another, and (2) there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (the ''two pronged test''). *See Allied Tube and Conduit Corp.* v. *United States*, 374 F. Supp. 2d 1257 (2005), and *Rajinder Pipes Ltd.* v. *United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). *See also Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review,* 62 FR 47632 (September 10, 1997) and *Federal Mogul Corp.* v. *United States*, 862 F. Supp. 384, 409 (CIT 1994).

During the POR, NSM received duty drawback for its U.S. sales using the tax certificate program, which is based on periodic industrial surveys performed by the Thai National Economic and Social Development Board (NESDB). The Thai Ministry of Finance (MOF), on an industry-wide basis, determines specific duty incidence rates for duty drawback that vary based on product. Under the duty drawback program, MOF links a certain percentage of the FOB value of the goods attributable to import duties incurred in the exported product's manufacture, regardless of product destination. *See* pages C–29 through 31 of the sections B&C response. When the goods are exported, a tax certificate is issued equivalent to the duty amount collected on the imported material used to manufacture the exported product. NSM provided documentation along with its sections B&C response demonstrating the link between the import duty and the rebate, including the Thai Government list of rebate amount based on HTSUS number, Tax Certificate, Details of Exported Goods and Request for Tax Certificate, Export Entry Form, and accompanying commercial invoices for all U.S. sales. *See* exhibit S1C–3 of the sections B&C response.

Consistent with the Department's decision in *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Good from Korea,* 60 FR 33561 (June 28, 1995) (*OCTG From Korea*), to allow duty drawback even though the respondent could not link the particular exportation of subject merchandise back to a particular imported material, the Department preliminarily determines that NSM uses a methodology consistent with Department practice for applying its duty drawback received upon export of subject merchandise to the United States. MOF's linkage of a certain percentage of the FOB value of the goods attributable to import duties incurred in the exported product's manufacture satisfies the linkage requirement consistent with *OCTG From Korea,* as does the tax certificate issued when the goods are exported, equivalent to the duty amount collected on the imported material used to manufacture the exported product. *See Far East Mach. II* v. *United States,* 699 F.Supp. 309, 312 (1988). Based on NSM's explanation and the supporting documentation, the Department preliminarily finds a link between the import duty and the rebate granted to NSM, thereby satisfying the first criterion of the Department's two-pronged test for duty drawback.

NSM also meets the second criterion of the Department's two-pronged test for duty drawback. NSM provided its POR purchases of raw material (*i.e.*, scrap and pig iron) in exhibit 3 of its second sections A through C supplemental response. It is clear from this exhibit that the POR amount of NSM's imported raw materials, converted to hot-rolled production in metric tons (MT), exceeds NSM's total exports of hot-rolled steel during the POR.[6] Accordingly, NSM has satisfied the second criterion of the Department's two-pronged test for duty drawback. Therefore, the Department preliminarily finds that for NSM's U.S. sales, the company uses a methodology consistent with Department practice for applying duty drawback received upon export of subject merchandise to the United States. *See OCTG From Korea.*

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared NSM's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because NSM's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See* section A response at exhibit 1.

B. Cost of Production Analysis

On April 24, 2006, after a request from petitioner and Nucor, the Department initiated a sales-below-cost investigation of NSM because both petitioner and Nucor provided a reasonable basis to believe or suspect that NSM is selling hot-rolled steel in Thailand at prices below the cost of production (COP). *See* the Department's Cost Initiation Memorandum. Based on the Department's findings in the Cost Initiation Memorandum there is a reasonable basis to believe or suspect that NSM is selling hot-rolled steel in Thailand at prices below COP, and in accordance with section 773(b)(1) of the Act, we examined whether NSM's sales in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of NSM's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs.

We relied on the COP information provided by NSM except for the following adjustments. During the POR, NSM purchased scrap from affiliated companies. For scrap purchased from one of these affiliated companies, we applied the major input rule under section 773(f)(3) of the Act and adjusted the reported cost to the higher of transfer price, market price or COP. We adjusted NSM's reported cost by excluding the fiscal year loss on the sale of scrap from NSM's G&A expenses, and including the POR loss on the sale of scrap in cost of manufacturing (COM). In addition, we excluded the offset for sales revenue derived from scrap coils and baby coils from the G&A expense ratio, and included revenue from these sales as an offset to NSM's reported

[5] *See* the Department's Sales Analysis Memorandum for a further discussion of this issue.

[6] Due to the proprietary nature of the amounts of NSM's purchases of raw materials and NSM's production of hot-rolled steel, a complete discussion of this issue is found at page 10 of the October 31, 2006, Sales Analysis Memorandum.

COM. We also excluded offsets for income from storage and bank charges, penalties, and inland freight charges from the G&A expense ratio because these offsets are related to sales activities. Last, we deducted the scrap recovery value from NSM's cost of goods sold, which is used as the denominator in the calculation of the G&A and financial expense rates. For further discussion of these adjustments, *see Memorandum to Neal Halper, from Oh Ji Young, regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results,* on file in the Department's CRU located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC CRU, dated October 31, 2006.

We compared the weighted-average COP figures to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of NSM's home market sales of a given model were made at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of NSM's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for NSM revealed that for home market sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Price-to-Price Comparisons

We matched all U.S. sales to NV sales. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

D. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative (SG&A) expenses, interest expense and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest and profit on the amounts NSM incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Thailand. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 of the Department's regulations.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997). If the

claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review,* 65 FR 30068 (May 10, 2000). In the present review, NSM did not claim a LOT adjustment. *See* Sections B&C response at B–25.

NSM claimed one LOT in the U.S. market and one LOT in the home market, with both LOTs involving sales to unaffiliated customers. NSM claimed that all U.S. sales are made to an unaffiliated trading company. NSM reported 2 channels of distribution for home market sales made through its single LOT. The first channel of distribution was sales made through unaffiliated wholesaler/trading companies to unaffiliated end-users. The second channel of distribution was sales made directly to unaffiliated end-users.

Whether made directly to end-users or through wholesalers/distributors, the Department finds that NSM reported similar selling activities for all home market sales. While NSM's direct sales to end-users and downstream sales in the home market involve different channels of distribution, these sales do not appear to involve significant differences in selling functions and therefore we consider these channels to represent one LOT. Additionally, after analyzing the selling functions NSM reported for its EP sales, we find that, apart from commissions paid for U.S. sales and for limited inventory provided on home market sales, the selling functions for NSM's EP sales is the same as the LOT for all sales in the home market. Based upon the above analysis, we preliminarily conclude that the LOT for all EP sales is the same as the LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for NSM. Due to the proprietary nature of the levels of these selling activities, for further analysis, *see* Sales Analysis Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period November 1, 2004, through October 31, 2005, to be as follows:

Manufacturer/Exporter	Margin (percent)
Nakornthai Strip Mill Public Co., Ltd	0.00

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. *See* 19 CFR 351.309(c). An interested party may request a hearing within 30 days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by NSM or by any of the companies for which we are rescinding this review and for which NSM or each no-shipment respondent did not know its merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 3.86 percent, which is the ''all others'' rate established in the LTFV investigation. *See Hot Rolled Steel Order.* These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–18884 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–833

Preliminary Results of Antidumping Duty Changed–Circumstances Review and Notice of Intent to Revoke Order in Part: Stainless Steel Bar from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 16, 2006, the Department of Commerce (the Department) published a notice of initiation of changed–circumstances review of the antidumping duty order on stainless steel bar from Japan, as described below. *See Initiation of Antidumping Duty Changed–Circumstances Review: Stainless Steel Bar from Japan*, 71 FR 60691 (October 16, 2006) (*Initiation Notice*). In our *Initiation Notice*, we invited interested parties to comment on the request to exclude 21–2N modified valve/stem stainless steel round bar, as described below, from the scope of this order. The Department received no comments.

Absent any comments, the Department preliminarily concludes that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by this order with respect to 21–2N modified valve/stem stainless steel round bar. Therefore, the Department preliminarily concludes that it is appropriate to revoke this order, in part, with respect to unliquidated entries of 21–2N modified valve/stem stainless steel round bar, not subject to the final results of an administrative review, that have been entered for consumption on or after February 1, 2006, based on the fact that the petitioners and domestic interested parties have made an affirmative statement of no interest in the continuation of the order with respect to that merchandise.

EFFECTIVE DATE: November 8, 2006.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on stainless steel bar from Japan on February 21, 1995. See *Notices of Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan*, 60 FR 9661 (February 21, 1995). On August 28, 2006, TRW Fuji Valve, Inc. (TRW), a U.S. importer, requested that the Department exclude a product to which it referred as 21–2N modified valve/stem stainless steel round bar from the scope of the order. See TRW's letter to the Secretary, dated August 28, 2006. TRW requested that the Department revoke the order in part retroactively to February 1, 2006, the beginning of the anniversary month of the order. On September 18, 2006, the petitioners and domestic interested parties[1] provided a letter attesting to their expressed lack of interest in having this merchandise continue to be subject to the antidumping duty order on stainless steel bar from Japan.

On October 16, 2006, the Department published a notice of initiation of changed- circumstances review of the antidumping duty order on stainless steel bar from Japan. See *Initiation Notice*. In the *Initiation Notice*, the Department indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 15 days after publication of the initiation of this review and submit responses to those comments no later than 7 days following the submission of comments. The Department received no comments from interested parties.

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi–finished products, cut–length flat–rolled products (*i.e.*, cut–length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections. The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Scope of Changed–Circumstances Review

The product subject to this changed–circumstances review meets the following description: certain valve/stem stainless steel round bar of 21–2N modified grade, having a diameter of 5.7 millimeters (with a tolerance of 0.025 millimeters), in length no greater than 15 meters, having a chemical composition consisting of a minimum of 0.50 percent and a maximum of 0.60 percent of carbon, a minimum of 7.50 percent and a maximum of 9.50 percent of manganese, a maximum of 0.25 percent of silicon, a maximum of 0.04 percent of phosphorus, a maximum of 0.03 percent of sulfur, a minimum of 20.0 percent and a maximum of 22.00 percent of chromium, a minimum of 2.00 percent and a maximum of 3.00 percent of nickel, a minimum of 0.20 percent and a maximum of 0.40 percent of nitrogen, a minimum of 0.85 percent of the combined content of carbon and nitrogen, and a balance minimum of iron, having a maximum core hardness of 385 HB and a maximum surface hardness of 425 HB, with a minimum hardness of 270 HB for annealed material. See TRW's letter to the Secretary, dated August 28, 2006.

Preliminary Results of Review and Intent to Revoke in Part the Antidumping Duty Order

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act),

[1] The petitioners and domestic interested parties include Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., North American Stainless, Universal Stainless and Alloy Products, Inc., and Valbruna Slater Stainless, Inc.

the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed–circumstances review). Section 751(b)(1) of the Act requires a changed–circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of relief. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed–circumstances review and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) other changed circumstances sufficient to warrant revocation exist.

As stated in the *Initiation Notice*, the petitioners and domestic interested parties attested to their lack of interest in having the merchandise to which TRW refers as 21–2N modified valve/stem stainless steel round bar, as fully described above in the ''Scope of the Changed- Circumstances Review'' section, continue to be subject to the antidumping duty order on SSB from Japan. The Department received no comments during the comment period opposing the partial revocation of the order with respect to 21–2N modified valve/stem stainless steel round bar. Therefore, the Department preliminarily concludes that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by this order with respect to 21–2N modified valve/stem stainless steel round bar.

If these results become final, the Department will revoke the order, in part, for all unliquidated entries of the product in question not covered by the final results of an administrative review. The most recent period for which the Department has completed an administrative review or ordered automatic liquidation under 19 CFR 351.212(c) is February 1, 2005, through January 31, 2006. Any prior entries are subject either to final results of review or automatic liquidation. Therefore, we will instruct U.S. Customs and Border Protection (CBP) to liquidate, without regard to antidumping duties, shipments of 21–2N modified valve/stem stainless steel round bar from Japan entered, or withdrawn from warehouse, for consumption on or after February 1, 2006. The Department will also instruct CBP to end suspension of liquidation for the product in question and to release any cash deposits or bonds pursuant to 19 CFR 351.222(g)(4). Moreover, the Department will instruct CBP to pay interest on such refunds in accordance with section 778 of the Act.

Public Comment

Interested parties wishing to comment on these preliminary results may submit briefs to the Department no later than 15 days after the publication of this notice in the **Federal Register**. Parties will have 7 days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those briefs. Parties who submit briefs or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303. Any comments must also be served on all interested parties on the service list for this proceeding, which is available on our Web site (*http://ia.ita.doc.gov/apo/index.html*). We will issue our final results in this changed–circumstances review as soon as practicable following the above comment period but not later than 270 days after the date on which we initiated the changed–circumstances review, in accordance with 19 CFR 351.216(e), and we will publish the results in the **Federal Register**. While the changed–circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed—circumstances review, will continue unless and until this order is revoked, in part, pursuant to the final results of this changed–circumstances review or an administrative review.

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 2, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–18880 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M., U.S. Department of Commerce, Room 2104, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 06–047. Applicant: University of Alabama, 201 7th Ave., A129 Bevill Building, Tuscaloosa, AL 33487. Instrument: Electron Microscope, Model Quanta 200 3D. Manufacturer: FEI, Czech Republic. Intended Use: The instrument is intended to be used to prepare transmission electron microscopy specimen foils and perform intricate cutting operations at the nano–scale for basic research programs on fuel cells, magnetic information storage, catalysis, joining and thin films using materials including Pt–alloy nanoparticles, TiAl thin film coatings and Cu–Sn alloys for welding. It will also be used for student training and operation. Application accepted by Commissioner of Customs: July 1, 2006.

Docket Number: 06–048. Applicant: Harvard Medical School, 25 Shattuck Street, Boston, MA 02115. Instrument: UV/Vis Upgrade for a Confocal Microscope. Manufacturer: Evotech, Germany. Intended Use: The article is intended to be used as a compatible accessory for an existing Evotec Opera 2.0 System. This extension is an integral part of the Opera platform and needs to be installed into the body of the microscope system for performing wide–field fluorescence microscopy, allowing detection of a greater number of fluorophores used to label structures or proteins of interest in cells. Application accepted by Commissioner of Customs: July 24, 2006.

Docket Number: 06–049. Applicant: Harvard Medical Center, 25 Shattuck Street, Boston, MA 02115. Instrument: Twister II Plate Handling Robotic

Extension for a Confocal Microscope. Manufacturer: Evotech, Germany. Intended use: The article is intended to be used as a compatible accessory for an existing Evotec Opera 2.0 System. Although the article is a product of Caliper LifeSciences, a U.S. company, it was sent to Germany where Evotec engineers installed it in order to insure seamless operation with the high–throughput microscope system. It allows automatic loading of tissue–culture plates onto the stage of the microscope for continuous unattended operation. Application accepted by Commissioner of Customs: July 24, 2006.

Docket Number: 06–050. Applicant: The University of Illinois at Urbana–Champaign, 616 E. Green Street, Suite 212 Champaign, IL 61820. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used, among other things, for studying (1) relations of structure to catalytic activity, (2) strain and composition distribution within nanostructures, (3) the effects of impurities on the strength of materials, (4) mechanisms for mixing of immiscible systems, (5) corrosion mechanisms and products, and (6) structural motifs of chromosome architecture and its modification. It will also be used for graduate student research. Application accepted by Commissioner of Customs: July 27, 2006.

Docket Number: 06–051. Applicant: Clemson University, AMRL Bldg, 91 Technology Drive, Anderson, SC 29625. Instrument: Electron Microscope, Model S–3400N. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument is intended to be used to study: (1)cellular interaction with nano–particles and development of new materials, grain boundaries, erosion, fractured surfaces and failure analysis. (2) effects of temperature variations and heat treatment on formation of carbon nanotubes. (3) ultra–thin sectioning for evaluation of polymer films with embedded nano–structures and cellular studies of healthy and diseased cells. It will also be used in courses on microscopy and to train graduate students and staff in the use of electron microscopes. Application accepted by Commissioner of Customs: August 9, 2006.

Applicant: Docket Number: 06–052. Clemson University, AMRL Bldg, 91 Technology Drive, Anderson, SC 29625. Instrument: Electron Microscope, Model H–9500. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument is intended to be used to study: (1)cellular interaction with nano–particles and development of new materials, grain boundaries, erosion, fractured surfaces and failure analysis. (2) effects of temperature variations and heat treatment on formation of carbon nanotubes and (3) ultra–thin sectioning for evaluation of polymer films with embedded nano–structures and cellular studies of healthy and diseased cells. It will also be used in courses on microscopy and to train graduate students and staff in the use of electron microscopes. Application accepted by Commissioner of Customs: August 9, 2006.

Applicant: Docket Number: 06–053. Clemson University, AMRL Bldg, 91 Technology Drive, Anderson, SC 29625. Instrument: Electron Microscope, Model S–4800. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument is intended to be used to study: (1)cellular interaction with nano–particles and development of new materials, grain boundaries, erosion, fractured surfaces and failure analysis. (2) effects of temperature variations and heat treatment on formation of carbon nanotubes. (3) ultra–thin sectioning for evaluation of polymer films with embedded nano–structures and cellular studies of healthy and diseased cells. It will also be used in courses on microscopy and to train graduate students and staff in the use of electron microscopes. Application accepted by Commissioner of Customs: August 9, 2006.

Docket Number: 06–054. Applicant: Purdue University, 465 Northwestern Ave., West Laffayette, IN. Instrument: DFB, Fiber Laser System. Manufacturer: Koheras A/S, Denmark. Intended Use: The instrument is intended to be used to formulate a fundamental physical description of the noise processes of optical frequency combs and their application to Optical Arbitrary Waveform Generation by generating an ultrastable (ultra–low linewidth) optical frequency via intensity and phase modulation of this ultra–low linewidth CW laser, sweeping its carrier frequency and beating it with a ''conventional'' mode-locked, laser–based optical frequency comb. Optical frequency comb line–by-line pulse shaping with RF and ultra–fast optical detection and analysis will be employed. Application accepted by Commissioner of Customs: September 1, 2006.

Docket Number: 06–055. Applicant: Southern Illinois University, Image Center, 750 Communications Drive, Carbondale, IL 62901. Instrument: Electron Microscope, Model H–7650–II. Manufacturer: Hitachi High–Technologies Corporation, Japan. Intended Use: The instrument is intended to be used in a central, multidisciplinary facility for a wide range of research projects involving living organisms, their cell and structural details, man–made nanoparticles, friction and wear on various surfaces, etc., to digitally capture 3–D images for inspection, storage, and transmittal. It will also be used in training courses in microscopy for graduate students. Application accepted by Commissioner of Customs: August 26, 2006.

Docket Number: 06–056. Applicant: DHHS/Centers for Disease Control & Prevention/Infectious Disease Pathology, 1600 Clifton RD., NE, Mailstop G–32, Atlanta, GA 30333. Instrument: Transmission Electron Microscope, Model Technai G2 Spirit twin. Manufacturer: FEI, Company, The Netherlands. Intended Use: The instrument is intended to be used for performance, of among other things, thin section electron microscopy, immuno–electron microscopy, in situ electron microscopy, and negative stain microscopy. The primary educational purpose is derived by publication of research data and high resolution images obtained in the course of research as published in peer reviewed scientific journals as well as materials available for informing the general public. Application accepted by Commissioner of Customs: August 28, 2006.

Docket Number: 06–058. Applicant: University of Illinois at Chicago, Department of Physics m/c 273, 845 West Taylor Street, Chicago, IL 60607–7059. Instrument: Magnesium Fluoride Windows. Manufacturer: Laser–Laboratorium, Gottingen, Germany. Intended Use: The article is a compatible accessory to reduce glare and improve the beam quality associated with an excimer laser system made by the same manufacturer and used to study nonlinear optical phenomena and x–ray amplification in gases, solids, atomic clusters and plasmas. Measured quantities of x–rays and their spectral properties will be examined for an understanding of new physics associated with coherent x–ray production which will serve as a preamplifier in an ultraviolet laser system. Application accepted by

Commissioner of Customs: October 5, 2006.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E6–18915 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–122–815

Pure Magnesium and Alloy Magnesium from Canada: Final Results of 2004 Countervailing Duty Administrative Reviews and Partial Rescission of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 13, 2006, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2004, through December 31, 2004. We gave interested parties an opportunity to comment on the preliminary results.

Our analysis of the comments received on the preliminary results did not lead to any changes in the net subsidy rates. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for the reviewed company are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: November 8, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1174 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 13, 2006, the Department of Commerce (''the Department'') published the preliminary results of these administrative reviews (*see Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews and Intent to Rescind*, 71 FR 39667 (July 13, 2006) (''*Preliminary Results*''). Norsk Hydro Canada, Inc. (''NHCI'') submitted a case brief on August 14, 2006. In its case brief, NHCI agreed with the Department's *Preliminary Results* with respect to NHCI. US Magnesium LLC (''the petitioner'') did not file a case or rebuttal brief.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Partial Rescission

In the *Preliminary Results*, the Department preliminarily rescinded these reviews with respect to Magnola Metallurgy Inc. (''Magnola'') pursuant to 19 CFR 351.213(d)(3). The Department confirmed using data from U.S. Customs and Border Protection that Magnola did not ship subject merchandise to the United States during the POR. In addition, we did not receive any evidence from the petitioners that Magnola shipped subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding these reviews with respect to Magnola.

Period of Reviews

The period for which we are measuring subsidies, or POR, is January 1, 2004, through December 31, 2004.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary results net subsidy rate.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter subject to these reviews. For the period January 1, 2004, through December 31, 2004, we find the net subsidy rate for NHCI to be 0.51 percent. We are disclosing our calculations to the interested parties in accordance with 19 CFR 351.224(b).

Cash Deposit Instructions

On July 6, 2006, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department revoked the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*see Revocation of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 71 FR 38382 (July 6, 2006)). The effective date of the revocations is August 16, 2005. As a result of this action, we are not issuing cash deposit instructions.

However, were the Department to issue cash deposit instructions, the estimated net subsidy for future NHCI imports would be zero because the subsidy benefits were fully extinguished during the POR. Consequently, no cash deposits of estimated countervailing duties would be required on shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Assessment Rates

Pursuant to 19 U.S.C. § 1516a(g)(5)(c)(i), the Department will not order the liquidation of entries of pure magnesium or alloy magnesium from Canada exported by NHCI on or after January 1, 2004, through December 31, 2004, pending final disposition of a dispute settlement proceeding under NAFTA (USA–CDA–00–1904–09 (panel)) with respect to *Pure and Alloy Magnesium From Canada; Final Results of Full Sunset Review*, 65 FR 41436 (July 5, 2000). Liquidation of NHCI entries will occur at the rate described in these final results of reviews, if appropriate, following the final disposition of the previously mentioned NAFTA dispute settlement proceedings.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: October 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–18886 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee (ETAC); Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held onDecember 7, 2006 from 1:00 pm–4:00 pm at the Trade Information Center, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004, Training Room C.

The ETAC is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid at (202) 482–5154.

Date: November 2, 2006.

Philip J. Martello,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E6–18879 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA's Teacher at Sea Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 8, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth McMahon, (301) 713–7611, or *elizabeth.mcmahon@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The application solicits information from interested educators: Basic personal information, teaching experience and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone going to sea. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea themselves. NOAA does not collect information from this universe of respondents for any other purpose.

II. Method of Collection

On-line forms can be filled-in on-line, printed, and mailed. Persons with full Adobe Acrobat software can save the on-line form and submit it electronically.

III. Data

OMB Number: 0648–0283.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 375.

Estimated Time Per Response: 45 minutes to read an complete application; 15 minutes to complete a Health Services Questionnaire; 15 minutes to deliver and discuss recommendation forms to persons from whom recommendations are being requested; 15 minutes to complete a recommendation form; and 2 hours for a follow-up report.

Estimated Total Annual Burden Hours: 309.

Estimated Total Annual Cost to Public: $660.

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: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–18865 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Office Socioeconomic Survey of Gulf Shrimp Fishermen

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 8, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Liese, 305–365–4109 or *Christopher.Liese@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA proposes to collect socioeconomic data from commercial fishermen in the Gulf of Mexico shrimp fishery who hold a permit for shrimp fishing in federal waters (U.S. Exclusive Economic Zone). Information about revenues, variable and fixed costs, capital investment and other socioeconomic information will be collected. This data complements other data already collected and is needed to conduct socioeconomic analyses that will improve the management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted and respond to federal regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

II. Method of Collection

The information will be collected either through face-to-face interviews or by mail.

III. Data

OMB Number: 0648–0476.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 900.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 900.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–18887 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheic Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council): Education and Commercial Fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosphy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to service 3-year terms, pursuant to the council's Charter

DATES: Applications are due by December 15, 2006.

ADDRESSES: Application kits may be obtained from Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362, Phone (350) 457–6622, ext. 15, e-mail *andrew.palmer@noaa.gov*.

SUPPLEMENTARY INFORMATION: Sanctuary Advisory Council members and alternates serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary. The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. Ina ddition, five Federal Government agencies and one federally funded program serve as non-viting, ex officio members. Since its establishment, the advisory coundil has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

November 1,2 006.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmosphere Administration.

[FR Doc. 06–9115 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103006A]

Endangered Species; File No. 1547

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the New York State Department of Environmental Conservation (Kathryn Hattala, Principal Investigator), 21 South Putt Corners Road; New Paltz, NY 12561 has been issued a permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 08, 2005, notice was published in the **Federal Register** (70 FR 45701) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the New York State Department of Environmental Conservation (NYSDEC). The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

In order to evaluate seasonal movement of shortnose sturgeon in Haverstraw and Newburgh Bays of the Hudson river, the NYSDEC is authorized annually to capture a maximum of 500 adult and juvenile shortnose sturgeon with gill nets, and to measure, weigh, scan for tags, insert passive integrated transponder tags and Carlin tags (if untagged) and then release.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 2, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–18868 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082306A]

Endangered Species; File No. 1576

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543–1026, has been issued a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 28, 2006, notice was published in the **Federal Register** (71 FR 25153) that a request for a scientific research permit to take loggerhead, leatherback, Kemp's ridley, green, hawksbill, and olive ridley sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will test modifications to scallop dredge gear that may reduce the probability of turtle injuries due to gear interactions. They will also opportunistically collect biological information from sea turtles captured in other projects or fisheries to improve NMFS's ability to assess stocks and the impact of anthropogenic activities. The researchers will annually capture and/or handle, measure, weigh, flipper tag, passive integrated transponder tag, tissue biopsy, collect parts from, photograph, and release up to 81 loggerhead, 10 leatherback, 27 Kemp's ridley, 11 green, 1 hawksbill, and 1 olive ridley. Up to 23 loggerheads and 1 leatherback, 1 Kemp's ridley, and 1 green sea turtle could be taken lethally annually. The research would occur in the Western Atlantic Ocean (Florida Keys through Maine) and the permit would be issued for 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 ofthe ESA.

Dated: November 2, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–18881 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102406C]

Nominations for the Annual Sustainable Fisheries Leadership Awards for 2007

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: NOAA has established the Sustainable Fisheries Leadership Awards Program to recognize outstanding performances, achievements and leadership by industries, organizations and individuals who promote best stewardship practices for the sustainable use of living marine resources and ecosystems, and who have fostered change and inspired a stewardship ethic within their community. This notice solicits nominations of qualified candidates for the second annual Sustainable Fisheries Leadership Awards in six award categories listed in this Notice. NMFS has partnered with the Fish for the Future Foundation to collect the nominations.

DATES: Nomination forms and required supporting materials must be received on or before January 8, 2007.

ADDRESSES: Nominations should be sent electronically to the Fish for the Future Foundation, *nominations@fish4thefuturefoundation.org.* Nominations can also be mailed to Sustainable Fisheries Leadership Awards, c/o Fish for the Future Foundation, 3382 Gunston Road, Alexandria, VA 22302, or faxed to (703) 379–5777. All information and official nomination forms can be accessed electronically at the NMFS Web site *www.nmfs.noaa.gov/awards/* or the Fish for the Future Foundation Web site *www.fish4thefuturefoundation.org* or by calling (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Michele Shea, Fish for theFuture Foundation, (703) 379–6101, *Michele.Shea@fish4thefuturefoundation.org* or Laurel Bryant, NMFS, (301) 713–2379 x171, *laurel.bryant@noaa.gov*

SUPPLEMENTARY INFORMATION: Established by NMFS, the Sustainable Fisheries Leadership Awards reflect the values and principles of NOAA and its mission to ensure sustainable management of U.S. fishery resources for the benefit of our Nation. NMFS has partnered with the Fish for the Future Foundation, an Internal Revenue Service-approved non-profit organization, to assist with the awards program. The Fish for the Future Foundation is dedicated to promoting education among the American public on the need for and importance of a vibrant, sustainable fishing industry.

The Sustainable Fisheries Leadership Awards Program is open to fishing industry sectors, organizations, individuals, and state, local and federal government agencies and their employees. Organizations, individuals and agencies cannot nominate themselves. A nominee cannot be nominated for more than one award category. International entities or employees of NMFS are not eligible to receive an award under any category. Presenting an award under each of the six categories will be entirely dependent on the pool of eligible candidates received and NMFS' determination of their qualifications. As such, there may be years in which an award is not presented under one or more of the categories.

Nominated through a public process, nominees will be considered for the following categories: Special Recognition Award, Stewardship & Sustainability Award, Conservation Partnership Award, Science, Research & Technology Award, Coastal Habitat Restoration Award, and Public Education, Community Service & Media Award.

Nominations must be submitted on the official nomination form available at *www.nmfs.noaa.gov/awards/* or *www.fish4thefuturefoundation.org*, and submitted electronically, mailed or faxed to Fish for the Future Foundation (see **DATES** and **ADDRESSES**). Relevant supporting materials, not to exceed 10 pages in length, may be submitted along with the nomination form. At least one reference is required, however no more than three references or endorsements will be accepted or considered by the review panel. Nominations will be reviewed by the Marine Fisheries Advisory Committee (a federal advisory group established to advise the Secretary of Commerce on living marine resource issues) as well as NMFS leadership, making recommendations to the Assistant Administrator for Fisheries. Final selection of award recipients is made by the Assistant Administrator for Fisheries and the Under Secretary of Commerce for Oceans and Atmosphere.

The following award categories are open for nominations:

Special Recognition Award—This award honors an individual who has demonstrated a life time achievement in innovative management and outstanding leadership for the stewardship and sustainable use of living marine resources.

Stewardship & Sustainability Award—This award recognizes excellence in promoting responsible stewardship and innovative management for long-term social, economic and biological sustainability of living marine resources.

Conservation Partnership Award—This award recognizes outstanding achievement in cooperative and collaborative work among stakeholder groups to foster best practices in sustainable living marine resources management.

Science, Research & Technology Award—This award recognizes excellence in the field of applied fisheries research. Nominations will be considered for advancements in technology to improve fisheries monitoring, reduce bycatch, protect habitat, conserve protected species, and enhance fishing operations as well as other technological advances that reduce the impacts of human activity on the marine environment.

Coastal Habitat Restoration Award—This award recognizes significant achievements made in coastal habitat restoration, including the development of innovative approaches and community based support necessary to accomplish the ambitious goals inherent with these projects.

Public Education, Community Service & Media Award—This award recognizes efforts to inform the general public about marine fisheries and living marine resources in the United States, or efforts to support the nation's fishing communities through community service.

Evaluation of nominations will include but are not limited to the following criteria:

Leadership—the individual or the overall team effort that has been demonstrated over a sustained period of time in support of the stewardship and sustained use of living marine resources.

Impact on Stewardship—the degree of stewardship and conservation ethics and practices fostered within the larger community of living marine fisheries stakeholders and users.

Ecological Significance—the impact and benefit to the overall health and abundance provided to living marine resources.

Long-term Significance—the impact to the science, management and economic sustainability of living marine resources.

These awards are presented annually. This is the second year of the Sustainable Fisheries Leadership Awards. Information on last year's awards and award recipients can be found at *www.nmfs.noaa.gov/awards.*

Dated: November 2, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 06–9116 Filed 11–3–06; 1:36 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information

services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time And Date: The meeting will be held Tuesday December 5, 2006, from 10:30 a.m. to 4:30 p.m. and Wednesday December 6, 2006, from 8:30 a.m. to 4:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Courtyard by Marriott, 8506 Fenton Street, Silver Spring, Maryland 20910.

Status: The meeting will be open to public participation with a 30-minute public comment period on December 5 (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by November 27, 2006 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after November 27 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) The Revision of NOAA Information Quality Guidelines to Conform with the OMB Peer Review Bulletin; (2) NOAA High Performance Computing Needs; (3) NOAA Space-Based Sensors; (4) Sound in the Marine Environment and Associated Science Challenges and Opportunities for NOAA; (5) the NOAA Hurricane Intensity Research Working Group (HIRWG) and National Science Foundation (NSF) National Science Board Hurricane Reports; (6) Research Goals to Improve Operational Support of Wildland Fire Management; (7) the NOAA Five-Year Research Plan and (8) Reviews of the NOAA Cooperative Institutes and the SAB's Role in them.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: November 2, 2006.

Mark E. Brown,

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–18869 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102606B]

Sea Turtle Conservation; Activities Related to Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is seeking public review and comment on information characterizing Atlantic and Gulf of Mexico state trawl fisheries to support the Strategy for Sea Turtle Conservation in Relation to Atlantic and Gulf of Mexico Fisheries (Strategy). NMFS is requesting public review of these reports to ensure state trawl fishery characterizations contain the most accurate and up-to-date scientific, commercial, and anecdotal information available and to inform potential future management actions to address incidental capture of sea turtles in trawl gears (bycatch).

DATES: Written comments on the state trawl characterizations announced by this notice, or other information that NMFS should consider, are requested on or before January 8, 2007.

ADDRESSES: Comments should be sent to: Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, NMFS 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 427–2522. Comments on this notice may be submitted by e-mail (see **FOR FURTHER INFORMATION CONTACT**). Include in the subject line of the e-mail comment the following document identifier: 102606B. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. References used in this document may be obtained by writing to this address or by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski (ph. 301–713–2322, fax (301) 427–2522, e-mail *Tanya.Dobrzynski@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All species of sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). NMFS is required to take steps to conserve and recover endangered and threatened sea turtles. Incidental capture in fishing gear is a leading threat to sea turtle populations. Certain types of gear are more prone to incidentally capturing sea turtles than others, depending on the design of the gear, the manner in which the gear is fished, and the time and area within which it is fished. NMFS initiated the Strategy in 2003 to institute a new approach to addressing sea turtle bycatch on a per-gear basis, rather than fishery by fishery, given that sea turtle bycatch is more strongly correlated with gear type than target species. The primary objectives of the Strategy are to: (1) conserve and recover sea turtles; (2) evaluate sea turtle bycatch across gear types; (3) develop and implement measures to reduce bycatch; and (4) authorize fishery takes consistent with ESA mandates. A comprehensive approach evaluating fishing impacts by gear type across fishing sector as well as across state, Federal, and regional boundaries will increase management effectiveness and ensure broader compliance with the ESA.

To execute the goals of the Strategy, NMFS has prioritized fishing gear in relation to sea turtle bycatch. Trawl gears operating without turtle excluder devices in areas and times where sea turtles are present are a high priority gear type under the Strategy. NMFS' efforts to address sea turtle bycatch in trawl gears include characterizing state and Federal fisheries; monitoring and estimating sea turtle takes; undertaking gear research; and working with stakeholders to develop solutions.

To prepare the state fishery characterizations mentioned above, NMFS contracted the Atlantic States Marine Fisheries Commission to prepare Atlantic state reports and individual state agencies in the Gulf of Mexico to prepare Gulf state reports. State fishery characterizations contain information, where available, on all fisheries and fishing gears used in each state's waters. NMFS is seeking public review only of trawl gear reports at this time since trawls have been identified as a high

priority gear type under the Strategy. Other gear sections of these reports will likely be made available at a future date.

State trawl gear reports include, where available, information on trawl deployment (e.g., how the gear is deployed, where in the water column it fishes, when it is fished seasonally); target species; number of licensed vessels/fishermen; landings or effort by geographical area; recent history, current status, and projected status of the fishery; state laws and regulations relevant to sea turtle bycatch reduction either directly or indirectly; bycatch monitoring programs (e.g., observer coverage); and sea turtle bycatch. Reports generally include information from 1999–2004.

NMFS is interested in corrections, clarifications, additions, or updates to the information provided in these reports, especially regarding the operation or presence of the trawl fisheries, and/or the interaction of sea turtles with this gear type. Public review and comment is sought to ensure that management decisions are based upon the best information available.

State trawl reports will be available for review for a period of 60 days. Individual trawl gear characterizations can be downloaded at *http://www.nmfs.noaa.gov/pr/species/turtles/trawl.htm* or copies may be requested from Tanya Dobrzynski (see **FOR FURTHER INFORMATION CONTACT**).

Dated: November 2, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–18882 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103106C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits and permit modifications.

SUMMARY: Notice is hereby given that NMFS has received ten scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on December 8, 2006.

ADDRESSES: The applications are available online at *http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/Section–10–Permits/Scientific-Research-Authorizations/Appls-for-Cmnt.cfm*. Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer-run, threatened SR fall-run, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR), threatened Hood Canal (HC).

Steelhead (*O. mykiss*): threatened LCR, threatened middle Columbia River (MCR), threatened Snake River (SR), threatened UCR, proposed threatened PS.

Coho salmon (*O. kisutch*): threatened LCR.

Sockeye salmon (*O. nerka*): threatened Ozette Lake (OL).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1175—Modification 1

The Gifford Pinchot National Forest (GPNF) is requesting a 5-year research permit to take juvenile PS Chinook salmon, LCR Chinook salmon, LCR coho salmon, and LCR steelhead. It would also take juvenile PS steelhead. The purpose of this research is to determine fish species presence and distribution, record fish habitat conditions, and inventory spawning areas on the GPNF. The information would be used in broad-scale analyses (e.g. watershed analysis) and project-level planning (e.g., timber sales and habitat restoration projects). The research would benefit listed salmonids by providing the GPNF with information to improve forest management. Permit 1175 has been in place for almost 5 years and is due to expire on December 31, 2006. The GPNF would observe/harass adult and juvenile salmonids during spawner and redd counts, snorkel surveys, and habitat surveys. The GPNF would also capture (using backpack electrofishing equipment or seines), handle, and release juvenile salmonids. The GPNF does not intend to kill any fish being captured, but a small number of fish may die as an unintentional result of the research activities.

Permit 1313—Modification 1

Pentec Environmental (Pentec) is requesting a 4-year research permit to take Puget Sound Chinook salmon associated with research to be conducted in Port Gardner and the Snohomish River estuary, Washington. It would also take juvenile PS steelhead. The purpose of the research is to monitor juvenile salmonid use of habitat restoration sites. The habitat restoration work was conducted by the Port of Everett in 2002 and monitoring has continued (under this permit) since then. Permit 1313 is due to expire on December 31, 2006. The habitat restoration projects were designed to improve salmonid rearing and migration habitat, and the research would benefit the fish by helping managers learn the effectiveness of those measures. Juvenile salmonids would be captured (using a floating beach seine), counted, measured, checked for adipose fin clips, and released. Pentec does not intend to

kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1372—Modification 1

The Puget Sound Energy, Incorporated (PSE) is requesting a 5-year research permit to take adult and juvenile PS Chinook salmon. It would also take juvenile PS steelhead. The purposes of the research are to (1) identify the numbers of redds of listed species in the Skagit River downstream from its confluence of the Baker River, (2) identify the timing and distribution of Chinook salmon spawning in the middle Skagit River, and (3) collect tissue samples from bull trout in the Baker River basin. Adult PS Chinook would be observed and harassed during redd counts and spawning surveys. The research would benefit PS Chinook by providing resource managers with information to improve management of the Baker River Hydroelectric Project. The Baker River bull trout study would not target PS Chinook, but juvenile Chinook may be captured (using backpack electrofishing equipment), handled, and released. The PSE does not intend to kill any of the juvenile fish being captured, but a small number may die as an unintended result of the activities.

Permit 1386—Modification 2

The Washington State Department of Ecology (DOE) is requesting a 5-year research permit to take all fish species identified in this notice while conducting research throughout the State of Washington. It would also take juvenile PS steelhead. The purpose of the research is to investigate and monitor toxic contaminants in fish tissues and freshwater environments in Washington. The research is part of the Washington State Toxics Monitoring Program. The listed species would benefit from the development of actions to control, reduce, and remove toxic contaminants from Washington State's waters. The DOE would capture fish (using nets, seines, backpack electrofishing equipment, and hook and line), handle, and release them. The DOE does not intend to kill any listed fish, but a small number may die as an unintended result of the activities.

Permit 1498—Modification 1

The Port of Bellingham (POB) is requesting a 1-year research permit to take juvenile PS Chinook salmon. It would also take juvenile PS steelhead. The purpose of the research is to monitor PS Chinook in newly created habitat in northern Bellingham Bay, Washington. As mitigation for dredging projects, the POB created that habitat (a subtidal sediment bench) west of Squalicum Harbor. Under permit 1498, the POB has monitored the mitigation site since 2005, but the permit is due to expire on December 31, 2006. The subtidal sediment bench was designed to improve Chinook salmon rearing habitat, and the research would benefit the species by helping managers learn the effectiveness of these mitigation measures. Fish would be captured (using beach seines and enclosure nets), anesthetized, measured, allowed to recover from the anesthesia, and released. The POB does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1521—Modification 1

Wyllie-Echeverria Associates (WEA) is requesting a 3-year research permit to take juvenile PS Chinook salmon. It would also take juvenile PS steelhead. The purpose of the research is to identify which salmonid species and Chinook salmon stocks use intertidal beaches and subtidal eelgrass meadows at representative sites near San Juan, Orcas, Shaw, Lopez, Jones, and Waldron Islands, Washington. This research would benefit PS Chinook by helping managers set priorities for protecting nearshore habitats. The WEA proposes to capture fish with beach seines, toss nets, and surface tow nets. Captured fish would be identified, counted, checked for tags or marks, measured, and released. Fin-clip samples would be collected for genetic analysis from an anesthetized subsample of juvenile PS Chinook. These anesthetized fish would be allowed to recover from the anesthetic before being released. The WEA does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1585

The Washington State Department of Natural Resources (DNR) is requesting a 5-year research permit to take juvenile PS Chinook and HC chum salmon. It would also take juvenile PS steelhead. The purpose of the research is to determine the presence and distribution of salmonids on DNR lands in the Puget Sound basin. The research would benefit listed salmonids by helping to improve management decisions. Fish would be captured (using backpack electrofishing equipment), handled, and released. The DNR does not intend to kill any of the fish being captured, but a small number my die as an unintended result of the activities.

Permit 1586

The Northwest Fisheries Science Center, Fish Ecology Division (FED) is requesting a 5-year research permit to take juvenile PS Chinook and HC chum salmon. It would also take juvenile PS steelhead. The purpose of the research is to characterize how wild, juvenile PS Chinook salmon use nearshore habitats in Whidbey Basin, Admiralty Inlet, the Strait of Juan de Fuca, and the San Juan Islands. Additional goals are to define what life history strategies are present in these areas, and identify their residence time, distribution, timing of movements, diet, health, age, and origin. This research would benefit the listed species by helping managers develop protection and restoration strategies and monitor the effects of recovery actions. Fish would be captured (using beach seines, townets, purse seines, and lampera nets), temporarily held (in live-wells, mesh pens, aerated buckets, or in the bag of the net before processing), separated into salmonids and non-salmonids, anesthetized, measured, weighed, checked for tags or marks, fin-clipped, allowed to recover from anesthesia, and released. A subsample of juvenile PS Chinook would be tagged with acoustic transmitters. A small portion of the captured juvenile PS Chinook would be killed for whole body analysis, but the great majority are not intended to be sacrificed.

Permit 1587

The U.S. Geological Survey, Western Fisheries Research Center (USGS) is requesting a 5-year research permit to take juvenile PS Chinook salmon. It would also take juvenile PS steelhead. The USGS proposes to conduct two studies: (1) U.S. Geological Survey Integrated Science Plan to Support Restoration of Puget Sound Deltas, The Skagit Delta Whidbey Basin Study; and (2) Effects of Urbanization of Nearshore Ecosystems in Puget Sound, Washington, Pilot Study in an Urban Embayment. The USGS would conduct study 2 in the nearshore marine waterways and inlets of east Kitsap County. The purpose of the research is to investigate the effects of urbanization on nearshore ecosystems. The research would benefit listed salmonids by serving as a basis for nearshore marine and estuarine habitat restoration and preservation plans. Non-salmonids are the target species in both studies, but PS Chinook may be unintentionally captured. The USGS would capture (using beach seines, dip nets, or cast nets, and angling), handle, and release PS Chinook salmon. The USGS does not intend to kill any of the PS Chinook

being captured, but a small number may die as an unintended result of the activities.

Permit 1588

The U.S. Geological Survey, Western Fisheries Research Center (USGS) is requesting a 2-year research permit to take juvenile PS Chinook salmon in the Lake Washington basin and the south and central Puget Sound, Washington. It would also take juvenile PS steelhead. The purpose of the research is to develop and use otolith microstructure analysis to characterize the importance of lake and estuarine rearing habitats for Chinook salmon. The research would benefit PS Chinook by helping managers prioritize habitat protection and restoration. The USGS would capture (using dip nets and beach seines) and intentionally kill naturally produced juvenile PS Chinook in the Lake Washington basin. The USGS will also obtain and intentionally kill juvenile listed hatchery fish from multiple hatchery facilities in the south and central Puget Sound.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: November 2, 2006.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–18866 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Digital to Analog Converter Box Coupon Public Meetings

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of Meetings

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces that it will be holding individual meetings with interested parties on November 14–15, 2006 in connection with its digital-to-analog converter box coupon program described in the July 25, 2006 ''Request for Comment and Notice of Proposed Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes'' (NPRM). All interested parties are invited to schedule an individual meeting.

DATES: The meetings will be held on November 14 and 15, 2006 from 9 a.m. to 5 p.m., Eastern Standard Time.

ADDRESSES: Meetings will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Washington, DC. Room numbers will be provided to interested parties when the meeting is scheduled.

FOR FURTHER INFORMATION CONTACT: Persons interested in scheduling a meeting should contact Sandra Stewart at (202) 482–2246.

SUPPLEMENTARY INFORMATION: NTIA is scheduling meetings to afford interested parties the opportunity to clarify comments submitted in response to the NPRM published by NTIA on July 25, 2006 (71 FR 42,067) regarding the implementation of a digital-to-analog converter box coupon program. Discussions will be limited to those subjects raised in the NPRM and no discussions are permitted with respect to the Request for Information published by NTIA on July 31, 2006, or other procurement related issues. These meetings will be considered *ex parte* presentations, and the substance of these meetings will be placed on the public record. At least two days after the meetings, parties should submit a memorandum to NTIA which summarizes the substance of the meetings. Any written presentations will be placed on the public record.

Individual meetings with interested parties will be scheduled from 9:00 a.m. to 5:00 p.m. on November 14 and 15 and are expected to last no longer than thirty minutes each. The meetings will be held at the Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, N.W., Washington, DC, 20230. Parties interested in scheduling meetings with NTIA must contact Sandra Stewart at (202) 482–2246 no later than November 10, 2006.

The meetings will be physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids are asked to indicate this to Sandra Stewart at least two (2) days prior to the meeting.

Dated: November 3, 2006.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E6–18828 Filed 11–7–06; 8:45 am]

BILLING CODE 3510–60–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Follow-Up Activities for Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On August 4, 2006, the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek approval for a collection of information obtained from persons who have been involved in or have witnessed incidents associated with consumer products. 71 FR 44262. The Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing approval of collections of information conducted during follow-up activities for product-related injuries.

The Commission received two comments. One commentor requests that the Commission post reports of problems found with products and act on the information obtained. This comment does not weigh against extension of the current authorization. Another commentor, the Association of Trial Lawyers of America (ATLA), supports the proposed extension and requests the Commission staff to continue to use personal interviews as well as technological data collection to obtain pertinent information regarding product-related incidents. ATLA also requests that the Commission staff investigate a wider variety of product-related incidents. Given the large number of incidents reported involving consumer products annually, including NEISS data on hospital emergency room treated injuries, over 350,000 records per year, the Commission's resources and strategic goals guide the number of follow-up investigations that are conducted annually. Although Commission staff does not conduct follow-up investigations in every instance, staff does conduct an estimated 807 face-to-face interviews, excluding investigations conducted by the Office of Compliance and Field

Operations, 2,544 in-depth investigations by phone, 4,600 hotline staff interviews, and conducts a review of 6,900 internet forms received from persons requesting information about product-related incidents or injuries.

ATLA also requests that incident reports that contain identifying information be made available, in unredacted form, to counsel for both plaintiffs and defendants. The statutes administered by the Commission explicitly preclude the release of the type of identifying information sought to be obtained by ATLA. Section 6 of the CPSA, 15 U.S.C. 2055, provides that the Commission may not disclose any information which will permit the public to ascertain the identity of a manufacturer without providing prior notification and opportunity for comment to the manufacturer to which such information pertains. In addition, section 25 of the CPSA, 15 U.S.C. 2074, provides that any accident or investigation report made by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified. Records that could reasonably be expected to constitute an unwarranted invasion of personal privacy are also exempted from production and disclosure under the Freedom of Information Act, 5 U.S.C. 552(b). To the extent an injured person has consented to release such information, that information would be readily available to counsel for either the plaintiff or the defendant.

The information collected from persons who have sustained injuries or who have witnessed safety-related incidents associated with consumer products is an important source of safety information. The information collected is vital to the Commission in its efforts to assess the safety of consumer products and identify areas regarding consumer safety issues that may require further development and improvement through voluntary standards activities, rulemaking proceedings, recall activities, and information and education campaigns. Accordingly, the Commission has submitted the request for an extension of the existing approval of collections of information conducted during follow-up activities for product-related injuries.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Follow-Up Activities for Product-Related Injuries.

Type of request: Extension of approval.

Frequency of collection: One time for each respondent.

General description of respondents: Persons who have been involved in, have witnessed, or otherwise have knowledge of incidents associated with consumer products.

Estimated number of respondents: 14,851 total annually; 807 for face-to-face interviews; 2,544 telephone interviews; 4,600 hotline interviews; and 6,900 persons submitting a form.

Estimated annual average number of hours per respondent: 20 min. for each telephone interview; 5.0 hours for each on-site interview; 12 min. to fill out a form; 10 min. for each Hotline interview.

Estimated total annual number of hours for all respondents: 7,030.

Estimated cost of collection for all respondents: $202,000.

Comments

Comments on this request for approval of information collection requirements should be submitted by December 8, 2006 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671; e-mail *lglatz@cpsc.gov.*

Dated: November 2, 2006.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. E6–18858 Filed 11–7–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Federal Acquisition Regulation; Submission for OMB Review; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat is submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractors' purchasing systems reviews. A request for public comments was published in the **Federal Register** at 71 FR 38866 on July 10, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 8, 2006.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.
Total Burden Hours: 26,860.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: November 1, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–9106 Filed 11–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Federal Acquisition Regulation;Information Collection; Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the examination of records by comptroller general and contract audit. The clearance currently expires on January 31, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses Per Respondent: 20.
Total Responses: 382,840.
Hours per Response: 0.167.
Total Burden Hours: 63,934.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: November 2, 2006

Ralph De Stefano,

Director,Contract Policy Division.

[FR Doc. 06–9119 Filed 11–7–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: These appointments are effective as of September 30, 2006.

Employee Name:

ABBOTT III, WALTER D
ALLEVA, JOHN A
ALLISON, JEFFREY M
ANDERSON, CHARLES E
ANDERSON, CYNTHIA V
ANDERSON, MARGOT H
ANGULO, VERONICA A
AOKI, STEVEN NMN
ARKIN, RICHARD W
ARMSTRONG, DAVID J
ARTHUR III, WILLIAM JOHN
ASCANIO, XAVIER NMN
ASHWORTH, DENNIS J
AVERY, NAPOLEON S
BACA, FRANK A
BACA, MARK C
BAILEY JR, LAWRENCE O
BAKER, KENNETH E
BARKER JR, WILLIAM L
BASHISTA, JOHN R
BAUER, CARL O
BEAMON, JOSEPH A
BEARD, SUSAN F
BEARSON, DARREN W
BEAUDRY-LOSIQUE, JACQUES
BELMAR, WARREN NMN
BENNETT, RUTH B
BESERRA, FRANK J
BIENIAWSKI, ANDREW J
BLACK, RICHARD L
BLACK, STEVEN K

BLACKWOOD, EDWARD B
BLADOW, JOEL K
BOARDMAN, KAREN L
BONILLA, SARAH J
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOYD, DAVID O
BOYD, GERALD G
BRADLEY, SAMUEL M
BRESE, ROBERT F
BREZNAY, GEORGE B
BROCKMAN, DAVID A
BROMBERG, KENNETH M
BRONSTEIN, ELI B
BROWN III, ROBERT J
BUBAR, PATRICE M
BURGESON, ERIC R
BURNS, ALLEN L
BURROWS, CHARLES W
BUTTRESS, LARRY D
BYON-WAGNER, AESOOK NMN
CADIEUX, GENA E
CALLAHAN, SAMUEL N
CALLENDER, BRIAN W
CAMPBELL II, HUGH T
CAMPBELL, JAMES THOMAS
CARABETTA, RALPH A
CARDINALI, HENRY A
CARLSON, JOHN T
CARY, STEVEN V
CAVANAGH, JAMES J
CERVENY, THELMA J
CHACEY, KENNETH A
CHALK, STEVEN G
CHAVEZ-WILCYNSKI, JAN M
CHUNG, DAE Y
CLAPPER, DANIEL R
COLLARD, GEORGE W
COLLAZO, YVETTE T
CONTI, JOHN J
COOK, JOHN S
COOKE JR, KEVIN R
COREY, RAY J
COSTLOW, BRIAN D
CRAIG JR, JACK R
CRANDALL, DAVID H
CRAWFORD, DAVID W
CROSS, CLAUDIA A
CUEVAS, STEVEN J
CYGELMAN, ANDRE I
DAUB, VERNON NMN
DAUGHERTY, MAURICE W
DE ALVAREZ, ALEXIS C
DE LORENZO, RALPH H
DECKER, JAMES F
DEDIK, PATRICIA NMN
DEENEY, CHRISTOPHER NMN
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DEIHL, MICHAEL A
DELWICHE, GREGORY K
DEMKO, JOSEPH C
DER, VICTOR K
DESMOND, WILLIAM J
DIAMOND, BRUCE M
DICAPUA, MARCO S
DICKERSON, PAUL H
DIFIGLIO, CARMEN NMN
DOBRIANSKY, LARISA E
DOOLEY III, GEORGE J
DYER, J RUSSELL
EDGERTON, PATRICK D
EGGER, MARY H
EKIMOFF, LANA NMN
ELWOOD, JERRY W
ERBSCHLOE, DONALD R
ERICKSON, LEIF NMN
EULE, STEPHEN D
FAUL, JERRY W
FIORE, JAMES J
FISCHETTI, MICHAEL P
FOLEY, KATHLEEN Y
FRANCO JR., JOSE R
FRANKLIN, CHARLES ANSON
FRANKLIN, RITA R
FREDRIKSEN, KATHARINE A
FREI, MARK W
FRESCO, MARY ANN E
FRYBERGER, TERESA A
FURRER, ROBIN R
FURSTENAU, RAYMOND V
FYGI, ERIC J
GASPEROW, LESLEY A
GEISER, DAVID W
GENDRON, MARK O
GERRARD, JOHN E
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GLENN, DANIEL E
GOLAN, PAUL M
GOLDSMITH, ROBERT NMN
GOLLOMP, LAWRENCE A
GOODRUM, WILLIAM S
GOTTLIEB, PAUL A
GREENBERG, RAYMOND F
GREENWOOD, JOHNNIE D
GRESHAM, LARRY M
GROSE, AMY E
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUEVARA, KAREN C
HACSKAYLO, MICHAEL S
HARDING, TODD K
HARDWICK JR, RAYMOND J
HARRELL, JEFFREY P
HARRIS, ROBERT J
HARTMAN, JOHN R
HARVEY, TOBIN K
HASS, RICKEY R
HAWTHORNE, JOAN GATES
HAYWARD, MARY ALICE
HENNEBERGER, KAREN O
HENNEBERGER, MARK W
HENRY, EUGENE A
HERRERA, ROBERT D
HICKOK, STEVEN G
HIXON JR, HARRY W
HODSON, PATRICIA J
HOFFMAN, DENNIS J
HOFFMAN, PATRICIA A
HOLLAND, MICHAEL D
HOLLOWELL, BETTY L N
HUDSON, JODY L
HUFFER, WARREN L
HUIZENGA, DAVID G
HUNEMULLER, MAUREEN A
HUNTEMAN, WILLIAM J
HUTTO III, F CHASE
HYNDMAN, JOHN E
INGOLS, ADAM B
IZELL, KATHY D
JAFFE, HAROLD NMN
JENKINS, ROBERT G
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JOHNSTON, MARC NMN
JONAS, DAVID S
JONES, KATHY D
JORDAN, ROBERT R
JORDAN, ROSALIE M
JUAREZ, LIOVA D
KAEMPF, DOUGLAS E
KANE, MICHAEL C
KAUFFMAN, STORM R
KEANE, CHRISTOPHER J
KEARNEY, JAMES H
KELLY, KEVIN NMN
KENDELL, JAMES M
KENNEDY, JOHN P
KERSTEN, JOHN H
KESELBURG, JAMES D
KHAN, TARIQ M
KIGHT, GENE H
KILPATRICK, MICHAEL A
KIRKENDALL, NANCY J
KLEIN, KEITH A
KNOLL, WILLIAM S
KNOX, ERIC K
KOLB, INGRID A C
KOLEVAR, KEVIN M
KOLTON, ANNE WOMACK
KONOPNICKI, THAD T
KOPPLE, SCOTT A
KOURY, JOHN F
KOUTS, CHRISTOPHER A
KOVAR, DENNIS G
KROL, JOSEPH J
KUNG, HUIJOU HARRIET
KUSNEZOV, DIMITRI F
LAGDON JR, RICHARD H
LAMBERT, JAMES B
LANGE, ROBERT G
LANTHRUM, J GARY
LAWRENCE, ANDREW C
LAZOR, JOHN D
LEE, STEVEN NMN
LEHMAN, DANIEL R
LEMPKE, MICHAEL K
LERSTEN, CYNTHIA A
LEWIS III, CHARLES B
LEWIS JR, WILLIAM A
LEWIS, ROGER A
LINGAN, ROBERT M
LISOWSKI, PAUL W
LIVENGOOD, JOANNA M
LOWE, OWEN W
LOYD, RICHARD NMN
LUCZAK, JOANN H
MAHARAY, WILLIAM S
MALE, BARBARA D
MALINOVSKY, JOSEPH M
MALOSH, GEORGE J
MARCINOWSKI III, FRANK NMN
MARKEL JR, KENNETH E
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MARTINEZ, ELOY DENNIS

MASTERSON, MARY A
MCCLOUD, FLOYD R
MCCONNELL, JAMES J
MCCORMICK, MATTHEW S
MCCRACKEN, STEPHEN H
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCRAE, JAMES BENNETT
MEEKS, TIMOTHY J
MELLINGTON, SUZANNE P
MEYER, CHARLES E
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLER, WENDY L
MINK, LELAND L
MIOTLA, DENNIS M
MIZROCH, JOHN F
MONETTE, DEBORAH D
MONTANO, PEDRO A
MOODY III, DAVID C
MOORER, RICHARD F
MOREDOCK, J EUN
MORTENSEN, RICHARD W
MORTENSON, VICTOR A
MOSQUERA, JAMES P
MUELLER, TROY J
MURPHIE, WILLIAM E
NAPLES, ELMER M
NEALY, CARSON L
NEUHOFF, JON W
NEUMAYR, MARY BRIDGET C
NEWELL, JOHN D
NICOLL, ERIC G
NOLAN, ELIZABETH A
NORMAN, PAUL E
O'FALLON, JOHN R
OLENCZ, JOSEPH NMN
OLINGER, SHIRLEY J
OLIVER, LAWRENCE R
OLIVER, STEPHEN R
OLSON, DEAN G
OOSTERMAN, CARL H
OSHEIM, ELIZABETH L
OTT, MERRIE CHRISTINE
OWEN, MICHAEL W
OWENDOFF, JAMES M
PARKS JR, WILLIAM P
PARNES, SANFORD J
PATEL, YOSEF NMN
PAVETTO, CARL S
PEASE, HARRISON G
PENRY, JUDITH M
PETERSON, BRADLEY A
PIEPER, FREDRICK G
PIPER II, LLOYD L
PODONSKY, GLENN S
PON, JEFF T H
POWELL, JAMES R
POWERS, KENNETH W
PROVENCHER, RICHARD B
PRZYBYLEK, CHARLES S
PUMPHREY, DAVID L
PYKE JR, THOMAS N
RAMSEY, CLAY HARRISON
RHEAUME, CYNTHIA A
RHODERICK, JAY E
RICHARD, MICHAEL T
RICHARDS, AUNDRA M
RICHARDSON, HERBERT NMN
ROACH, RANDY A
ROBINSON, DAVID M
RODEKOHR, MARK E
RODGERS, DAVID E
RODGERS, STEPHEN J
ROSEN, SIMON PETER
RUDINS, GEORGE NMN
RUSSO, FRANK B
RYDER, THOMAS S
SALM, PHILIP E
SALMON, JEFFREY T
SANCHEZ, NANCY N
SANTANA, CATHERINE Y
SCHEINMAN, ADAM M
SCHEPENS, ROY J
SCHMITT, WILLIAM A
SCHMITZ, THOMAS A
SCHNAPP, ROBERT M
SCHOENBAUER, MARTIN J
SCHWARTZ, DOUGLAS H
SCHWIER, JEAN F
SCOTT, BRUCE B
SCOTT, RANDAL S
SELLERS, ELIZABETH D
SHAGES, JOHN D
SHARPLEY, CHRISTOPHER R
SHEARER, C RUSSELL H
SHEELY, KENNETH B
SHEPPARD, CATHERINE M
SHERRY, THEODORE D
SILBERGLEID, STEVEN A
SILVERSTEIN, BRIAN L
SIMON-GILLO, JEHANNE E
SIMPSON, EDWARD R
SINGER, MARVIN I
SITZER, SCOTT B
SKUBEL, STEPHEN C
SLUTZ, JAMES A
SMITH, BARRY ALAN
SMITH, DENISE H
SMITH, KEVIN W
SMITH, THOMAS Z
SMITH-KEVERN, REBECCA F
SNIDER, LINDA J
SOHINKI, STEPHEN M
SOLICH, DONALD J
SPADER, WILLIAM F
SPAMPINATO, FRANCIS C
SPEARS, TERREL J
STACY, GERALD L
STAFFIN, ROBIN NMN
STALLMAN, ROBERT M
STARK, RICHARD M
STARNES, ALBERT J
STONE, BARBARA R
STONE, CHERYL M
STRAKEY JR, JOSEPH P
STRAUSS, NEAL J
STRAYER, MICHAEL R
SURASH, JOHN E
SWEETNAM, GLEN E
SWIFT III, JOHN E
SWIFT, JUSTIN R
TAVARES, ANTONIO F
TAYLOR, STEVE C
TAYLOR, WILLIAM J
TEDROW, RICHARD T
TORKOS, THOMAS M
TRAUTMAN, STEPHEN J
TRIAY, INES R
TURI, JAMES A
TURNER, JAMES M
TYNER, TERESA M
UNDERWOOD, WILLIAM R
VAGTS, KENNETH A
VALDEZ, WILLIAM J
VANZANDT, VICKIE A
VIOLA, MICHAEL V
WAGNER, M PATRICE
WAISLEY, SANDRA L
WALL, EDWARD JAMES
WALSH, ROBERT J
WARNICK, WALTER L
WEEDALL, MICHAEL J
WEIS, MICHAEL J
WELLS, RITA L
WESTON-DAWKES, ANDREW P
WHITAKER JR, MARK B
WHITE, DONALD G
WHITNEY, JAMES M
WIEKER, THOMAS L
WILBANKS, LINDA R
WILCHER, LARRY D
WILKEN, DANIEL H
WILKES, BRYAN K
WILLIAMS, ALICE C
WILLIAMS, MARK H
WILLIAMS, RHYS M
WILMOT, EDWIN L
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WUNDERLICH, ROBERT C
YUAN-SOO HOO, CAMILLE C
ZAMORSKI, MICHAEL J
ZIESING, ROLF F

Issued in Washington, DC November 1, 2006.

Claudia A. Cross,

Deputy Chief Human Capital Officer/ Director, Office of Human Capital Management.

[FR Doc. E6–18831 Filed 11–7–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy.

DATES: This appointment is effective as of September 30, 2006.

Margot H. Anderson

Issued in Washington, DC, November 1, 2006.

Claudia A. Cross,

Deputy Chief Human Capital Officer/ Director, Office of Human Capital Management.

[FR Doc. E6–18832 Filed 11–7–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Institution of Proceeding and Refund Effective Date

November 1, 2006.

California Independent System Operator, Inc	Docket No. EL07–1–000.
ISO New England, Inc	Docket No. EL07–2–000.
PJM Interconnection, LLC	Docket No. EL07–3–000.
Midwest Independent Transmission System Operator, Inc	Docket No. EL07–4–000.
NewYork Independent System Operator, Inc	Docket No. EL07–5–000.
Southwest Power Pool, Inc	Docket No. EL07–6–000.

On October 25, 2006, the Commission issued an order that instituted a proceeding in the above-referenced dockets, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the justness and reasonableness of the tariffs of the independent system operators (ISOs) and regional transmission organizations (RTOs).

The refund effective date in the above-docketed proceedings, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18809 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

November 1, 2006.

CalPeak Power LLC	Docket No. EG06–68–000.
Spanish Ford Wind Park 2, LLC	Docket No. EG06–69–000.
Evergreen Wind Power, LLC	Docket No. EG06–71–000.
Mt. Tom Generating Company LLC	Docket No. EG06–72–000.
BG Dighton Power, LLC	Docket No. EG06–73–000.
FPL Energy Oliver Wind, LLC	Docket No. EG06–74–000.
Allegheny Ridge Wind Farm, LLC	Docket No. EG06–75–000.
Noble Clinton Windpark I, LLC	Docket No. EG06–76–000.
Noble Ellenburg Windpark, LLC	Docket No. EG06–77–000.
Noble Altona Windpark, LLC	Docket No. EG06–78–000.
Noble Bliss Windpark, LLC	Docket No. EG06–79–000.
Hawks Nest Hydro LLC	Docket No. EG06–80–000.

Take notice that during the month of October 2006, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,

Secretary.

[FR Doc. E6–18812 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–155]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

November 1, 2006.

Take notice that on October 27, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amendment to a negotiated rate agreement between CEGT and Anadarko Energy Services Company and will be effective November 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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. E6–18808 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–27–001]

Texas Eastern Transmission, LP; Notice of Supplemental Filing

November 1, 2006.

Take notice that on October 27, 2006, Texas Eastern Transmission, LP (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub Third Revised Sheet No. 610, proposed to be effective on November 18, 2006.

Texas Eastern states that it is supplementing its filing submitted on October 18, 2006, in the captioned docket (October 18 Filing) with the revised tariff sheet in order to reinstate the language of Section 14.9(A) of the General Terms and Conditions of its Tariff that was inadvertently deleted by the October 18 Filing.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as all parties on the official service list.

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. E6–18811 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–323–011]

Williston Basin Interstate Pipeline Company; Notice of Negotiated Rate

November 1, 2006.

Take notice that on October 27, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Commission a revised negotiated Rate Schedule FT–1 Service Agreement. The proposed effective date of the Service Agreement is November 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18810 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 1, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Number: EC07–7–000.

Applicants: TPG Generations Holdings, LLC; High Desert Power Project; Holland Energy, LLC; Wolf Hills Energy, LLC; University Park Energy, LLC; Big Sandy Peaker Plant, LLC.

Description: TPF Generation Holdings, LLC, High Desert Power Project, LLC *et al.* submit a section 203 application for indirect transfer of various public utility owners of existing generation facilities.

Filed Date: 10/23/2006.

Accession Number: 20061030–0196.

Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Number: EC07–8–000.

Applicant: KGen Marshall LLC.

Description: KGen Marshall LLC submits an Application requesting approval of an expedited sale of jurisdictional assets, *et al.* to Tennessee Valley Authority.

Filed Date: 10/25/2006.

Accession Number: 20061031–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 15, 2006.

Docket Number: EC07–9–000.

Applicant: Dynegy Inc.

Description: Dynegy, Inc *et al.* submits their application requesting authorization to consummate a transaction by which the interest in specific jurisdictional facilities.

Filed Date: 10/26/2006.

Accession Number: 20061101–0176.

Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Number: EC07–10–000.

Applicants: Central Illinois Light Company; AmerenEnergy Resources Generating Company.

Description: Central Illinois Light Company and AmerenEnergy Resources Gen Co. submits a joint Application for approval of the Disposition of Jurisdictional Facilities under Section 203 of the FPA.

Filed Date: 10/27/2006.

Accession Number: 20061031–0156.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER00–3562–004.

Applicant: Calpine Energy Services LP.

Description: Calpine Energy Services, LP submits its updated triennial market power analysis pursuant to FERC's 10/30/03 Order.

Filed Date: 10/30/2006.

Accession Number: 20061101–0168.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER02–999–004; ER05–320–002; ER97–2460–007; ER97–2463–004.

Applicants: Unitil Energy Systems, Inc.; Unitil Power Corporation; Fitchburg Gas Company.

Description: Unitil Energy Systems, Inc *et al.* submits their updated market power analysis with respect to each company's authority to make sales at market-based rate etc. pursuant to FERC's 2/2/05 Order.

Filed Date: 10/30/2006.

Accession Number: 20061101–0161.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER03–765–002.

Applicant: Calpine Oneta Power, LP.

Description: Calpine Oneta Power, LP submits its Amended Compliance filing for Rate Schedule FERC 2.

Filed Date: 10/27/2006.

Accession Number: 20061030–0240.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Number: ER05–1179–006.

Applicant: Berkshire Power Company, LLC.

Description: Berkshire Power Company, LLC submits a Compliance Electric Refund Report.

Filed Date: 10/30/2006.

Accession Number: 20061030–5101.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER06–192–001.

Applicant: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits its 2006 Amended Compliance Filing and initial Compliance Filing with regard to the requirements of Order 2006–A and 2006–B.

Filed Date: 10/25/2006.

Accession Number: 20061030–0185.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 15, 2006.

Docket Number: ER06–1437–001.

Applicants: Kentucky Utilities Company; Louisville Gas and Electric Company.

Description: E.ON US, LLC on behalf of Louisville Gas and Electric Co. *et al.* submits an executed Firm Point-to-Point transmission service agreement with Indiana Municipal Power Agency.

Filed Date: 10/30/2006.

Accession Number: 20061101–0145.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER07–45–001.

Applicant: Horizon Power and Light LLC.

Description: Horizon Power and Light LLC submits an amendment to the petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 10/27/2006.

Accession Number: 20061101–0146.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Number: ER07–75–000.

Applicant: Southern California Edison Company.

Description: Southern California Edison Company submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6 and to certain existing transmission contracts to reflect change in Reliability Service Rates.

Filed Date: 10/26/2006.

Accession Number: 20061031–0006.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Number: ER07–86–000.

Applicant: Entergy Services Inc.

Description: Entergy Services, Inc submits Revisions to its Open Access Transmission Tariff, to its FERC Electric Tariff, Second Revised Volume 3.

Filed Date: 10/30/2006.

Accession Number: 20061101–0153.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER07–87–000.

Applicants: ISO New England Inc.; New England Participating

Transmission Owners, Maine Electric Power Company, and New England Power Pool.

Description: ISO New England, Inc *et al.* submits proposed amendments on the standardization of small generator interconnection agreements and procedures pursuant to FERC's Order 2006–B.

Filed Date: 10/29/2006.

Accession Number: 20061101–0154.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–92–000.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England Inc *et al.* submits its Price Finality Market Package revisions.

Filed Date: 10/30/2006.

Accession Number: 20061101–0157.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER07–93–000.

Applicant: Entergy Services Inc.

Description: Entergy Operating Companies submits a new Schedule 9 and 10 to its Open Access Transmission Tariff and related amendments to the transmission rate formulas for pt-to-pt, *et al.*

Filed Date: 10/30/2006.

Accession Number: 20061101–0160.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER07–94–000.

Applicant: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits proposed amendments to its Rate Schedule 1 in order to recover projected expenses for the period of 1/1/07–6/30/07.

Filed Date: 10/30/2006.

Accession Number: 20061101–0159.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: ER07–95–000.

Applicants: Michigan Electric Transmission Company, LLC; Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submit proposed revisions to the Midwest ISO's OAT&EM Tariff, Third Revised Volume 1.

Filed Date: 10/30/2006.

Accession Number: 20061101–0155.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER98–1734–012; ER07–98–000.

Applicant: Commonwealth Edison Company.

Description: Commonwealth Edison Co modifies its market based tariff to remove the market behavior rules, delete the Code of Conduct re Public Service Enterprise Group Inc and update identifying information etc.

Filed Date: 10/25/2006.

Accession Number: 20061027–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 15, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Number: PH07–3–000.

Applicant: Enbridge Inc.

Description: Enbridge Inc. submits an Exemption Notification pursuant to 18 CFR sections 366.2, *et al.*

Filed Date: 10/30/2006.

Accession Number: 20061027–5093.

Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Number: PH07–4–000.

Applicant: Sun Capital Partners III, LLC.

Description: SUN CAPITAL PARTNERS III, LLC submits a petition for waiver of the Commission's Regulations and PUHCA 2005.

Filed Date: 10/31/2006.

Accession Number: 20061031–5019.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 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. E6–18805 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 31, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Number: EG07–6–000.

Applicant: Caithness Long Island, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/27/2006.

Accession Number: 20061027–5084.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2948–006; ER00–2918–005; ER00–2917–005; ER05–261–002; ER01–558–004; ER01–557–004; ER01–559–004; ER01–560–004; ER01–556–004; ER01–1654–007; ER01–2641–005; ER05–728–002; ER01–1949–005; ER04–485–002.

Applicants: Baltimore Gas and Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group, Inc.; Holland Energy, LLC; University Park Energy, LLC; Wolf Hills Energy, LLC; Big Sandy Peaker Plant, LLC; Handsome Lake Energy, LLC; Nine Mile Point Nuclear Station, LLC; High Desert Power Project, LLC; Constellation NewEnergy Commodities Group Main,

LLC; Power Provider, LLC; RE Ginna Nuclear Power Plant, LLC.

Description: Constellation Energy Group, Inc submits its notification to FERC that it will no longer treat FPL Group MBR Entities as affiliates under the terms of their respective market-based rate tariffs.

Filed Date: 10/27/2006.

Accession Number: 20061030–0248.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER01–1807–024; ER01–2020–021.

Applicants: Carolina Power & Light Company; Florida Power Corporation.

Description: Carolina Power & Light Co and Florida Power Corp submit a Refund Report pursuant to the Commission's 5/21/03 Order.

Filed Date: 10/26/2006.

Accession Number: 20061026–5022.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER03–44–005.

Applicants: BOC Energy Services, Inc.

Description: BOC Energy Services, Inc submits its notice of non-material change in status.

Filed Date: 10/26/2006.

Accession Number: 20061031–0163.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER03–515–001.

Applicants: Black Oak Capital, LLC.

Description: Black Oak Capital, LLC submits an amendment to its 9/13/06 triennial updated market analysis.

Filed Date: 10/27/2006.

Accession Number: 20061031–0162.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER06–311–001.

Applicants: New York Independent System Operator, Inc.; New York Transmission Owners.

Description: New York Independent System Operator, Inc. and the New York Transmission Owners submit standard legal terms and conditions for interconnection study agreements pursuant to Order 2006–B, *etc.*

Filed Date: 10/27/2006.

Accession Number: 20061030–0242.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER06–451–010.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to its OATT in Compliance to Commission's 9/26/06 Order.

Filed Date: 10/26/2006.

Accession Number: 20061030–0247.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER07–72–000.

Applicants: Plymouth Energy, LLC.

Description: Plymouth Energy, LLC submits a notice of cancellation of FERC Electric Tariff, Original Volume 1.

Filed Date: 10/26/2006.

Accession Number: 20061027–0001.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER07–73–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: CenterPoint Energy Houston Electric, LLC submits First Revised Sheet 2 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1, to be effective 10/10/06.

Filed Date: 10/26/2006.

Accession Number: 20061030–0160

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER07–74–000.

Applicants: Caithness Long Island, LLC.

Description: Petition of Caithness Long Island, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.

Filed Date: 10/26/2006.

Accession Number: 20061030–0162.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER07–76–000; ER06–1451–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits Notice of Termination of its FERC Rate Schedule 315 proposed effective 11/1/06.

Filed Date: 10/25/2006.

Accession Number: 20061030–0161.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 15, 2006.

Docket Numbers: ER07–77–000.

Applicants: Reliant Energy Etiwanda, Inc.

Description: Reliant Energy Etiwanda Inc submits its Notice of Cancellation of the Must-Run Service Agreement between Reliant Etiwanda and the California Independent System Operator Corp.

Filed Date: 10/27/2006.

Accession Number: 20061030–0154.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–78–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6 to reflect the annual update of the Transmission Revenue Balancing Account Adjustment.

Filed Date: 10/27/2006.

Accession Number: 20061030–0143.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–79–000.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc submits a Revised Interconnection Agreement between Cleco Power, LLC, Entergy Gulf States Inc and Entergy Louisiana, LLC.

Filed Date: 10/27/2006.

Accession Number: 20061030–0125.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–80–000.

Applicants: ACN Utility Services, Inc.

Description: ACN Utility Services, Inc submits Notice of Cancellation of its rate tariff, Original Volume No. 1.

Filed Date: 10/26/2006.

Accession Number: 20061030–0245.

Comment Date: 5 p.m. Eastern Time on Thursday, November 16, 2006.

Docket Numbers: ER07–81–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits a revised rate schedule sheet, Fourth Revised Sheet 227 to the Second Revised Rate Schedule FERC No. 51.

Filed Date: 10/27/2006.

Accession Number: 20061030–0244.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–82–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits revisions to its OATT, Thirteenth Revised Volume No. 2 in compliance with FERC Order 2006B.

Filed Date: 10/27/2006.

Accession Number: 20061030–0246.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–83–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits revisions to its OATT, Thirteenth Revised Volume No. 2, First Revised Sheet No. 194 in Compliance filing to the FERC Order 676.

Filed Date: 10/27/2006.

Accession Number: 20061030–0243.

Comment Date: 5 p.m. Eastern Time on Friday, November 17, 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 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. E6–18806 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 2, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–888–004.
Applicants: Nordic Marketing of Illinois, LLC.
Description: Nordic Marketing of Illinois, LLC submits revision of terms and conditions of its tariff for sales of power at negotiated rates.
Filed Date: 10/30/2006.
Accession Number: 20061101–0148.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER05–406–002.
Applicants: Williams Power Company, Inc.
Description: Williams Power Company, Inc submits an Amended Offer of Settlement along with an Explanatory Statement.
Filed Date: 10/27/2006.
Accession Number: 20061101–0124.
Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER05–849–007.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits a compliance filing, pursuant to FERC's 6/22/05 Order.
Filed Date: 10/30/2006.
Accession Number: 20061101–0149.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER06–185–004.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits worksheets that detail the results of their Real-Time guarantee payment impact test for April 2005.
Filed Date: 10/23/2006.
Accession Number: 20061031–0209.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER06–1315–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to the Open Access Transmission and Energy Markets Tariff, to its FERC Electric Tariff, Revised Volume 1.
Filed Date: 10/30/2006.
Accession Number: 20061101–0143.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–20–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits proposed revisions to its OATT to amend timing requirements for Short Term Transmission Service, Non-Firm Transmission Service and Secondary Network Service requests.
Filed Date: 10/27/2006.
Accession Number: 20061101–0144.
Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Docket Numbers: ER07–88–000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: Central Hudson Gas & Electric Corporation submits a Notice of Cancellation of its Rate Schedule FERC 71, effective 10/26/06.
Filed Date: 10/30/2006.
Accession Number: 20061101–0142.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–89–000.
Applicants: Southern California Edison Company.
Description: Southern Edison Company submits a Letter Agreement with Green Borders Geothermal, LLC.
Filed Date: 10/30/2006.
Accession Number: 20061101–0141.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–90–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits a supplement to Rate Schedule FERC 117, Facilities Agreement with Delaware County Electric Cooperative.
Filed Date: 10/30/2006.
Accession Number: 20061101–0140.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–91–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits a supplement to Rate Schedule FERC 72 Facilities Agreement with the Municipal Board of the Village of Bath.
Filed Date: 10/30/2006.
Accession Number: 20061101–0139.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–99–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits a request for limited, temporary waiver.
Filed Date: 10/24/2006.
Accession Number: 20061101–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 14, 2006.

Docket Numbers: ER07–100–000.
Applicants: Koch Supply & Trading, LP.
Description: Koch Supply & Trading, LP submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority of its FERC Electric Tariff, Original Volume 1.
Filed Date: 10/31/2006.
Accession Number: 20061101–0203.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–101–000.

Applicants: Central Vermont Public Service Corporation.

Description: Central Vermont Public Service Corporation submits a Notice of rate adjustments for Borderline Sales Agreement with New York State Electric & Gas Corporation FPC Rate Schedule 29.

Filed Date: 10/31/2006.

Accession Number: 20061101–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–102–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits changes in its OATT to reflect revised calculations of real power losses for transmission paths re Arizona Nuclear Power Project Valley Transmission System.

Filed Date: 10/31/2006.

Accession Number: 20061101–0205.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–103–000.

Applicants: LSP Oakland, LLC.

Description: LSP Oakland, LLC submits revisions to certain Reliability Must-Run Rate Schedules of its Reliability Must Run Agreement with California Independent System Operator Corp for Contract Year 2007.

Filed Date: 10/31/2006.

Accession Number: 20061101–0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–104–000.

Applicants: Ameren Energy Generating Company.

Description: Ameren Services Co on behalf of Ameren Energy Generating Co submits a notice of cancellation of its Second Revised Rate Schedule FERC 1.

Filed Date: 10/31/2006.

Accession Number: 20061101–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–105–000.

Applicants: Ameren Energy Resources Generating Co.

Description: Ameren Services Co on behalf of Ameren Energy Resources Generating Co submits a revised market-based rate tariff.

Filed Date: 10/31/2006.

Accession Number: 20061101–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–106–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc and Ameren Services Co submit Fifth Revised Sheet 888 to FERC Electric Tariff, Third Revised Volume 1 to be effective 1/1/07.

Filed Date: 10/31/2006.

Accession Number: 20061101–0209.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–107–000.

Applicants: Mirant Delta, LLC.

Description: Mirant Delta, LLC submits a notice of cancellation of Rate Schedule FERC 5, to effective 1/1/07.

Filed Date: 10/31/2006.

Accession Number: 20061101–0210.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–108–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits a non-conforming Market Participant Service Agreement executed with Innoventive Power LLC.

Filed Date: 10/31/2006.

Accession Number: 20061101–0211.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–109–000.

Applicants: BTEC Southaven LLC.

Description: BTEC Southaven LLC submits an application for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 10/31/2006.

Accession Number: 20061101–0212.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–110–000.

Applicants: BTEC New Albany LLC.

Description: BTEC New Albany LLC submits an application for order accepting rates for filing and granting waivers and blanket approvals.

Filed Date: 10/31/2006.

Accession Number: 20061101–0213.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–111–000.

Applicants: Mirant Delta, LLC; Mirant Potrero, LLC.

Description: Mirant Delta, LLC and Mirant Potrero, LLC submit revisions to their Must-Run Service Agreements with the California Independent System Operator Corp.

Filed Date: 10/31/2006.

Accession Number: 20061101–0214.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–113–000.

Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners; Midwest Stand-Alone Transmission Companies.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits proposed revisions to their Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 10/31/2006.

Accession Number: 20061101–0215.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–114–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits two large facilities Agreements with the City and County of San Francisco.

Filed Date: 10/31/2006.

Accession Number: 20061101–0019.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ER07–116–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits revised tariff sheets for recovery of 2007 Administrative Costs & requests limited tariff waiver.

Filed Date: 10/31/2006.

Accession Number: 20061101–0230.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 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. E6–18807 Filed 11–7–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0881; FRL–8240–5]

Proposed Approvals of the Central Characterization Project's Remote-Handled Waste Characterization Programs at Idaho National Laboratory and Argonne National Laboratory

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or we) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approvals of the radioactive, remote-handled (RH), transuranic (TRU) waste characterization programs implemented by the Central Characterization Project (CCP) at Idaho National Laboratory (INL) and Argonne National Laboratory (ANL). This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico. These are the first proposed approvals for the characterization of RH waste.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of RH TRU debris waste from INL–CCP and ANL–CCP during inspections conducted the weeks of June 12, 2006, and September 11, 2006, respectively. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program to characterize RH TRU waste, EPA verified whether DOE could adequately characterize RH TRU waste consistent with the Compliance Criteria. The results of EPA's evaluations of the INL–CCP and ANL–CCP programs and their proposed approvals are described in the Agency's inspection reports, which are available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approvals. As required by the 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments, and issue final reports and approval letters to DOE.

DATES: Comments must be received on or before December 26, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0881, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* To *a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2006–0881. The Agency'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 electronically at *http://www.regulations.gov.*

As of September 22nd, 2006, the EPA Docket Center (EPA/DC) Public Reading Room will be temporarily inaccessible to the public until November 6th, 2006, due to construction. Public access to docket materials will still be provided. We strongly encourage you to visit the EPA Dockets Web site frequently (*http://www.epa.gov/epahome/dockets.htm*) in order to receive the latest status concerning the Public Reading Room and public access to docket materials.

If you wish to obtain materials from a docket in the EPA/DC, please go first to Regulations.gov (*http://www.regulations.gov*) and obtain electronic copies. If the materials are listed in the docket index but the documents themselves are not available in Regulations.gov, please call (202) 566–1744 or e-mail the applicable Program Office Docket.

EPA Docket Center operations will still continue during this period. In addition to electronic access through regulations.gov, public inspection of docket materials will be available by appointment during this period. Appointments may be made by calling (202) 566–1744 or by e-mailing the appropriate Docket Office.

If you wish to hand deliver comments during this period, you may drop them off between the hours of 8:30 a.m. and 4:30 p.m. eastern standard time (EST), Monday through Friday, excluding Federal holidays at the EPA Headquarters, Room 6146F in the EPA West Building located at 1301 Constitution Avenue, NW., Washington, DC.

EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times, and be escorted to Room 6146F to drop off comments.

If you have any other questions concerning the temporary closing of the EPA/DC Public Reading Room, you may call (202) 566–1744 between the hours of 8:30 a.m. and 4:30 p.m. eastern standard time.

These documents are also available for review in hard-copy form at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m., phone number: 505–885–0731; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Vary by semester, phone number: 505–277–2003; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m., phone number: 505–476–9700. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT:

Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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.

II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in shielded casks. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) Prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with § 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. EPA's inspection and approval process gives EPA (a) Discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site WC inspections.

As described in Section 194.8(b), EPA's baseline inspections evaluate each WC process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under § 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [§ 194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent WC program changes or expansion should be reported to EPA [§ 194.8(b)(4)]. The

Agency is required to assign Tier 1 (T1) and Tier 2 (T2) to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site must notify EPA of proposed changes to the approved components of an individual WC process (such as radioassay equipment or personnel), and EPA must also approve the change before it can be implemented. A WC element with a T2 designation allows the site to implement changes to the approved components of individual WC processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of § 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of § 194.24(h).

The site inspection and approval process outlined in § 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the WC processes EPA inspected at the site, as well as their compliance with § 194.24 requirements.

All waste characterization site approvals for WIPP, up until this point, have been applicable only to contact-handled (CH) TRU waste. The aforementioned inspections at INL–CCP and ANL–CCP mark the first two inspections related to RH waste.

EPA previously issued a preliminary approval of DOE's general framework for characterizing RH waste on March 26, 2004 (Docket A–98–49, Item II–B2–21). This approval requires DOE to provide site-specific RH waste characterization plans and characterization procedures for EPA approval prior to implementing them for characterizing RH waste.

III. Proposed Baseline Compliance Decisions

EPA has performed baseline inspections of RH TRU waste characterization activities of INL–CCP (EPA Inspection No. EPA–INL–CCP–RH–06–06–8) and ANL–CCP (EPA Inspection No. EPA–ANL–CCP–RH–09–06–8).

The purpose of EPA's inspections were to verify that the RH waste characterization programs implemented at both INL–CCP and ANL–CCP for characterizing RH TRU, retrievably-stored, debris waste (S5000) are adequate. EPA evaluated whether the RH waste characterized meets the regulatory requirements at 40 CFR 194.24. During these inspections, EPA evaluated the adequacy, implementation, and effectiveness of the waste characterization activities at INL–CCP and ANL–CCP. The Agency's evaluation focused on the individual components—equipment, procedures, and personnel training/experience of the following waste characterization processes: acceptable knowledge (AK), radiological characterization using a dose-to-curie (DTC) procedure, visual examination (VE), and load management. The RH waste characterization programs at INL–CCP and ANL–CCP are based on DOE-provided upper-tier documents.

A. June 2006 INL–CCP RH Inspection Results

At INL, EPA's inspection team identified one finding in the area of VE and six concerns that needed to be addressed by DOE. Two of these concerns were in VE and four in AK. DOE responded to the EPA finding and concerns and the Agency determined the DOE responses were satisfactory. EPA's inspection team determined that INL–CCP's RH WC program activities were technically adequate. (For complete discussion of EPA's findings, concerns, and technical evaluation, *see* EPA INL CCP RH Inspection Report A–98–42, II–A4–69 in the accompanying EPA Docket.) EPA is proposing to approve CCP's AK, DTC, and VE processes implemented at INL in the configuration observed during a June 2006 inspection and during two subsequent follow-up inspections (July & August), and as described in the inspection report A–98–42, II–A4–69. The proposed approval includes the following:

(1) The AK process for RH retrievably-stored TRU debris in one waste stream, Idaho National Laboratory Waste Stream No. ID–ANLE–S5000, Lots 1 through 20, as defined in CCP–AK–INL–500, Revision 2, June 1, 2006.

(2) The radiological characterization process using dose-to-curie (DTC) and modeling-derived scaling factors for assigning radionuclide values to one RH waste stream for which the scaling factors are applicable, as described in CCP–AK–INL–501, Revision 1.

(3) The VE process used for a total of 8 retrievably-stored RH debris waste drums included in three batch data reports—BDR No.'s RHINLVE 6001–03. CCP has terminated the use of VE process for this waste until further notice. If CCP decides to use VE in the future EPA inspection and approval is necessary.

Any changes to the WC activities from the date of the baseline inspection must be reported to and, if applicable, approved by EPA, according to Table 1 below.

TABLE 1.—TIERING OF RH TRU WC PROCESSES IMPLEMENTED BY INL–CCP

[For details see EPA's INL–CCP RH inspection report in EPA Docket No.: A–98–49, II–A4–69]

RH WC process elements	INL–CCP RH WC process—T1 changes	INL–CCP RH WC process—T2 changes*
Acceptable Knowledge (AK)	Any new waste streams not approved under this baseline. ..... Load management for any RH waste stream ..... Substantive modification(s)*** that have the potential to affect the characterization process to the following documents: CCP–AK–INL–500, Revision 2; CCP–AK–INL–501, Revision 1; or CCP–AK–INL–502, Revision 0. Addition of K Cell or other debris wastes to ID–ANLE–S5000	Changes to AK documentation as a result of WCPIP revisions.** AK accuracy report for Lot 16 (or the appropriate Lot) wherein individual drum data assessed by INL (*e.g.*, P030) will be compared against DTC-derived values; all other AK Accuracy reports prepared annually at a minimum. Waste stream data package for debris waste stream once completed, and any modifications to the WSPF including the CRR and AK Summary. Completed Correlation or Surrogate Summary Form of RH containers identified in this waste stream identified as CH based upon measured dose rates that present NDA results for assayed containers, including isotopic ratios. Updates to CCP–INL–AK–500, 501 and 502 made available when each update is approved.
Radiological Characterization, including Dose-To-Curie (DTC).	Use of any alternate radiological characterization procedure other than DTC with established scaling factors as documented in CCP–TP–504, Revision 3, or substantive modification of the DTC procedure.***. Application of new scaling factors for isotopic determination other than those documented in CCP–AK–INL–501, Revision 0. Any new waste stream not approved under this baseline or addition of containers to waste stream ID–ANLE–S5000 that require a change to the established radionuclide scaling factors.	Revisions of CCP–AK–INL–501or CCP–TP–504 that require CBFO approval.**
Visual Examination (VE)	Implementation of VE following this Baseline approval is a T1 change. If CCP decides to use VE in the future EPA approval is necessary.	None.
Real Time Radiography (RTR) ...	Any use of RTR requires EPA approval.	None.
WIPP Waste Information System (WWIS).	Any use of WWIS requires EPA approval prior to RH waste disposal.	None.

* Upon receiving EPA approval, INL–CCP will report all T2 changes to EPA every three months.
** Excluding changes that are editorial in nature or are required to address administrative concerns.
*** *Substantive modification* refers to a change with the potential to affect INL's RH WC process, e.g., the use of an inherently different type of measurement instrument or the use of the high range probe as described in CCP–TP–504.

EPA will notify the public of the results of its evaluations of proposed T1 and T2 changes through the WIPP Web site and by forwarding e-mails to the WIPP–NEWS list. All T1 changes must be submitted for approval before their implementation and will be evaluated by EPA. Upon approval, EPA will post the results of the evaluations through the WIPP Web site and the WIPP–NEWS list, as described above. EPA will post T2 changes approximately every three months beginning with the date of EPA's approval of the TRU WC program implemented at INL–CCP. EPA expects the first report of INL–CCP's T2 changes approximately three months from date of EPA's approval of the TRU WC program implemented at INL–CCP.

In this notice, EPA is not proposing to approve WIPP Waste Information System (WWIS) for tracking of waste contents of RH debris wastes. Although the WWIS is currently approved by EPA for tracking CH waste, this system has not been demonstrated by DOE for the Agency for tracking RH waste. Therefore, in accordance with 194.8(b)(2)(iii), EPA is placing a limitation on this proposed baseline that requires DOE to provide WWIS information as a T1 change. EPA will review the WWIS database populated with actual RH waste content data when the RH modules have been completed. EPA may conduct the evaluation of the WWIS during this comment period; however, no final decision or approval of the WWIS will be made until a baseline approval is finalized. No RH waste can be shipped to WIPP for disposal until EPA approves the WWIS database through the T1 process. Similarly, if INL–CCP intends to use an RTR unit to evaluate RH drum contents, EPA will also evaluate this process as a T1 change. Although EPA may evaluate INL–CCP's RTR prior to a baseline approval, no decision or approval regarding RTR will be made until a baseline approval is finalized.

B. September 2006 ANL–CCP RH Inspection Results

At ANL, EPA's inspection team identified three concerns; two in VE and one in AK. DOE responded to the EPA concerns and the Agency determined that the DOE responses were satisfactory. EPA's inspection team determined that ANL–CCP's RH WC program activities were technically adequate. (For a complete discussion of

EPA's findings, concerns, and technical evaluation, *see* EPA ANL CCP RH Inspection Report A–98–42, II–A4–70 in the accompanying EPA Docket.) EPA is proposing to approve CCP's AK, DTC, and VE processes implemented at ANL in the configuration observed during the September 2006 inspection and as described in the inspection report A–98–49, II–A4–70. The proposed approval includes the following:

(1) The AK process for RH retrievably-stored TRU debris in one waste stream, Waste Stream AERHDM, as defined in CCP–AK–ANLE–501, Revision 0, July 21, 2006.

(2) The radiological characterization process using DTC and modeling-derived scaling factors for assigning radionuclide values to one RH waste stream for which the scaling factors are applicable, as described in CCP–AK–ANL–501, Revision 1.

(3) The VE process for retrievably-stored RH debris waste.

Any changes to the WC activities from the date of the baseline inspection must be reported to and, if applicable, approved by EPA, according to Table 2 (as seen below).

TABLE 2.—TIERING OF RH TRU WC PROCESSES IMPLEMENTED BY ANL–CCP

[For details see EPA's ANL–CCP RH inspection report in EPA Docket No: A–98–49, II–A4–70]

RH WC process elements	ANL–CCP RH WC process—T1 changes	ANL–CCP RH WC process—T2 changes*
Acceptable Knowledge (AK)	Any new waste streams not approved under this baseline ..... Load management for any RH waste stream. Substantive modification(s)*** that have the potential to affect the characterization process to the following documents: CP–AK–ANLE–500, Revision 1; CCP–AK–ANLE–501, Revision 0; or CCP–AK–ANLE–502, Revision 0. Modification of the approved waste stream AERHDM to include additional containers beyond the approximately 45 included in CCP–AK–ANLE–500, Revision 3.	Changes made to AK documentation as a result of WCPIP revisions.** AK accuracy reports, prepared annually at a minimum. Waste stream data package for debris waste stream once completed, and any modifications to that WSPF including the CRR and AK Summary. Comparison of AK versus DTC-derived radiological data to support the use of waste stream-specific instead of drum-specific radiological data and the completed DTC results for all containers in this waste stream. Updates to documents as follows: • CCP–AK–ANLE–500 and CCP–AK–ANLE–502 to address freeze file changes. • All future revisions of CCP–ANLE–AK–500, CCP–ANLE–AK–501 and CCP–ANLE–AK–502. • Listing of the references that document the assembly of fuel pin data and review process.
Radiological Characterization, including Dose-To-Curie (DTC).	Use of any alternate radiological characterization procedure other than DTC with established scaling factors as documented in CCP–TP–504, Revision 3, or substantive modification*** of the DTC procedure. Application of new scaling factors for isotopic determination other than those documented in CCP–AK–ANLE–501, Revision 0. Any new waste stream not approved under this baseline or addition of containers to waste stream AERHDM that require changing the established radionuclide scaling factors.	Revisions of CCP–AK–ANLE–501 or CCP–TP–504 that require CBFO approval.**
Visual Examination (VE)	VE by reviewing existing audio/visual recordings for S4000 and S3000 wastes. VE by any process other than review of existing audio/visual recordings for S5000 debris wastes.	Changes made to any VE procedure(s) that require CBFO approval. Addition of new S5000 debris waste streams.
Real Time Radiography (RTR) ...	Any use of RTR requires EPA approval	None.
WIPP Waste Information System (WWIS).	Any use of WWIS requires EPA approval prior to RH waste disposal.	None.

* Upon receiving EPA approval, ANL–CCP will report all T2 changes to EPA every three months.

** Excluding changes that are editorial in nature or are required to address administrative concerns. New references that are included as part of the document revision may be requested by EPA.

*** Substantive modification refers to a change with the potential to affect ANL's RH WC process, *e.g.*, the use of an inherently different type of measurement instrument or the use of the high range probe as described for CCP–TP–504.

EPA will notify the public of the results of its evaluations of proposed T1 and T2 changes through the WIPP Web site and by forwarding e-mails to the WIPP–NEWS list. All T1 changes must be submitted for approval before their implementation and will be evaluated by EPA. Upon approval, EPA will post the results of the evaluations through the WIPP Web site and the WIPP–NEWS list, as described above. EPA will post T2 changes approximately every three months beginning with the date of EPA's approval of the TRU WC program implemented at ANL–CCP. EPA expects

the first report of ANL–CCP's T2 changes approximately three months from date of EPA's approval of the TRU WC program implemented at ANL–CCP.

In this notice, EPA is not proposing to approve WIPP Waste Information System (WWIS) for tracking of waste contents of RH debris wastes. Although the WWIS is currently approved by EPA for CH waste, the system has not yet been demonstrated by DOE for the Agency for tracking RH waste. Therefore, in accordance with 194.8(b)(2)(iii), EPA is placing a limitation on this proposed baseline that requires DOE to provide WWIS information as a T1 change. EPA will review the WWIS database populated with actual RH waste content data when the RH modules have been completed. EPA may conduct the evaluation of the WWIS during this comment period; however, no final decision or approval of the WWIS will be made until a baseline approval is finalized. No RH waste can be shipped to WIPP for disposal until EPA approves the WWIS database through the T1 process. In the future, if ANL–CCP intends to use an RTR unit to evaluate RH drum contents, EPA will evaluate this process as a T1 change.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed both reports discussing the results of EPA's inspections of INL–CCP and ANL–CCP in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decisions and tiering designations, as described in EPA's inspection reports. EPA will accept public comment on this notice and supplemental information as described in Section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection reports as necessary. If appropriate, the Agency will then issue approval letters and final inspection reports, both of which will be posted on the WIPP Web site. DOE must obtain EPA approval of the WWIS, through the T1 change system prior to the disposal of RH waste at WIPP.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico (as listed in **ADDRESSES**). The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: October 31, 2006.

Elizabeth Cotsworth,

Director, Office of Radiation and Indoor Air.

[FR Doc. E6–18847 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0258; FRL–8100–1]

Triadimefon; Notice of Receipt of Requests to Voluntarily Cancel or to Amend to Terminate Uses of Triadimefon Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel and amend their registrations to terminate uses of certain products containing the pesticide triadimefon. The requests would terminate triadimefon use in or on apples, pears, grapes, raspberries, and residential turf. The requests would not terminate the last triadimefon product registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before May 7, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0258, 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. 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: 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 on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from the registrants Bayer CropScience, Bayer Environmental Science, and Bayer Advanced to cancel and amend to terminate uses of the triadimefon products listed in Tables 1 and 2. Triadimefon is a broad spectrum fungicide used for the systemic control of rust and mildew on various fruits and 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. In a letter dated July 31, 2006, Bayer CropScience, Bayer Environmental Science, and Bayer Advanced requested EPA to voluntarily cancel and amend their registrations to terminate use(s) of certain products containing the pesticide triadimefon identified in this notice Tables 1 and 2. Specifically, the registrant has agreed to voluntarily cancel all use on apples, pears, grapes, and raspberries (commercial and residential) as well as use on residential turf. The registrant's request for these use deletions will not terminate the last triadimefon products registered in the United States, or the last pesticide products registered in the United States for these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel and/or amend to terminate uses of triadimefon product registrations. The affected products and the registrants making the requests are identified in Tables 1 - 3 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The triadimefon registrants have declined to waive the 180–day comment period. EPA will provide a 180–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling or amending the affected registrations.

TABLE 1.—TRIADIMEFON PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
264-757	Summit S Flowable Fungicide	Bayer CropScience

TABLE 2.—TRIADIMEFON PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
264-736	Bayleton Technical Fungicide	Bayer CropScience
264-737	Bayleton 50% Wettable Powder Fungicide	Bayer CropScience
264-757	Summit S Flowable Fungicide	Bayer CropScience
432-1293	Bayleton 25 WP Fungicide	Bayer Environmental Science
432-1295	Bayleton 1% Granular Turf Fungicide	Bayer Environmental Science
432-1296	Bayleton 0.5% Granular Turf Fungicide	Bayer Environmental Science
432-1297	Bayleton 009 EC Turf and Ornamental Fungicide	Bayer Environmental Science
432-1300	Bayleton 216 Concentrate	Bayer Environmental Science
432-1309	Bayleton 25% Turf and Ornamental Fungicide in WSP	Bayer Environmental Science
432-1316	Bayleton 25 WP Fungicide	Bayer Environmental Science
432-1317	Bayleton 25 Nursery and Greenhouse Fungicide in WSP	Bayer Environmental Science
432-1336	Bayleton 1% Turf and Sod Production Fungicide	Bayer Environmental Science
432-1360	Bayleton 50 Turf and Ornamental Fungicide in WSP and Bayleton 50 WP Fungicide	Bayer Environmental Science
432-1367	Bayleton 50 WDG Fungicide and Bayleton 50 WDG Nursery and Greenhouse Fungicide	Bayer Environmental Science
432-1445	Bayleton FLO Turf and Ornamental Fungicide	Bayer Environmental Science
72155-46	Bayleton 1% Granular	Bayer Advanced
72155-47	Bayleton Granular	Bayer Advanced
72155-48	Bayleton Liquid Concentration	Bayer Advanced

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Tables 1 and 2 of this unit.

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
264	Bayer CropScience2 T.W. Alexander DriveP.O. Box 12014Research Triangle Park, NC 27709
432	Bayer Environmental Science2 T.W. Alexander DriveP.O. Box 12014Research Triangle Park, NC 27709
72155	Bayer Advanced 2 T.W. Alexander DriveP.O. Box 12014Research Triangle Park, NC 27709

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Triadimefon

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 7, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation and use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation

order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental Protection, Pesticides and pests.

Dated: October 27, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–18757 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0084; FRL-8101-7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations and providing a public comment period.

DATES: Unless a request is withdrawn by May 7, 2007 or December 8, 2006 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than May 7, 2007 or December 8, 2006, whichever is applicable. Comments must be received on or before May 7, 2007 or December 8, 2006, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2006–0084, 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. Written withdrawal requests should be to the Attention of: John Jamula, Information Technology and Resources Management Division (7502P), at the address above.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0084. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6426; e-mail address: *jamula.john@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 persons who produce or use 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 notice, 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. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 105 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000004-00450	Bonide Snail N Slug Plus	Metaldehyde
		Carbaryl
000100-00982	Riceco Touche	Propanil
		Molinate
000100-01036	Arrosolo 3-3E	Propanil
		Molinate
000100-01136	Butafenacil Technical	Benzoic acid, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidin
000100-01137	Inspire EC	Benzoic acid, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidin
000100 CO-06-0006	Axial Herbicide	Pinoxaden
000100 OR-05-0011	Tilt	Propiconazole
000228-00133	Riverdale Killsall Liquid	Sodium chlorate
000228-00158	Riverdale Pre-Emergent Crabgrass Control Concentrate	Benfluralin
000228-00172	Riverdale 34-0-10 & Benefin Crabgrass Preventer	Benfluralin
000228-00174	Riverdale 2.5g Pre-Emergent Herbicide	Benfluralin
000228-00201	Riverdale Killsall II Ready-To-Use Liquid	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
		Sodium chlorate
000228-00204	Riverdale Triamine II Liquid Weed & Feed	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228-00207	Riverdale Team .87 Lawn Weed and Feed	Trifluralin
		Benfluralin
000228-00215	Riverdale Triamine II Premium Liquid Weed and Feed	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228-00218	Riverdale Triamine II Premium 75 Liquid Weed and Feed	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000228-00219	Riverdale Sweet Sixteen Weed & Feed with Triamine II	MCPA, dimethylamine salt
		Propanoic acid, 2-(2,4-dichlorophenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
000228-00224	Riverdale Triamine II Spot Weed Killer	MCPA, dimethylamine salt
		Propanoic acid, 2-(2,4-dichlorophenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
000228-00225	Riverdale Triamine II Weed & Feed	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228-00226	Riverdale 3-Way Weed and Feed with Triamine II	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228-00228	Riverdale Triamine II W.S.	MCPA (and salts and esters)
		Propanoic acid, 2-(2,4-dichlorophenoxy)-, (R)-
		Mecoprop-P
000228-00229	Riverdale Triamine II Granular Weed Killer	MCPA, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
000228-00256	Riverdale Team 1.33% Lawn Weed and Feed	Trifluralin
		Benfluralin
000228-00266	Riverdale Duo Lawn Weed Killer	MCPA, dimethylamine salt
		Mecoprop, dimethylamine salt
000228-00279	Riverdale Dri-MCPA Amine	MCPA, dimethylamine salt
000228-00285	Riverdale Tri-Power (r) Dry	Dicamba
		MCPA (and salts and esters)
		Mecoprop (and salts and esters)
000228-00299	Riverdale Tri-Power (r) 4000 Weed and Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Mecoprop, dimethylamine salt
000228-00300	Riverside Sweet Sixteen Weed and Feed with Tri-Power (r)	Dicamba
		MCPA (and salts and esters)
		Mecoprop-P
000228-00301	Riverdale Tri-Power (r) Dry Weed and Feed	Dicamba

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		MCPA (and salts and esters)
		Mecoprop-P
000228-00306	Riverdale Tri-Power (r) Dry Granular Weed Killer	Dicamba
		MCPA (and salts and esters)
		Mecoprop (and salts and esters)
000228-00349	MCDA Lawn Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and isopropanol serie
000228-00350	MCDA 8000 Lawn Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and isopropanol serie
000228-00351	MDCA Spot Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and isopropanol serie
000228-00352	Riverdale MCDA Weed and Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and isopropanol serie
000228-00353	Riverdale MCDA Granular Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		3,6-Dichloro-2-pyridinecarboxylic acid, alkanolamine salts (of ethanol and isopropanol serie
000241 CA-03-0005	Raptor Herbicide	Imazamox
000264-00649	Tiller EC Herbicide	2,4-D, 2-ethylhexyl ester
		MCPA, 2-ethylhexyl ester
		Fenoxaprop-p-ethyl
000264-00654	Cheyenne FM Herbicide	MCPA, 2-ethylhexyl ester
		Fenoxaprop-p-ethyl
000264-00655	Dakota Herbicide	MCPA, 2-ethylhexyl ester
		Fenoxaprop-p-ethyl
000264 AL-06-0004	Baythroid XL	beta-cyfluthrin
000264 PR-92-0001	Monitor 4	Methamidophos
000524 CA-02-0011	Mon 78112 Herbicide	Glyphosate-isopropylammonium

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000769-00825	SMCP Dursban 2.5% G Insecticide	Chlorpyrifos
001021-01340	MGK Formula 7243	Piperonyl butoxide
		Pyrethrins
001021-01464	Pyrocide Intermediate 7123	Piperonyl butoxide
		Pyrethrins
002217-00720	Trimec 869	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00721	Trimec 870	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00722	Trimec 871	Dicamba
		MCPA (and salts and esters)
		Mecoprop-P
002217-00729	MM885	MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00730	Trimec M 886 Liquid Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00731	Trimec M 887 Liquid Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00732	Trimec M 903	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00733	Trimec M 904	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00734	Trimec M 905	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00735	MM 890 Liquid Weed & Feed 20-0-0	MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00736	Trimec M907 Liquid Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00737	Trimec M908 Liquid Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00738	MM 909 Liquid Weed and Feed	MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00743	Trimec M891 Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00744	Trimec M 892 Weed & Feed	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00745	MM 893 Weed & Feed	MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
002217-00750	Gordon's Trimec M 936 Broadleaf Herbicide	Dicamba
		MCPA (and salts and esters)
		Mecoprop (and salts and esters)
002217-00784	Trimec 1158 Broadleaf Herbicide	Dicamba
		MCPA (and salts and esters)
		Mecoprop-P
002217-00821	EH1356 Herbicide	Dicamba
		MCPA (and salts and esters)
		Mecoprop-P
002217-00822	EH1355 Weed and Feed	Dicamba
		MCPA (and salts and esters)
		Mecoprop-P

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
004581 WA-04-0016	Microthiol Disperss	Sulfur
004822-00404	Raid Liquid Flea Killer LF4	Piperonyl butoxide
		Phenothrin
004822-00500	Whitmire TC 85 Total Release Insect Fogger	4,7-Methano-1H-isoindole-1,3(2H)-dione, 2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Pyrethrins
		Permethrin
		Pyriproxyfen
007001-00383	Turf Fertilizer with 1.00% Ronstar	Oxadiazon
007401-00085	Ferti-Lome Ready To Use Liquid Weed & Wild Grass Killer	Sodium chlorate
007401-00087	Ferti-Lome Liquid Vegetation Killer	Sodium chlorate
007401-00173	Ferti-Lome Special Vegetation Killer	Sodium chlorate
009198-00030	The Andersons Fertilizer with 0.92% Balan	Benfluralin
009198-00091	The Andersons Tee Time Plus 0.57% Team	Trifluralin
		Benfluralin
009198-00101	The Andersons Fertilizer with 0.87% Team	Trifluralin
		Benfluralin
009198-00130	The Andersons Fertilizer with 1.50% Team	Trifluralin
		Benfluralin
010404-00036	Lesco 2.5 Benefin Granular	Benfluralin
010404-00056	Lesco Turf Fertilizer with 1.15% Team	Trifluralin
		Benfluralin
011603-00040	Acetochlor Technical	Acetochlor
011685-00013	MCPA Technical Acid	MCPA (and salts and esters)
011685-00024	Riverdale Technical Mcpa Ioe	MCPA, 2-ethylhexyl ester
019713-00511	Drexel Methyl Parathion 4 Insecticide	Methyl parathion
019713-00512	Drexel Methyl Parathion 4E	Methyl parathion
019713 OR-04-0026	Drexel Diazinon Insecticide	Diazinon
032802-00079	Ronstar Plus Fertilizer 1.00%	Oxadiazon
032802-00080	Ronstar Plus Fertilizer 1.50%	Oxadiazon
034704-00804	Stay-N 2000	Nitrapyrin
034704 OR-00-0005	Prometryne 4L Herbicide	Prometryn
034704 OR-00-0017	Saber Herbicide	2,4-D, dimethylamine salt
034704 OR-98-0001	Clean Crop Dimethoate 400	Dimethoate
035935-00002	Propanilo-3	Propanil
035935-00010	Technical MCP Ester	MCPA, 2-ethylhexyl ester
051036-00233	Propanil 4EC	Propanil

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
053263-00029	Emtrol Tobacco Sucker Control Agent	Fatty alcohols (54.5% C10, 45.1% C8, 0.4% C6)
057700-00001	Shirasagi WHA	Silver
062719-00058	MCPA Na Salt	MCPA, sodium salt
062719-00386	Stam F-34 Herbicide	Propanil
062719-00389	Stam LV-10 Herbicide	Propanil
062719-00393	Stam GX-4 Herbicide	Propanil
062719-00436	Stampro	Propanil
		Sulfometuron
062719-00521	Atrazine Technical	Atrazine
070506-00027	Devrinol 2-E Selective Herbicide	Napropamide
071085-00024	Riceco Arrosolo 3-3E	Propanil
		Molinate
071368-00055	Mcpa Amine 4 Herbicide	MCPA, dimethylamine salt
071368-00056	Mcpa Ester 4 Herbicide	MCPA, 2-ethylhexyl ester

A request to waive the 180–day comment period has been received for the following registrations: 7401-85, 7401-87, and 7401-173. Therefore, the 30–day comment period will apply for these registrations.

Unless a request is withdrawn by the registrant by May 7, 2007 or by December 8, 2006 for those registrations with a 30–day comment period, orders will be issued canceling all of these registrations. A person may submit comments to EPA as provided in **ADDRESSES** and Unit I. of the **SUPPLEMENTARY INFORMATION** above. However, because FIFRA section 6(f)(1)(A) allows a registrant to request cancellation of its pesticide registrations at any time, users or anyone else desiring retention of those pesticides listed in Table 1 may want to contact the applicable registrant in Table 2 directly during this period to request that the registrant retain the pesticide registration or to discuss the possibility of transferring the registration. A user seeking to apply for its own registration of that pesticide may submit comments requesting EPA not to cancel a registration until its ''me-too'' registration is granted.

Table 2 of this unit includes the names and **ADDRESSES** of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000004	Bonide Products, Inc., 6301 Sutliff Rd., Oriskany, NY 13424.
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, Po Box 18300, Greensboro, NC 27419-8300.
000228	Nufarm Americas Inc., 150 Harvester Drive Suite 200, Burr Ridge, IL 60527.
000241	BASF Corp., PO Box 13528, Research Triangle Park, NC 277093528.
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000524	Monsanto Co., Agent For: Monsanto Co., 1300 I Street, NW., Suite 450 E., Washington, DC 20005.
000769	Value Gardens Supply, LIC, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427-4372.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
002217	PBI/Gordon Corp., PO Box 014090, Kansas City, MO 64101-0090.
004581	Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19406.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
007001	J.R. Simplot Co, PO Box 198, Lathrop, CA 95330.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007-1451.
009198	The Andersons Lawn Fertilizer Division, Inc., dba/ Free Flow Fertilizer, PO Box 119, Maumee, OH 43537.
010404	Lesco Inc., 1301 E. 9th Street, Suite 1300, Cleveland, OH 44114-1849.
011603	Makhteshim-Agan of North America Inc., Agent For: Agan Chem Mfg, Ltd, 4515 Falls of Neuse Rd. Ste 300, Raleigh, NC 27609.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
011685	Nufarm Limited, Agent For: Nufarm UK Limited, PO Box 13439, Rtp, NC 27709.
019713	Drexel Chemical Co., PO Box 13327, Memphis, TN 381130327.
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St. Ste 222, Milwaukee, WI 53204-1548.
034704	Loveland Products, Inc., PO Box 1286, Greeley, CO 80632.
035935	Nufarm Limited, Agent For: Nufarm Limited, PO Box 13439, Rtp, NC 27709.
051036	BASF Sparks LLC, PO Box 13528, Research Triangle Park, NC 27709.
053263	Lewis & Harrision, Agent For: Cognis Corp., 122 C St., NW., Suite 740, Washington, DC 20001.
057700	Takeda America Inc., Agent For: Takeda Chemical Industries, Ltd., 555 Madision Ave. 11th Floor, New York, NY 10022.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2e, Indianapolis, IN 46268-1054.
070506	United Phosphorus Inc., 423 Riverview Plaza, Trenton, NJ 08611.
071085	Riceco LLC, 5100 Poplar Ave - Ste 2428, Memphis, TN 38137.
071368	Nufarm, Inc., 150 Harvester Drive Suite 200, Burr Ridge, IL 60527.

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

Section 6(f)(1)(A) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30–day public comment period. In addition, where a pesticide is registered for a minor agricultural use and the Administrator determines that cancellation or termination of that use would adversely affect the availability of the pesticide for use, FIFRA section 6(f)(1)(C) requires EPA to provide a 180–day period before approving or rejecting the section 6(f) request unless:

1. The registrant requests a waiver of the 180–day period, or
2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 7, 2007 or before December 8, 2006 for those registrations where the 180–day comment period has been waived. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 27, 2006.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E6–18778 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0644; FRL–8082–7]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Thiophanate-methyl in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petition proposing the establishment and amendment of regulations for residues of pesticide thiophanate-methyl in or on bushberry subgroup 13B; juneberry; lingonberry; salal; caneberry subgroup 13A; brassica, leafy greens, subgroup 5B; turnip greens; cotton, undelinted seed; cotton, gin byproducts; citrus; ginseng; mushroom; nut, tree, group 14; pistachio; sunflower; vegetable, tuberous and corm, subgroup 1C; tomato; tomatillo; and mustard.

DATES: Comments must be received on or before December 8, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0644 and pesticide petition number (PP) 6E7075 and 6F7069 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0644. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Shaja 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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information subject heading, **Federal Register** date and page number.

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing each summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemical thiophanate-methyl in or on bushberry subgroup 13B; juneberry; lingonberry; salal; caneberry subgroup 13A; brassica, leafy greens, subgroup 5B; turnip, tops; cotton, undelinted seed; cotton, gin byproducts; citrus; ginseng; mushroom; nut, tree, group 14; pistachio; sunflower; vegetable, tuberous and corm, subgroup 1C; tomato; tomatillo; and mustard. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the thiophanate-methyl residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's

Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

1. *PP 6E7075*. Interregional Research Project Number 4 (IR-4), 500 College Rd., East, Princeton, NJ 08540, proposes to establish tolerances for residues of the fungicide thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-o-phenylene bis(allophonate), and its benzimidazole-containing metabolites] in or on the following raw agricultural commodities: Bushberry subgroup 13B at 4.0 parts per million (ppm); juneberry, lingonberry, and salal at 4.0 ppm; caneberry subgroup 13A at 25 ppm; brassica, leafy greens, subgroup 5B at 7.0 ppm; turnip greens at 7.0 ppm; fruit, citrus, group 10 at 6.0 ppm; ginseng at 0.3 ppm; mushroom at 0.09 ppm; nut, tree, group 14 at 0.2 ppm; sunflower at 0.05 ppm; vegetable, tuberous and corm, subgroup 1C at 0.1 ppm; tomato, tomatillo at 1.4 ppm; and mustard (grown for seed) at 0.1 ppm. The IR-4 pesticide petition also proposes to amend 40 CFR 180.371 by amending the existing tolerance for the raw agricultural commodity pistachio currently at 0.1 ppm to 0.9 ppm, and the existing tolerance for almond hulls currently at 1.0 ppm to 14.0 ppm.

2. *PP 6F7069*. Cerexagri, Inc., agent for Nisso TM, LLC, 630 Freedom Business Center, Suite 402, King of Prussia, Pennsylvania 19406 also proposes to establish tolerances for residues of the fungicide thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-o-phenylene bis(allophonate), and its benzimidazole-containing metabolites] in or on cotton, undelinted seed at 0.05 ppm, and cotton, gin byproducts at 14.0 ppm.

An adequate method for purposes of enforcement of the proposed thiophanate-methyl tolerances is available. The method uses an HPLC system employing column-switching capabilities. It consists of reverse phase HPLC with UV detection, and is capable of analyzing for residues of thiophanate-methyl and its metabolite, MBC.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 26, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–18777 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0848; FRL–8099–9]

Notice of Filing of Pesticide Petitions for Establishment to Regulations for Residues of Fenamidone in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of fenamidone in or on carrot; sunflower; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; vegetables, fruiting, group 8; vegetable, leafy, except brassica, group 4; strawberry; and cotton.

DATES: Comments must be received on or before December 8, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0848 and pesticide petition number (PP), by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0848. 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: 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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of fenamidone in or on carrot; sunflower; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; vegetables, fruiting, group 8; vegetable, leafy, except brassica, group 4; strawberry; and cotton. EPA has determined that the pesticide petitions contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of fenamidone residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

1. *PP 6E7109, 5E6924, and 5E6925.* Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 West, Princeton, NJ 08540, proposes to establish tolerances for residues of the fungicide, fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-, (S)-) in or on the following raw agricultural commodities:

PP 6E7109 proposes to establish a tolerance for carrot at 0.15 parts per million (ppm).

PP 5E6924 proposes to establish a tolerance for sunflower at 0.08 ppm.

PP 5E6925 proposes to establish tolerances for brassica, head and stem, subgroup 5A at 4.0 ppm; brassica, leafy greens, subgroup 5B at 35 ppm; vegetables, fruiting, group 8 at 2.0 ppm; and vegetable, leafy, except brassica, group 4 at 35 ppm.

2. *PP 5F6898.* Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, also proposes to establish tolerances for residues of the fungicide, fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-, (S)-) in or on cotton, undelinted seed at 0.02 ppm; cotton, gin byproducts at 0.02 ppm; and strawberry at 0.02 ppm.

Although residue levels approaching the proposed tolerances are unlikely, independently validated enforcement methods are available for determining residues of fenamidone and relevant metabolites. Residues are first extracted from the crop matrix by blending or shaking with a mixture of acetonitrile and water. After filtration, an aliquot of the extract is rotary evaporated to near dryness, then diluted with water. Cleanup is accomplished on a HR–P polymeric solid phase extraction (SPE) cartridge and an amino SPE cartridge. Residues are quantified by HPLC with tandem mass spectrometric detection (LC/MS/MS). The method limits of quantification (LOQ) are 0.02 ppm for fenamidone, and its metabolites, RPA 412636, RPA 412708, and RPA 410193 in potato tubers and processed fractions, tomatoes and processed fractions, cucumbers, squash, cantaloupes, head and leaf lettuce, onions, spinach, and wheat raw agricultural commodities and processed fractions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 26, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–18873 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–782; FRL–8095–7]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 67979–EUP–A from Syngenta Seeds, Inc. requesting an experimental use permit (EUP) for the plant-incorporated protectants MIR162 *Bacillus thuringiensis* Vip3A protein and the genetic material (plasmid vector pNOV1300) necessary for its production in corn, Bt11 *Bacillus thuringiensis* Cry1Ab protein and the genetic material (plasmid vector pZO1502) necessary for its production in corn, and MIR604 *Bacillus thuringiensis* mCry3A protein and the genetic material (plasmid vector pZM26) necessary for its production in corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before December 8, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–782, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–782. 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: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those interested in agricultural biotechnology and those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

The 67979–EUP–A application is for 536 acres of MIR162, 220 acres of Bt11, 199 acres of MIR604, 469 acres of Bt11 x MIR162, 468 acres of Bt11 x MIR162 x MIR604, and 1,207 acres of non plant-incorporated protectant border areas. MIR162 contains the lepidopteran protecting *Bacillus thuringiensis* Vip3A protein and the genetic material (plasmid vector pNOV1300) necessary for its production. Bt11 contains the lepidopteran protecting *Bacillus thuringiensis* Cry1Ab protein and the genetic material (plasmid vector pZO1502) necessary for its production. MIR604 contains the coleopteran protecting *Bacillus thuringiensis* mCry3A protein and the genetic material (plasmid vector pZM26) necessary for its production.

Proposed shipment/use dates are March 1, 2007 through February 29, 2008. Five trial protocols have been proposed, including the following:

- Breeding and observation.
- Efficacy evaluation.
- Agronomic observation.
- Inbred and hybrid seed production.
- Regulatory studies.

States and commonwealths involved include: California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Puerto Rico, South Dakota, Texas, and Wisconsin.

III. What Action is the Agency Taking?

Following the review of the Syngenta Seeds, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

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

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 27, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–18941 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8240–8]

Water Pollution Control; Approval of Modification to Michigan's Approved National Pollutant Discharge Elimination System Permitting Program To Administer a Partial State Sewage Sludge Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; approval of application.

SUMMARY: On September 28, 2006, pursuant to Section 402(b) of the Clean Water Act (CWA), the Acting Regional Administrator for EPA, Region 5, approved the State of Michigan's modification of its existing National Pollutant Discharge Elimination System (NPDES) program to include the administration and enforcement of a partial state sewage sludge (biosolids) management program where it has jurisdiction.

FOR FURTHER INFORMATION CONTACT: John Colletti, at (312) 886–6106, NPDES Programs Branch, (WN–16J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or electronically at *colletti.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we'', ''us'', or ''our'' means EPA.

Table of Contents

I. Introduction
II. Was notice provided seeking public comments on Michigan's program submittal?
III. Was a public hearing held?
IV. Did EPA receive any public comments?
V. Does EPA's approval affect Indian Country in Michigan?
VI. Conclusion
VII. **Federal Register** Notice of Approval of State NPDES Programs or Modifications
VIII. Administrative Requirements
A. National Historic Preservation Act
B. Other Provisions

I. Introduction

Michigan's application to modify its existing NPDES program to administer and enforce a partial state biosolids management program was submitted on March 28, 2002. Specifically, the state sought approval of a biosolids management program which addresses the land application of biosolids. On April 21, 2005, the state amended its submittal limiting the state's request to the activity mentioned above within the state except if that activity occurs within ''Indian Country'' as defined in 18 U.S.C. 1151 and applicable case law. The state's biosolids management program does not extend to Indian Country, and will not include lands within the exterior boundaries of Indian reservations within or abutting the State of Michigan. Michigan did not seek approval for the surface disposal of biosolids, the landfilling of biosolids, the incineration of biosolids, or the land application of domestic septage. The biosolids management program is administered by the Michigan Department of Environmental Quality (MDEQ). Modifications were made to the program submittal based on discussions between EPA and MDEQ. These modifications are part of the record of the program application and review process.

II. Was notice provided seeking public comments on Michigan's program submittal?

Michigan's application was described in the August 4, 2006, **Federal Register** at Vol. 71, No. 150, pages 44291 to 44294, in which EPA requested public comments for a period of 45 days. Further notice was provided by way of publication in the following newspaper on August 4, 2006: The Bay City Times; The Flint Journal; The Traverse City Record-Eagle; The Grand Rapids Press; The Lansing State Journal; The Ann Arbor News, and; The Mining Journal (Marquette) in an effort to get wide coverage throughout the state. Additionally, notices were sent to all known Michigan NPDES permitted facilities that would be impacted by the program and to people or organizations that MDEQ determined might have an interest in the program application. Copies of MDEQ's application package were available for public review at the EPA Region 5 Office and at MDEQ's district offices.

III. Was a public hearing held?

A public hearing was not held. The above notice explained that a hearing had not been scheduled and how a hearing could be requested. EPA will hold a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest. No request for a hearing was received during the public comment period and therefore, no hearing was held.

IV. Did EPA receive any public comments?

Pursuant to the public notice, we would accept written comments from the public postmarked on or before September 18, 2006. During the comment period, no comments were received.

V. Does EPA's approval affect Indian Country in Michigan?

MDEQ did not seek approval to administer and enforce the state biosolids management program for activities occurring in Indian Country. Our approval does not authorize MDEQ to carry out its biosolids management program in ''Indian Country,'' as defined in 18 U.S.C. 1151 and applicable case law. Indian Country includes:

1. All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, our approval of the state's sewage sludge management program will have no effect in Indian Country where EPA continues to implement and administer the NPDES program.

VI. Conclusion

The Michigan Department of Environmental Quality has demonstrated that it adequately meets the requirements for program modification to include biosolids management (specifically, the land application of biosolids) as defined in the Clean Water Act and 40 CFR parts 123, 501, and 503.

At this time, EPA is withholding authorization to administer the biosolids management program for the surface disposal of biosolids, the landfilling of biosolids, the incineration of biosolids, the land application of domestic septage, and activities occurring in Indian Country, as mentioned above.

VII. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Michigan's authority to administer the sewage sludge management program.

STATE NPDES PROGRAM STATUS

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program	Approved sludge management program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91	.....
Arizona	12/05/02	12/05/02	12/05/02	12/05/02	04/01/04
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86	.....
California	05/14/73	05/05/78	09/22/89	09/22/89	.....
Colorado	03/27/75	.....	.....	03/04/82	.....
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92	.....
Delaware	04/01/74	.....	.....	10/23/92	.....
Florida [1]	05/01/95	05/01/00	05/01/95	05/01/95	.....
Georgia	06/28/74	12/08/80	03/12/81	01/28/91	.....
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91	.....
Illinois	10/23/77	09/20/79	.....	01/04/84	.....
Indiana	01/01/75	12/09/78	.....	04/02/91	.....
Iowa	08/10/78	08/10/78	06/03/81	08/12/92	.....
Kansas	06/28/74	08/28/85	.....	11/24/93	.....
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83	.....
Louisiana	08/27/96	08/27/96	08/27/96	08/27/96	.....
Maine	01/12/01	01/12/01	01/12/01	01/12/01	.....
Maryland	09/05/74	11/10/87	09/30/85	09/30/91	.....
Michigan	10/17/73	12/09/78	04/16/85	11/29/93	09/28/06
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87	.....
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91	.....
Missouri	10/30/74	06/26/79	06/03/81	12/12/85	.....
Montana	06/10/74	06/23/81	.....	04/29/83	.....
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89	.....
Nevada	09/19/75	08/31/78	.....	07/27/92	.....
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82	.....
New York	10/28/75	06/13/80	.....	10/15/92	.....
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91	.....
North Dakota	06/13/75	01/22/90	09/16/05	01/22/90	.....
Ohio	03/11/74	01/28/83	07/27/83	08/17/92	03/16/05
Oklahoma	11/19/96	11/19/96	11/19/96	09/11/97	11/19/96
Oregon	09/26/73	03/02/79	03/12/81	02/23/82	.....
Pennsylvania	06/30/78	06/30/78	.....	08/02/91	.....
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84	.....
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92	.....
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93	10/22/01
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91	.....
Texas	09/14/98	09/14/98	09/14/98	09/14/98	09/14/98
Utah	07/07/87	07/07/87	07/07/87	07/07/87	06/14/96
Vermont	03/11/74	.....	03/16/82	08/26/93	.....
Virgin Islands	06/30/76	.....	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	04/20/91	.....
Washington	11/14/73	.....	09/30/86	09/26/89	.....
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82	.....
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86	07/28/00

STATE NPDES PROGRAM STATUS—Continued

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program	Approved sludge management program
Wyoming	01/30/75	05/18/81	.....	09/24/91	.....
Totals	46	41	35	44	08

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 33.
Number of authorized Sludge Management Programs = 8.
[1] The Florida authorizations of 05/01/95 represent a phased NPDES program authorization to be completed by the year 2000.

VIII. Administrative Requirements

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), agencies consult with the appropriate State Historic Preservation Officer (SHPO) on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places.

By letter dated June 19, 2006, we requested concurrence from the SHPO that approval of MDEQ to implement a biosolids management program would not have an adverse impact on historical and archeological resources. After discussions with SHPO staff, it was concluded that concurrence was not needed because our action is not an undertaking as the Michigan SHPO would interpret it. It is still believed that program approval will have no effect on historic or archeological resources within the State of Michigan because the transferring of the program is an administrative act.

B. Other Provisions

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State Clean Water Act (CWA) program submission to constitute an adjudication because an ''approval,'' within the meaning of the Administrative Procedure Act (APA), constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here.

Authority: Clean Water Act 33, U.S.C. 1251 *et seq.*

Dated: October 6, 2006.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E6–18850 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0692.

Title: Home Wiring Provisions.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities.

Number of Respondents: 30,500.

Estimated Time per Response: 5 minutes—5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 45,614 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This information collection accounts for the information collection requirement stated in 47 CFR 76.613, where MVPDs causing harmful signal interference may be required by the Commission's engineer in charge (EIC) to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

47 CFR 76.620 applies the Commission's signal leakage rules to all non-cable MVPDs. Our rules require that each cable system perform an independent signal leakage test

annually, therefore, non-cable MVPDs will now be subject to the same requirement, although the Second Order on Reconsideration, FCC 03–9, has exempted small non-cable MVPDs. We recognize, however, that immediate compliance with these requirements may present hardships to existing non-cable MVPDs not previously subject to such rules. We will allow a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than 47 CFR 76.613. The transition period will apply only to systems of those non-cable MVPDs that have been substantially built as of January 1, 1998.

47 CFR 76.802, Disposition of Cable Home Wiring, gives individual video service subscribers in single unit dwellings and MDUs the opportunity to purchase their cable home wiring at replacement cost upon voluntary termination of service. In calculating hour burdens for notifying individual subscribers of their purchase rights, we make the following assumptions:

(1) There are approximately 20,000 MVPDs serving approximately 72,000,000 subscribers in the United States.

(2) The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year.

(3) MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination.

(4) Subscribers or property owners already have gained ownership of the wiring in the other 50% of occurrences (*e.g.*, where the MVPD has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture).

(5) Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement.

We believe in most cases that MVPDs will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, *e.g.*, by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone.

In addition, 47 CFR 76.802 states that if a subscriber in an MDU declines to purchase the wiring, the MDU owner or alternative provider (where permitted by the MDU owner) may purchase the home wiring where reasonable advance notice has been provided to the incumbent.

(1) According to the 2000 U.S. Census, the nation's population was approximately 281,000,000.

(2) The American Housing Survey for the United States, 2001, Table 2–25, and the 2000 Census stated that the total number of living units of all types in the United States was approximately 106,000,000, or an average of 2.65 people per unit.

(3) The American Housing Survey also estimated that 24,600,000 occupied housing units were classified as ''multi-units,'' that is, they are in MDUs with two or more units per building.

(4) The American Housing Survey data also found that there were approximately 7,600,000 buildings classified as MDUs in the United States.

(5) Approximately 66,000,000 people resided in these 24,600,000 occupied housing units in these MDUs in 2000.

(6) We estimate that 2,000 MDU owners will provide advance notice to the incumbent MVPD that the MDU owner wishes to use the home run wiring to receive service from an alternative video service provider. 47 CFR 76.802 also states that, to inform subscribers of per-foot replacement costs, MVPDs may develop replacement cost schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file available for public inspection during regular business hours.

We estimate that 50% of MVPDs will develop such cost schedules to place in their public files. Virtually all individual subscribers terminate service via telephone, and few subscribers are anticipated to review cost schedules on public file.

47 CFR 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns or controls the common areas of the MDU or have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes.

We use the term ''MDU owner'' to include whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. For building-by-building disposition of home run wiring, the MDU owner gives the incumbent service provider a minimum of 90 days' written notice that its access to the entire building will be terminated. The incumbent then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. Also, regarding cable home wiring, when the MDU owner notifies the incumbent service provider that its access to the building will be terminated, the incumbent provider must, within 30 days of the initial notice and in accordance with our home wiring rules:

(1) Offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove, and

(2) provide the MDU owner with the total per-foot replacement cost of such home wiring.

The MDU owner must then notify the incumbent provider as to whether the MDU owner or an alternative provider intends to purchase the home wiring not later than 30 days before the incumbent's access to the building will be terminated. For unit-by-unit disposition of home run wiring, an MDU owner must provide at least 60 days' written notice to the incumbent MVPD that it intends to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent service provider then has 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will remove the wiring, abandon the wiring, or sell the wiring to the MDU owner.

In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch service providers; that election will then be implemented each time an individual subscriber switches service providers.

Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. The MDU owner also must provide reasonable advance

notice to the incumbent provider that it will purchase, or that it will allow an alternative provider to purchase, the cable home wiring when a terminating individual subscriber declines. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election during the initial 30-day notice period for each subscriber who switches back from the alternative provider to the incumbent MVPD.

While the American Housing Survey estimates that there were some 7,600,000 MDUs with 24,600,000 resident occupants in the United States in 2000, we estimate that there will be only 12,500 notices and 12,500 elections being made on an annual basis. In many buildings, the MDU owner will be unable to initiate the notice and election processes because the incumbent MVPD service provider continues to have a legally enforceable right to remain on the premises. In other buildings, the MDU owner may simply have no interest in acquiring a new MVPD service provider.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18687 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 8, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW, 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:

OMB Control Number: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions; and state, local or tribal governments.

Number of Respondents: 500 respondents; 5,065 responses.

Estimated Time Per Response: 1.50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 5,065 hours.

Total Annual Cost: $478,200.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting or third party requirements) in order to obtain the full three-year clearance from them. There is no change to the estimated average burden, costs, or the number of respondents.

The purpose for the FCC Form 602 is to obtain the identity of the filer and to elicit information required by 47 CFR 1.2112 of the Commission's rules regarding: (1) Persons or entities holding a 10 percent or greater direct or indirect ownership interest or any general partners in a general partnership holding a direct or indirect ownership interest in the applicant (''Disclosable Interest Holders''); and (2) all FCC-regulated entities in which the filer or any of its Disclosable Interest Holders owns a 10 percent or greater interest. The data collected on the FCC Form 602 includes the FCC Registration Number (FRN) which serves as a ''common link'' for all filings an entity has with the Commission. The Debt Collection Improvement Act of 1996 requires that entities filing with the Commission use a FRN. Finally, the FCC Form 602 was designed for, and must be filed by, all licensees that hold licenses in auctionable services.

Without such information, the Commission could not determine whether to issue licenses to applicants that provide telecommunications services to the public and fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18733 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 30, 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: Persons wishing to comment on this information collection should submit comments January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by email send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–B441, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection after this 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0392.

Title: 47 CFR Part 1, Subpart J—Pole Attachment Complaint Procedures.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 1,780.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 2,645 hours.

Annual Cost Burden: $450,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The rules and regulations contained in 47 CFR Part 1, Subpart J, provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms and conditions that are just and reasonable. The information collected under these rules will be used by the Commission to hear and resolve petitions for stays and complaints as mandated by Section 224 of the Communications Act of 1934, as amended. Information filed is used to determine the merits of the petitions and complaints. Additionally, state certifications are used to make public notice of the states' authority to regulate rates, terms and conditions for pole attachments, and to determine the scope of the FCC's jurisdiction.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18735 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 27, 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 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the 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 PRA comments should be submitted on or before January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Les Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,778.

Estimated Time per Response: 0.75 to 6.70 hours.

Frequency of Response: Recordkeeping; Annual reporting requirements.

Total Annual Burden: 44,576 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In addition to the existing information collection requirements that were previously approved by OMB, in the *Order on Reconsideration*, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (*2005 Report and Order*), CG Docket No. 02–386, FCC 06–134, which was released on September 13, 2006, the Commission concluded that minor modifications to 47 CFR 64.4002 are needed to clarify carriers' respective obligations under that rule section.

Paragraph 64.4002(d) is modified to require that a LEC notify an IXC when the LEC has removed at its local switch a presubscribed customer of the IXC in connection with the customer's selection of ''no-PIC'' status. In this context, the selection of ''no-PIC'' status by the customer refers to the selection of no carrier for interLATA service or no carrier for intraLATA service. The Commission concludes that this modification is needed to ensure that an IXC does not continue billing a customer for non-usage-related monthly

charges where that customer has contacted his current LEC or his current IXC to select ''no-PIC'' status.

Paragraph 64.4002(e) of the Commission's rules is modified to include the effective date of any changes to a customer's local service account and the carrier identification code of the customer's IXC among the categories of information that must be provided to the IXC by the LEC. The Commission concludes that knowing the effective date of account changes will help IXCs to maintain accurate customer account information and that including the carrier identification code of the customer's IXC will enable an IXC to verify that it is the proper recipient of the transmitted information.

Paragraph 64.4002(g) of the Commission's rules is modified to make the information categories included in paragraph 64.4002(g) consistent with those included in other LEC notification requirements. Paragraph 64.4002(g) also is modified to require that when a customer changes LECs, but wishes to retain his current PIC, the new LEC must so notify the current PIC so that the current PIC does not erroneously assume, absent additional notification from the new LEC, that the customer also wishes to cancel his current PIC.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18743 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 27, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0727.

Title: Operator: Section 73.213, Grandfathered Short-Spaced Stations.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15.

Estimated Time per Response: 0.5 hours—0.83 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 20 hours.

Total Annual Cost: $2,250.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.213 requires licensees of grandfathered short-spaced FM stations seeking to modify or relocate their stations to provide a showing demonstrating that there is no increase in either the total predicted interference area or the associated population (caused or received) with respect to all grandfathered stations or increase the interference caused to any individual stations. Applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. In addition, licensees are required to serve a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused upon the licensee(s) of the affected short-spaced station(s). Commission staff use the data to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18745 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 2, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 750.

Estimated Time per Response: 0.25–3 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 440 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

OMB Control Number: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 365.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 365 hours.

Total Annual Cost: $798,750.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. 47 CFR 73.37(f) requires applicants seeking facilities modification that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18854 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 8, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0190.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 325.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 306 hours.

Total Annual Cost: $45,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3544(b) requires an informal application, see

§ 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, to cover the following changes:

(1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed.

(2) A change in the type of AM station directional antenna monitor. See § 73.69.

(3) A change in the location of the station main studio when prior authority to move the main studio location is not required.

(4) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

47 CFR 73.3544 (c) requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18856 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60, FCC 06–144]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission establishes a pilot program to examine how the rural health care (RHC) funding mechanism can be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services.

DATES: Effective September 29, 2006. The pilot program applications contain information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the approval by OMB.

ADDRESSES: Interested parties may submit applications, identified by [WC Docket number 02–60 and/or FCC Number 06–144], by any of the following methods:

- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Applicants should follow the same instructions provided on the Web site for submitting comments.
- *Paper Submissions:* Paper filings are permitted and must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, in accordance with the **SUPPLEMENTARY INFORMATION** provided herein.
- *People with Disabilities:* People with disabilities may contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail at *FCC504@fcc.gov* or by phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting applications, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Erika Olsen, Wireline Competition Bureau, Telecommunications Access Policy Division at (202) 418–7400 (voice), (202) 418–0484 (TTY), or e-mail at *Erika.Olsen@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document FCC 06–144, Rural Health Care Support Mechanism, *Rural Health Care Support Mechanism Pilot Program Order*, WC Docket No. 02–60, adopted September 26, 2006, released September 29, 2006, establishing a pilot program to examine how the rural health care (RHC) funding mechanism can be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services. Applications to participate in the pilot program will be due 30 days from the receipt of OMB approval. Applications may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

- *Electronic Filers:* Applications may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/.* Applicants should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, applicants should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is WC Docket No. 02–60. Parties may also submit an electronic application by Internet e-mail. To get filing instructions for e-mail applications, applicants should send an e-mail to *ecfs@ecfs.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.
- *Paper Filers:* 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 in this proceeding, filers must submit two additional copies of 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 the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings to 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 mail sent by 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, Express Mail and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: 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).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements which will be submitted to OMB. A separate notice will be published in the **Federal Register** seeking comment on these information collection requirements.

Synopsis

Introduction and Background

In this Order, pursuant to section 254(h)(2)(A) of the Telecommunications Act of 1996, we establish a pilot

program to examine how the rural health care (RHC) funding mechanism can be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services. Specifically, the pilot program will provide funding to support the construction of state or regional broadband networks and services provided over those networks. These networks will be designed to bring the benefits of innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.

In addition, the pilot program will provide funding to support the cost of connecting the state or regional networks to Internet2, a dedicated nationwide backbone. Internet2 links a number of government research institutions, as well as academic, public, and private health care institutions that are repositories of medical expertise and information. By connecting to this dedicated national backbone, health care providers at the state and local levels will have the opportunity to benefit from advanced applications in continuing education and research. In addition, a ubiquitous nationwide broadband network dedicated to health care will enhance the health care community's ability to provide a rapid and coordinated response in the event of a national crisis.

Under this pilot program, all public and non-profit health care providers may apply for funding to construct a dedicated broadband network that connects health care providers in a state or region. In particular, given the nature of the pilot program, we encourage multiple health care providers in a state or region to join together for the purpose of formulating and submitting proposals. In accordance with general principles of universal service, we will require applicants in the pilot program to include in their proposed networks public and non-profit health care providers that serve rural areas. As detailed below, this program will provide funding for up to 85 percent of an applicant's costs of deploying a dedicated broadband network, including any necessary network design studies, as well as the costs of advanced telecommunications and information services that will ride over this network. We recognize that this funding percentage exceeds the funding percentages under our existing RHC mechanism, but find that this percentage is justified by the extraordinary benefits of universal service designed to spur broadband deployment dedicated to telehealth, including telemedicine services. Moreover, we find that this percentage is economically reasonable because the funding is constrained by the program funding caps we describe below.

The pilot program will lay the foundation for a future rulemaking proceeding that will explore permanent rules to enhance access to advanced services for public and non-profit health care providers. In particular, the goal of the pilot program will be to provide us with useful information as to the feasibility of revising the Commission's current RHC rules in a manner that best achieves the objectives set forth by Congress. If successful, increasing broadband connectivity among health care providers at the national, state and local levels would also provide vital links for disaster preparedness and emergency response and would likely facilitate the President's goal of implementing electronic medical records nationwide.

Broadband has enabled health care providers to vastly improve access to quality medical services in remote areas of the country. Among other things, telehealth applications allow patients to access critically needed medical specialists in a variety of practices, including cardiology, pediatrics, and radiology, without leaving their homes or their communities. Using video feeds over broadband and real-time patient information, intensive care doctors and nurses can monitor critically ill patients at multiple locations around the clock. Using this technology, a single medical professional is able to administer services to over a hundred patients, while cutting skyrocketing medical costs by shortening average hospital stays and reducing the need for additional tests and treatments. The benefits of these technologies are particularly apparent in underserved areas of the country that may lack access to the breadth of medical expertise and advanced medical technologies available in other areas.

In the Telecommunications Act of 1996, Congress specifically sought to provide rural health care providers ''an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.'' In 1997, we implemented this directive by adopting the RHC support mechanism funded by monies collected through the Universal Service Fund. Our RHC program provides reduced rates to rural health care providers for their telecommunications and Internet services. The primary goal of our existing rules is to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs in the provision of health care services.

In section 254(h)(2)(A), Congress directed the Commission to ''establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for * * * health care providers.'' Since 1997, the Commission has made several changes to the RHC support mechanism to make it more viable and to reflect technological changes. For example, the Commission has exercised its authority under section 254(h)(2)(A) to establish discounts and funding mechanisms for advanced services provided by both telecommunications carriers and non-telecommunications carriers. We currently have an open proceeding seeking comment on further modifications to the existing RHC support mechanism.

Despite the modifications the Commission has made to the rural health care mechanism, the program continues to be greatly underutilized and is not fully realizing the benefits intended by the statute and our rules. In 1997, we authorized $400 million dollars per year for funding of this program. Yet, in each of the past 10 years, the program generally has disbursed less than 10 percent of the authorized funds. Although there are a number of factors that may explain the underutilization of this important fund, it has become apparent that health care providers continue to lack access to the broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country. In addition, many of these real-time telehealth applications require a dedicated broadband network that is more reliable and secure than the public Internet. Although the Commission has taken a number of steps to spur deployment of the type of broadband facilities that would support advanced medical technologies, to date our rural health care funding mechanism has not adequately provided the type of support needed to encourage development of dedicated broadband networks among health care providers.

Because of the enormous benefits of telemedicine applications that ride over broadband facilities, it is essential that the Commission take additional steps to facilitate broadband deployment to health care providers. Before taking further action to revise or expand the current RHC program, however, we believe it is prudent to engage in a trial

program that will provide us with a more complete and practical understanding of how to ensure the best use of these available funds. Results from such a pilot program will inform our examination of how we can more effectively use available funding to bring the benefits of broadband connectivity to health care providers and patients in those areas of the country most in need. Upon completion of the pilot program, we will issue a report detailing the results of the program and the status of the health care mechanism generally, and recommend any changes that are needed to improve the programs. In addition, we intend to incorporate the information we gather as part of this pilot program in the record of any subsequent proceeding.

Pilot Program

The pilot program will fund a significant portion of the costs of deploying a dedicated broadband network that connects multiple public and non-profit health care providers, within a state or region, as well as providing the ''advanced telecommunications and information services'' that ride over that network. Consistent with the mandate provided in section 254(h)(2)(A) and general principles of universal service, all eligible public and non-profit health care providers may apply to participate in the pilot program, but applicants must include in their proposed networks public and non-profit health care providers that serve rural areas. A comprehensive network will provide the health care communities access to the various technologies and medical expertise that reside in specific hospitals, medical schools, and health centers within a region or state.

The pilot program satisfies the requirements of section 254(h)(2)(A). First, the program will be ''competitively neutral,'' which ''means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.'' The pilot program meets that requirement because eligible health care providers are free to choose any technology and provider of the broadband connectivity needed to provide telehealth, including telemedicine, services. Second, the pilot program will be ''technically feasible'' because the program will not require development of any new technology. Rather, participants will be free to utilize any currently available technology. Third, the program will be ''economically reasonable.'' In discussing economic reasonableness, the Commission has generally focused on the effect any new rules would have on growth in the rural support mechanism. To ensure the pilot program is economically reasonable, we will work within the confines of the existing RHC program funding mechanism and will structure pilot program funding in a manner similar to the priority system provided for the E-rate program in the Commission's rules.

Specifically, to ensure that there is sufficient funding for the existing rural health care program, we will ensure applications for RHC support under the existing program receive priority funding. Once we have determined the funding needs for the existing program, we will fund the pilot program in an amount that does not exceed the difference between the amount committed under our existing program for the current year and $100 million (*i.e.*, 25 percent of the total $400 million annual RHC cap). Thus, if funding for RHC support under the existing program is $35 million in a year, $65 million will be available for the pilot program. By capping the combination of applications for RHC support under the existing program and under the pilot program at $100 million (or 25 percent of the annual $400 million cap), we will ensure that the pilot program is economically reasonable. This will ensure that rural health care provider telecommunications needs under the current program are given priority and that the pilot program funding is capped at a reasonable level. We recognize that this prioritization may limit the amount of support provided to the pilot program in the event demand for the RHC program increases dramatically, but this outcome appears unlikely given our experience to date with this fund.

Because we recognize that we will need the experience of more than one year to fully evaluate the results of the pilot program, the pilot program we establish herein is limited to two years. For purposes of this pilot program, we are reopening the filing window for Funding Year 2006. Funding under this pilot program for Funding Year 2006 will be available until June 30, 2007. Participants that receive funds in Funding Year 2006 must reapply to the extent they seek additional funds in Funding Year 2007. Applicants not selected in Funding Year 2006 may apply for funds during our normal filing window for Funding Year 2007.

The funding provided under this pilot program may be used to fund up to 85% of the costs incurred by the applicants to deploy a state or regional dedicated broadband health care network, and to connect that network to Internet2. Selected applicants must use these funds for the purposes specified in the application award. Authorized purposes will include the costs of deploying transmission facilities and advanced telecommunications and information services, including associated non-recurring and recurring costs. We find that section 254(h)(2)(A), which requires the Commission ''to enhance * * * access to advanced telecommunications and information services,'' authorizes support for construction of facilities for the purposes of this pilot program. This is consistent with the Commission's conclusion in the *May 8th Universal Service Order*, FCC 98–85, released May 8, 1998, that we have authority to implement a program of universal service support for infrastructure development as a method to enhance access to advanced services under section 254(h)(2)(A). Because many health care providers would be unable to access certain telehealth services without deployment of new broadband facilities, the pilot program will support construction of those facilities.

For purposes of this pilot program, we will permit funding to be used to conduct initial network design studies. These studies will enhance access to advanced telecommunications and information services by enabling applicants to determine how best to deploy an efficient network that includes multiple locations and various technologies. We recognize that funding initial network design studies in the pilot program goes beyond the services normally eligible for support in the RHC program. Consistent with our authority in section 252(h)(2)(A), we conclude that funding these studies is in the public interest for the purposes of this pilot program because it will enable program participants to explore more efficient, effective means of delivering telemedicine in rural areas. In light of the historical trend of the RHC program to operate at 10% or less of the total amount authorized, as well as the funding cap described earlier, we find that funding network design studies for pilot program participants will be economically reasonable. We find that these justifications apply equally to supporting infrastructure deployment, which is also not covered under the existing program.

We will select a limited number of participants from applications that meet the criteria outlined below. We expect each applicant to present a strategy for aggregating the specific needs of health care providers, including providers that serve rural areas, within a state or

region, and leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers. Applicants should indicate in their application how they plan to fully utilize a newly created dedicated broadband network to provide health care services. We anticipate that successful applicants will be able to demonstrate that they have a viable strategic plan for aggregating usage among health care providers within their state or region. In choosing participants for the program, we will consider whether the applicant has a successful track record in developing, coordinating, and implementing a successful telehealth/telemedicine program within their state or region. In addition, because the purpose of this program is to encourage health care providers to aggregate their connection needs to form a comprehensive statewide or regional dedicated health care network, we will also consider the number of health care providers that would be included in the proposed network. In particular, we will give considerable weight to applications that propose to connect the rural health care providers in a given state or region. A proposal that connects only a *de minimis* number of rural health care providers will not be accepted.

To be eligible for participation in the pilot program, interested parties should submit applications that:

(1) Identify the organization that will be legally and financially responsible for the conduct of activities supported by the fund;

(2) Identify the goals and objectives of the proposed network;

(3) Estimate the network's total costs for each year;

(4) Describe how for-profit network participants will pay their fair share of the network costs;

(5) Identify the source of financial support and anticipated revenues that will pay for costs not covered by the fund;

(6) List the health care facilities that will be included in the network;

(7) Provide the address, zip code, Rural Urban Commuting Area (RUCA) code and phone number for each health care facility participating in the network;

(8) Indicate previous experience in developing and managing telemedicine programs;

(9) Provide a project management plan outlining the project's leadership and management structure, as well as its work plan, schedule, and budget.

(10) Indicate how the telemedicine program will be coordinated throughout the state or region; and

(11) Indicate to what extent the network can be self-sustaining once established.

Applicants will be required to comply with the existing competitive bidding requirements, certification requirements, and other measures intended to ensure funds are used for their intended purpose. We recognize that we may need to waive additional rules in order to implement this pilot program, and we request that applicants identify in their application any rules that they would like us to waive for purposes of this pilot program.

Applications to participate in the pilot program will be due 30 days from the receipt of OMB approval.

Instructions for Filing. Applications should reference WC Docket No. 02–60 only, and may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies.

- *Electronic Filers:* Applications may be filed electronically using the Internet by accessing the ECFS at *http://www.fcc.gov/cgb/ecfs/.* Applicants should follow the same instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. To get filing instructions for e-mail applications, commenters should send an e-mail to *ecfs@fcc.gov* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each application. Applications 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

Applicants must also send a courtesy copy of their application to each of the following individuals: (1) Jeremy Marcus, (202) 418–0059, *jeremy.marcus@fcc.gov;* (2) Thomas Buckley, (202) 418–0725, *thomas.buckley@fcc.gov;* and (3) Erika Olsen, (202) 418–2868, *erika.olsen@fcc.gov.* Each is located in the Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Ordering Clause

Pursuant to the authority contained in sections 1, 4(i), 4(j), 10, 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Order is adopted,* and shall become effective September 29, 2006, pursuant to 47 U.S.C. 408, except that the information collections contained in the Order will become effective following OMB approval. Applications to participate in the pilot program shall be filed 30 days from the receipt of OMB approval. The Commission will issue a public notice announcing the date upon which the information collection requirements set forth in this Order shall become effective following receipt of such approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18759 Filed 11–7–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 06–2275]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 3, 2006, the Commission released a public notice announcing the appointment of a new Designated Federal Officer (DFO) to the North American Numbering Council (NANC) and announcing the November 30, 2006 meeting and agenda of the NANC. The intended effect of this action is to make the public aware of a new DFO and of the NANC's next meeting and agenda.

DATES: Thursday, November 30, 2006, 9:30 a.m.

ADDRESSES: Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–C162, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: November 3, 2006. The Wireline Competition Bureau (Bureau) has appointed Marilyn Jones, FCC attorney, to serve as the Designated Federal Officer (DFO) to the NANC. Ms. Jones currently serves as the Alternate DFO to the NANC.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, November 30, 2006, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda—Thursday, November 30, 2006, 9:30 a.m.:*

1. Announcements and Recent News.
2. Approval of Minutes
   —No Minutes to Approve.
3. Report of the North American Numbering Plan Administrator (NANPA).
   Action Item: Resolve Disposition of Unused Travel Fund.
4. Report of the National Thousands Block Pooling Administrator (PA).
5. Report of the North American Numbering Portability Management (NAPM) LLC.
6. Status of the Industry Numbering Committee (INC) activities.
7. Reports from the Issues Management Groups (IMGs).
   Action items from pANI IMG:
   (a) Formal approval by NANC of timeline for pANI Administration. Permanent Solution Recommendations submitted to NANC Chairman for transmittal to FCC by NANC Chairman on October 10, 2006;
   (b) Formal NANC consideration and adoption of NANC Recommendations for pANI Administration as developed by the pANI IMG to meet the time line established by NANC Chairman's letter to FCC on October 10, 2006;
   (c) Subject to approval of item 2 by NANC, recommendation that NANC Recommendations for pANI Administration be forwarded to the ATIS Industry Numbering Committee for action and development of INC pANI Guidelines.
8. Report from the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
9. Report of the Billing and Collection Working Group (B&C WG).
   Action items:
   (a) Annual evaluation of B&C Agent;
   (b) Approve election of co-chairs.
10. Report of the Local Number Portability Administration (LNPA) Working Group
    Action Items:
    (a) PIM 32 and 50—Referred to the NANC May 2006: LNPAWG has been unable to resolve PIM 32—Porting Reseller Numbers;
    (b) PIM 50—Customer Service Record Too Large, and seeks guidance from NANC on how best to proceed.
11. Report of the Numbering Oversight Working Group (NOWG).
    Action Items:
    (a) Submission of 2005 NANPA and PA Annual Performance Reports, as approved in June 2006;
    (b) Approve 2006 NANPA and PA Annual Performance Surveys and cover letter (to be signed by the NANC chair);
    (c) Approve newly elected NOWG co-chairs (2 year term—2007/2008).
12. Report of the Future of Numbering Working Group (FoN WG).
    Action Items: None.
13. Special Presentations.
14. Update List of the NANC Accomplishments.
15. Summary of Action Items.
16. Public Comments and Participation (five minutes per speaker).
17. Other Business.

Adjourn no later than 5 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. E6–18852 Filed 11–7–06; 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 agreements 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.: 010099–045.

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; COSCO Container Lines Company Limited; CP Ships USA LLC; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Malaysia International Shipping Corporation 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 changes Montemar's name to Compania Libra de Navegacion Uruguay S.A.

Agreement No.: 010977–059.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services; Seaboard Marine Ltd.; and Tropical Shipping and Construction Co. Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Frontier Liner Services, Inc. as a party.

Agreement No.: 010982–040.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; Nina (Bermuda) Ltd.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; and Tropical Shipping and Construction Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Nina (Bermuda) Ltd. as a party to the agreement.

Agreement No.: 011117–043.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S and Safmarine Container Lines NV; ANL Singapore Pte Ltd.; CMA–CGM, S.A.; Compagnie Maritime Marfret S.A.; Hamburg-Süd KG; Hapag-Lloyd AG; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add U.S. Lines Limited as a party.

Agreement No.: 011279–025.

Title: Latin America Agreement.

Parties: Central America Discussion Agreement; Hispaniola Discussion Agreement; Caribbean Shipowners Association; Venezuelan Discussion Agreement; ABC Discussion Agreement; West Coast of South America Discussion Agreement; Inland Shipping Services Association; Montemar Maritima S.A.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment updates the membership of the Hispaniola Discussion Agreement, the Caribbean Shipowners Association, and the West Coast of South America Agreement. It also updates the address of the Caribbean Shipowners Association and changes Montemar's name to Compania Libra de Navegacion Uruguay S.A.

Agreement No.: 011290–037.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties: Aliança Navegacao e Logistica Ltda.; APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; Atlantic Container Line AB; Bermuda Container Line; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; COSCO Container Lines, Inc.; Crowley Maritime Corporation; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Horizon Lines, LLC; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha Ltd.; Marine Transport Lines, Inc.; Maruba SCA; Matson Navigation Company; Mitsui O.S.K. Lines, Ltd.; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; Safmarine Container Lines; Seaboard Marine Ltd.; Senator Lines GmbH; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Co. S.A.G.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Australia-New Zealand Direct Line, Compania Latino Americana de Navegacion SA, Contship Containerlines, CP Ships USA LLC, and Canada Maritime Agencies Ltd. as parties; updates addresses for CMA CGM, Hamburg-Süd, and Hapag-Lloyd; and changes Hapag-Lloyd's and Marine Transport Line's names.

Agreement No.: 011325–036.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes China Shipping Container Lines Co., Ltd. as a party.

Agreement No.: 011539–014.

Title: Montemar/HLAG Space Charter and Sailing Agreement.

Parties: Hapag-Lloyd AG and Montemar Maritima S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment changes Montemar's name to Compania Libra de Navegacion Uruguay S.A., changes the name of the agreement, and restates the agreement.

Agreement No.: 011672–005.

Title: CSAV Group Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Companhia Libra de Navegacao; Norasia Container Lines Limited; Montemar Maritima S.A.; and CSAV Sud Americana de Vapores S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, New York, 10016.

Synopsis: The amendment changes Montemar's name to Compania Libra de Navegacion Uruguay S.A.

Agreement No.: 011872–002.

Title: USATLAN Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A., Companhia Libra de Navegacao, and Montemar Maritima S.A.

Filing Party: Walter H. Lion, Esq; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, New York 10016.

Synopsis: The amendment changes Montemar's name to Compania Libra de Navegacion Uruguay S.A.

Agreement No.: 011938–003.

Title: HSDG/Alianca/CSAV/Libra/CLNU 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: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, New York 10016.

Synopsis: The amendment changes Montemar's name to Compania Libra de Navegacion Uruguay S.A. and restates the agreement.

Agreement No.: 011947–002.

Title: Grimaldi/Sallaum Space Charter Agreement.

Parties: Grimaldi Compagnia di Navigazione and Sallaum Lines SAL.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment extends the duration of the agreement to February 28, 2007.

Agreement No.: 011953–001.

Title: Florida Shipowners Group Agreement.

Parties: The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.

Filing Party: Wayne R. Rhode, Esq.; Sher & Blackwell, 1800 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment updates the membership list of the Florida-Bahamas Shipowners and Operators Association.

Agreement No.: 011978.

Title: USATLAN/Maruba Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A., Companhia Libra de Navegacao, Compania Libra de Navegacion Uruguay S.A., and Maruba S.A.

Filing Party: Walter H. Lion, Esq; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, New York 10016.

Synopsis: The agreement authorizes the parties to FMC Agreement No. 011872 to charter space to Maruba S.A. between U.S. East Coast ports and ports in Argentina, Brazil, Uruguay, and Venezuela.

Dated: November 3, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–18889 Filed 11–7–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2006.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. The Mark S. Reckman Trust; The Lynne W. Reckman Trust; Brent W. Reckman; Eric S. Reckman; The Richard F. Reckman Trust; The Mary Jo Pollock Trust; Casey E. Reckman; Christin N. Reckman; Nicholas M. Reckman; and Robert C. Reckman (collectively known as the Reckman Group); to acquire voting shares of Columbia Bancorp, Inc., and thereby indirectly acquire voting shares of The Columbia Savings Bank, all of Cincinnati, Ohio.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Margaret Ann Farmer, Sallisaw, Oklahoma; to acquire control of Armstrong Bancshares, Inc., Muskogee, Oklahoma, and thereby indirectly acquire voting shares of Armstrong Bank, Muskogee, Oklahoma.

Board of Governors of the Federal Reserve System, November 2, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–18773 Filed 11–7–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Tommy L. Daughtrey, Janice Fowler and Jerry Vaughn, all of Duncan, Oklahoma, as individuals and as trustees of the Commerce Bancorp, Inc. Employee Stock Ownership Plan (in formation); to acquire voting shares of Commerce Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Commerce, all of Duncan, Oklahoma.

Board of Governors of the Federal Reserve System, November 3, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–18823 Filed 11–7–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Beacon Bancorp, Taunton, Massachusetts; to acquire 100 percent of the voting shares of, and thereby merge with Randolph Bancorp, Stoughton, Massachusetts, and thereby indirectly acquire voting shares of Randolph Savings Bank, Randolph, Massachusetts.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Alerus Financial Corporation, Grand Forks, North Dakota; to acquire 100 percent of the voting shares of Alerus Interim, National Association, Minnetonka, Minnesota, which will be merged with Stanton Trust Company, National Association, and the resulting institution will immediately thereafter be merged into Alerus Financial, National Association, Grand Forks, North Dakota.

Board of Governors of the Federal Reserve System, November 2, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–18772 Filed 11–7–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Reserve Financial Associates, LLC, Columbus, Ohio, Sofia Financial Associates, LLC, and Skilken Financial Associates, LLC, all of Columbus, Ohio; to become bank holding companies by acquiring 100 percent of the voting shares of Business Bank of Florida Corp., and thereby indirectly acquire voting shares of Florida Business Bank, both of Melbourne, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Franklin Bancorp, Inc., and d/b/a Sunrise Community Banks; to merge with University Financial Corp., and thereby indirectly acquire University National Bank, all of St. Paul, Minnesota.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Community Bancshares of Kansas, Inc., Goff, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Nemaha Investment Company, Inc., Merriam, Kansas, and thereby indirectly acquire First State Bank of Goff, Goff, Kansas.

2. Ironhorse Financial Group, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bank & Trust, both of Norman, Oklahoma.

3. Ironhorse Financial Group, Inc., Norman, Oklahoma; to acquire 100 percent of the voting shares of Armstrong Bancshares, Inc., and thereby indirectly acquire voting shares of Armstrong Bank, both of Muskogee, Oklahoma.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. BT Holdings, Inc., Quitman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Quitman Bancorporation, Inc., Quitman, Texas, and thereby indirectly acquire voting shares of Quitman Bancorporation of Delaware, Inc., Wilmington, Delaware, and Bank Texas, National Association, Quitman, Texas.

Board of Governors of the Federal Reserve System, November 3, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–18824 Filed 11–7–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EST), November 20, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 16, 2006 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Participant Survey Update.
4. Analysis of Investment Funds Report.
5. Pension Protection Act Report.
6. 2007 Board Meeting Changes.
7. DOL Audit Report.
8. GAO Review of FRTIB Report.

Parts Closed to the Public

9. Procurement
10. Security

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 6, 2006.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 06–9142 Filed 11–6–06; 12:24 pm]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Docket FTR–2006–006; Sequence 5]

Seventh National Federal Fleet Management Workshop and Information Fair, Including Aviation and Motor Vehicle Workshops (FedFleet 2007)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing that it will hold its Seventh National Federal Fleet Management Workshop and Information Fair (including Aviation and Motor Vehicle workshops) (FedFleet 2007). FedFleet 2007: Performance Measurement/Navigating Success will take place July 24–26 at Rosen Shingle Creek in Orlando, Florida. FedFleet 2007 offers three days of valuable educational opportunities, with sessions being facilitated by fleet

and aviation experts as well as invited professional speakers, various networking opportunities, and a first-class exhibit hall. In addition, a Basic Fleet class, optional but included in the registration fee, will be held on Sunday, July 22. A 24–hour ICAP Aircraft Safety Officer's (ASO) training course will begin on Monday, July 23. To attend, exhibit, or hold an agency-wide meeting, visit the FedFleet 2007 web site at *www.fedfleet.org*.

FOR FURTHER INFORMATION CONTACT: Michael Hopkins, Office of Governmentwide Policy, at (202) 208–4421, or by e-mail to *Michael.Hopkins@gsa.gov*.

Dated: November 1, 2006.

Janet C. Dobbs,

Director of Aviation Policy, Acting Director of Motor Vehicle Fleet.

[FR Doc. E6–18872 Filed 11–7–06; 8:45 am]

BILLING CODE 6820–24–S

GOVERNMENT ACCOUNTABILITY OFFICE

No FEAR Act Notice

AGENCY: Government Accountability Office.

ACTION: Notice.

SUMMARY: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires that each Federal agency provide notice to all employees, former employees, and applicants for employment about the rights and remedies available under antidiscrimination laws and whistleblower protection laws applicable to them. GAO's notice specifically describes the GAO processes and procedures for filing complaints alleging violations of these laws. This document fulfills GAO's requirement to publish the initial notice in the **Federal Register**.

DATES: This notice is effective November 8, 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Simball, Assistant General Counsel; telephone 202–512–8173; e-mail *simballb@gao.gov*.

SUPPLEMENTARY INFORMATION: The ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'' was passed to require that Federal agencies be accountable for violations of discrimination and whistleblower protection laws. The Act recognized that agencies cannot be run effectively if those agencies practice or tolerate discrimination. As defined in 5 U.S.C. 104, GAO is an independent establishment, and by extension an executive agency as defined in 5 U.S.C. 105, and thus is covered under this Act. The Act and regulations promulgated by Office of Personnel Management at 5 CFR 724.102 require that Federal employees, former employees, and applicants be notified in paper and/or electronic form of the rights and protections available to them under Antidiscrimination and Whistleblower Protection laws. GAO's notice will raise the awareness of its employees, former employees, and applicants for employment of the procedures to follow if they believe they have been subject to a violation of these laws.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' Public Law 107–174, 116 Stat. 566, 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 107–174, Title I, General Provisions, section 101(1).

The Act also requires that each Federal agency provide the following notice to its employees, former employees, and applicants for Federal employment to inform them of the rights and protections available to them under Federal antidiscrimination and whistleblower protection 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, 42 U.S.C. 2000e–16, and 42 U.S.C. 12101.

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 Office of Opportunity and Inclusiveness (OOI) 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 GAO Order 2713.2, ''Discrimination Complaint Resolution Process'' (July 10, 2006). 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 OOI within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a charge with the Personnel Appeals Board Office of General Counsel (PAB/OGC). See 4 CFR Part 28. In addition, in certain types of adverse and performance-based actions, such as removals, you may file a discrimination charge directly with the PAB/OGC within 30 days of the effective date of the action, instead of filing a complaint with OOI. See 4 CFR 28.98(c) for further information.

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), as made applicable to GAO by 31 U.S.C. 732(b)(2).

If you believe that you have been the victim of whistleblower retaliation, you may file a charge with the PAB/OGC. See 4 CFR part 28.

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 protection 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 sections in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline an employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. 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 Part 724, or contact the Office of Opportunity & Inclusiveness (OOI) or the Office of the General Counsel, Legal Services Group. OOI is located at 441 G Street, NW., Room 6123, Washington, DC 20548. The Office of the General Counsel, Legal Services, is located at 441 G Street, NW., Room 7838, Washington, DC 20548. Additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws can be found at the Equal Employment Opportunity Commission Web site—*http://www.eeoc.gov*, the Office of Special Counsel Web site—*http://www.osc.gov*, and in GAO Order 2713.2, ''Discrimination Complaint Resolution Process'' (July 10, 2006), and Personnel Appeals Board regulations, 4 CFR Part 28. The PAB/OGC is located at Union Center Plaza II, Suite 580, 820 First Street, NE., Washington, DC 20002.

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: November 3, 2006.

Gary L. Kepplinger,

General Counsel, Government Accountability Office.

[FR Doc. E6–18862 Filed 11–7–06; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–05BF]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Human Smoking Behavior—New—National Center for Chronic Disease and Public Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), in a joint venture with the National Center for Environmental Health (NCEH), proposes to conduct a 2-year laboratory-based study of human smoking behavior among established current smokers of the major styles and varieties of cigarettes consumed in the United States. This study will compare how different categories of cigarettes deliver toxic chemicals to smokers in order to further investigate the link between tobacco use and disease.

The major objective of this study is to better understand how human and cigarette variables influence the delivered dose of harmful chemicals in smoke to identify risk factors that result in adverse health effects from smoking. The smoking behavior and biomarkers of 360 smokers will be ascertained. Participants will attend two sessions on consecutive days. Solanesol levels in cigarette filter butts; carbon monoxide boost in breath; carcinogens and nicotine and its metabolites in urine; cotinine in saliva; vent-blocking (as measured by filter stain pattern and visualization of lip and finger placement on the rod using fluorescent markers); smoking topography; and breathing patterns (inhalation and exhalation volume, breath velocity and duration prior to smoking, during smoking and after smoking) will be used to measure dose based on the number of cigarettes smoked, amount of each cigarette smoked, filter vent blocking behavior, smoking behavior and puff characteristics.

Another objective of this study is to define average or ''composite'' smoking patterns across several of the most popular cigarette categories (ultralight, light, full-flavored menthol and full-flavored non-menthol) from the quantitative and observational data. All current smoking machine methodologies are ''one size fits all'' approaches to generating cigarette smoke. The composite conditions can be used to establish human behavior-based smoking machine methods for laboratory studies that require cigarette smoke for chemical or toxicological testing. Currently, laboratory scientists rely on automated smoking machines to generate cigarette smoke for chemical and toxicological testing.

Funding for this study will come from both NCCDPHP and NCEH. The Centers will share responsibilities, with administrative and technical assistance coming from NCCDPHP and laboratory support coming from NCEH.

This is a two-year study, and an estimated 500 respondents will be screened by telephone to yield 360 eligible respondents who complete both visits over the two-year study period. The total burden for each respondent who completes screening, visit 1 and visit 2 will be two hours and five minutes. The CATI screening will take five minutes. Visit 1 will take one hour, which includes a short screening item, the informed consent process, biologic sample collection (urine, saliva, and breath carbon monoxide), smoking topography, ventilation hole blocking procedure and breath measurements. Visit 2 will also take approximately one hour, which includes compensation, discussion of quit opportunities if requested, collection of cigarette butts, biologic sample collection (urine, saliva, and breath carbon monoxide), smoking topography, ventilation hole blocking procedure and breath measurements.

The following table summarizes burden on an annualized basis for 500 telephone interviews and 180 eligible respondents (one-half of the total respondents). The 180 eligible respondents estimated to complete visit 2 are the same respondents estimated to complete visit 1.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 402.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Procedure	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokers	CATI Screening	500	1	5/60
Eligible Smokers	Visit 1 (Day 1)	180	1	1
Eligible Smokers	Visit 2 (Day 2)	180	1	1

Dated: November 1, 2006.

Catina J. Conner,

Acting Assistant Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–18825 Filed 11–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Medicaid Statistical Information System (MSIS),'' System No. 09–70–6001, last published at 67 FR 48906 (July 26, 2002). CMS is reorganizing its databases because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law (Pub. L.) 108–173) provisions and the large volume of information the Agency collects to administer the Medicare program. We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained the system of records. The new assigned identifying number for this system should read: System No. 09–70–0541.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 4 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We will broaden the scope of routine uses number 5 and 6, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all federally-funded health benefit programs.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support a research or evaluation project; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 2, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Ron North, Division of Informational Analysis and Technical Assistance, Finance, Systems & Budget Group, Center for Medicaid and State Operations, CMS, Mail Stop S3–13–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. He can also be

reached by telephone at 410–786–5651, or via e-mail at *Ronald.North@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1994, CMS established a new SOR under the authority of section 1902 (a)(6) of the Social Security Act (the Act) (42 Code of Federal Regulations (CFR) 1396(a)(6)), and the Balanced Budget Act (Public Law 105–33). Notice of this system, MSIS, was published in the **Federal Register** (FR) at 58 FR 41327 (August 1, 1994), an unnumbered routine use was added for the Social Security Administration (SSA) at 61 FR 6645 (February 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), two of the fraud and abuse routine uses were revised and a third deleted at 65 FR 50552 (August 18, 2000), and three routine uses were deleted and the security classification was modified at 67 FR 48906 (July 26, 2002).

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under section 1902 (a)(6) of the Social Security Act (42 U.S.C. 1396a (a)(6)), and Title IV of the Balanced Budget Act (Public Law 105–33).

B. Collection and Maintenance of Data in the System

MSIS contains information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries. Information contained in this system includes, but is not limited to: Assigned Medicaid identification number, social security number, health insurance claim number, date of birth, gender, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MSIS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MSIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs.

2. Determines that:

a. the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all patient-identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor, consultant or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MSIS information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

SSA may require MSIS data to enable them to assist in the implementation and maintenance of the Medicare/Medicaid program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Title IV, XVIII, XIX and XXI of the Act, and for the administration of the Medicaid program.

Data will be released to the state only on those individuals who are eligible enrollees, and beneficiaries under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MSIS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing

functions relating to purposes for this system of records.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MSIS data will provide for research or in support of evaluation projects, a broader, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, and abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

Other agencies may require MSIS information for the purpose of combating fraud, waste, and abuse in such federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1).)

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: November 1, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0541

SYSTEM NAME:

''Medicaid Statistical Information System (MSIS),'' HHS/CMS/CMSO.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MSIS contains information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes, but is not limited to: assigned Medicaid identification number, social security number (SSN), health insurance claim number (HICN), date of birth, gender, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1902(a)(6) of the Social Security Act (42 U.S.C. 1396a(a)(6)), and Title IV of the Balanced Budget Act (Public Law 105–33).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support a research or evaluation project; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, and abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1).)

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on computer diskette and magnetic media.

RETRIEVABILITY:

Information can be retrieved by the assigned beneficiary identification number, SSN, HICN, and the assigned physician or other providers of services identification number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information

security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable MSIS data for a total period not to exceed 10 years after the final determination of the case is completed. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Informational Analysis and Technical Assistance, Finance, Systems & Budget Group, Center for Medicaid and State Operations, CMS, Mail Stop S3–18–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

CMS obtains the identifying information contained in this system from state Medicaid agencies, or Medicaid Management Information Systems maintained by the individual states, and information contained on CMS Form 2082.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–18814 Filed 11–7–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review, Comment Request

Title: Evaluation of the Head Start Region III I am Moving, I am Learning (IM/IL) Program.

OMB No.: New Collection.

Description: The purpose of this evaluation is to examine the implementation of the Head Start project I am Moving, I am Learning (IM/IL) as a preventive intervention targeting obesity in children. IM/IL was designed to fit within the Head Start Performance Standards and the Head Start Child Outcomes Framework through enhancements to current teaching and family support practices by providing more focused guidance on quality movement, gross and fine motor development, and child nutrition.

This data collection will be conducted among programs implementing IM/IL in Region III, and will gain information about each site's program context and service components, including level of adoption of IM/IL enhancements, intensity of implementation, and sustainability of enhancements. Progress toward achieving outcomes and goals of the IM/IL program that can be measured will also be assessed.

Respondents: Head Start directors, management teams, teachers, and staff in Region III that received spring 2006 IM/IL training; parents or guardians of children who attend Head Start programs where IM/IL is being implemented.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Director/Manager Questionnaire	65	1	0.84	54.6
Director/Manager Telephone Interview	30	1	1.5	45.0
Teacher/Home Visitor Telephone Interview	60	1	0.5	30.0
Director Interview	16	1	2.0	32.0
Key Management Staff Interview	48	1	1.5	72.0
Teacher/Home Visitor Focus Group	80	1	1.5	120.0
Parent Focus Group	160	1	1.5	240.0

Estimated Total Annual Burden Hours: 593.6.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *Karen_T._Matsuoka@omb.epo.gov.*

Dated: November 3, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–9111 Filed 11–7–06; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0435]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending OMB approval on the existing reporting requirements for the information collection activity entitled ''How to Use E-mail to Submit a Notice of Intent to Slaughter For Human Food Purposes.''

DATES: Submit written or electronic comments on the collection of information by January 8, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on ''How to Use E-mail to Submit a Notice of Intent to Slaughter for Human Food Purposes,'' Section 512j, Federal Food, Drug, and Cosmetic Act; (OMB Control Number 0910–0450)—Extension

Section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act), gives FDA the authority to set conditions under which animals treated with investigational new animal drugs may be marketed for food use. Under this authority, the Center for Veterinary Medicine (CVM), issues to a new animal drug sponsor (sponsors) a slaughter authorization letter that sets the terms under which investigational animals may be slaughtered. The United States Department of Agriculture (USDA), also monitors the slaughter of animals treated with investigational new animal drugs under the authority of the Meat Inspection Act (21 U.S.C. 601–95). Sponsors must submit slaughter notices each time investigational animals are presented for slaughter, unless this requirement is waived by an authorization letter ((21 CFR 511.1(b)(5)), (9 CFR 309.17)). These notifications assist CVM and USDA in monitoring the safety of the food supply. Slaughter notices were previously submitted to CVM and USDA on paper. (OMB No. 0910–0450). CVM's guidance on ''How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes'' provides sponsors with the option to submit a slaughter notice as an e-mail attachment to CVM and USDA by the internet.

The electronic submission of slaughter notices is part of CVM's ongoing initiative to provide a method for paperless submissions.

The likely respondents are new animal drug sponsors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
FDA Form #3488	25	.08	2	0.41	.82

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]Electronic submissions received between July 1, 2005 and June 30, 2006.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (25). The number of total annual responses are based on a review of the actual number of submissions made between July 1, 2005, and June 30, 2006. 2 x hours per response (.41) = .82 total hours.

Submitting a slaughter notice electronically represents an alternative to submitting a notice of intent to slaughter on paper. The reporting burden for compilation and submission of this information on paper is included in OMB clearance of the information collection provisions of 21 CFR 511.1 (OMB No. 0910–0450). The estimates in Table 1 of this document reflect the burden associated with putting the same information on FDA Form #3488 and resulted from previous discussions with sponsors about the time necessary to complete this form.

Dated: November 2, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18896 Filed 11–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0432]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending Office of Management and Budget (OMB) approval on the existing reporting requirements relating to how one may submit information electronically to the Center for Veterinary Medicine (CVM), using e-mail.

DATES: Submit written or electronic comments on the collection of information by January 8, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine—21 CFR 11.2 (OMB Control Number 0910–0454—Extension)

CVM accepts certain types of submissions electronically with no requirement for a paper copy. These types of documents are listed in public docket 97S–0251 as required by 21 CFR 11.2. CVM's ability to receive and process information submitted electronically is limited by its current information technology capabilities and the requirements of the Electronic Records; Electronic Signatures final regulation. CVM's guidance entitled ''Guidance for Industry #108: ''How to Submit Information in Electronic Format by E-Mail'' outlines general standards to be used for the submission of any information by e-mail.

The likely respondents are sponsors for new animal drug applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Respondent	Total Hours
11.2	25	5.62	140	.08	11.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 3006. (140 x hours per response (.08) =11.2 total hours.)

Dated: November 2, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18901 Filed 11–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0436]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How To Use E-Mail To Submit A Study Protocol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending OMB approval of existing reporting requirements for the information collection activity on guidance for industry on ''How to Use E-Mail to Submit a Study Protocol.''

DATES: Submit written or electronic comments on the collection of information by January 8, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on ''How to Use E-Mail to Submit a Study Protocol—21 CFR 58.120; 21 CFR 514.117(b); (OMB Control Number 0910–0524)—Extension

Protocols for nonclinical laboratory studies (safety studies), are required under 21 CFR 58.120 for approval of new animal drugs. Protocols for adequate and well-controlled effectiveness studies are required under 21 CFR 514.117(b). Upon request by the animal drug sponsors, the Center for Veterinary Medicine (CVM), reviews protocols for safety and effectiveness studies that CVM and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application. Establishing a process for acceptance of the electronic submission of protocols for studies conducted by sponsors in support of new animal drug applications, is part of CVM's ongoing initiative to provide a method for paperless submissions. Sponsors may submit protocols to CVM in paper format. CVM's guidance on how to submit a study protocol permits sponsors to submit a protocol without data as an e-mail attachment via the Internet. CVM's guidance on how to submit a study protocol electronically implements provisions of the Government Paperwork Elimination Act (GPEA). The GPEA requires Federal agencies, by October 21, 2003, to provide for the following: (1) The option of the electronic maintenance, submission, or disclosure of information, if practicable, as a substitution for paper; and (2) the use and acceptance of electronic signatures, where applicable.

FDA is also seeking an extension of an existing paperwork clearance for form FDA 3536 to facilitate the use of electronic submission of protocols. This collection of information is for the benefit of animal drug sponsors, giving them the flexibility to submit data for review via the Internet.

The likely respondents are sponsors of new animal drug applications.

FDA estimates the burden for this collection of information as follows[1]:

21 CFR Section/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
514.117(b), 58.120/Form 3536	25	4.2	103	.20	20.6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in Table 1 of this document is the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 2006. 103 x hours per response (.20) = 20.6 total hours.

Dated: November 2, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18908 Filed 11–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0434]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance For Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office Of New Animal Drug Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending Office of Management and Budget (OMB) approval of existing reporting requirements on electronic submission of requests for meetings, in person or via teleconference, to discuss with animal drug sponsors studies to be conducted and how to meet the statutory requirements for drug approval under the Federal Food, Drug, and Cosmetic Act. Requests for meetings about new animal drug submissions were previously submitted on paper copy to the Center for Veterinary Medicine (CVM).

DATES: Submit written or electronic comments on the collection of information by January 8, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office Of New Animal Drug Evaluation—21 CFR 10.65 (OMB Control Number—(0910–0452)—Extension

CVM holds meetings and/or teleconferences when a sponsor requests a presubmission conference under 21 CFR 514.5, or requests a meeting to discuss general questions. Generally, meeting requests are submitted to CVM on paper. However, CVM now allows registered sponsors to submit information electronically, and to request meetings electronically, if they determine this is more efficient and time saving for them. CVM's guidance entitled ''How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation'' provides sponsors with the option to submit a request for a meeting or teleconference as an e-mail attachment by the Internet.

The likely respondents are sponsors for new animal drug applications.

CVM estimates the burden for this information collection activity as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDA Form #	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Respondent	Total Hours
10.65/FDA Form 3489	25	6.24	156	.08	12.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 2006. (156 x hours per response (.08) = 12.5 total hours).

Dated: November 2, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–18911 Filed 11–7–06; 8:45 am]

BILLING CODE 4160–01–S

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.

Mice Lacking Expression of Chemokine Receptor CCR9 Generated by Gene Targeting (CCR9 KO Mice)

Description of Technology: Chemokines and their receptors are key regulators of thymocytes migration and maturation in normal and inflammation conditions. The chemokine CCL25 is highly expressed in the thymus and small intestine. CCR9, the receptor for CCL25, is expressed on the majority of thymocytes, indicating that CCR9 and its ligand may play an important role in thymocyte development. To investigate the role of CCR9 during lymphocyte development, CCR9 knockout mice were developed. Knockout mice had increased numbers of peripheral γδ-T cells but reduced numbers of αβ-T cells. In competitive transplantation experiments bone marrow from CCR9 knockout mice was much less efficient at repopulating the thymus than control (wild type) bone marrow. Thus, CCR9 KO mice are a model for studying thymocyte development and trafficking in the body. Additionally, as the ligand for CCR9 is highly expressed in the small intestine, CCR9 potentially plays a role in the specialization of immune responses in the gastrointestinal tract.

Applications: (1) Evaluate drugs aimed at blocking or augmenting lymphocyte trafficking; (2) A model for studying T cell development; (3) A model for studying immunological based gastrointestinal disorders.

Inventors: Paul E. Love (NICHD), Joshua M. Farber (NIAID), Shoji Uehara (NICHD).

Publications:

1. S Uehara *et al.* A role for CCR9 in T lymphocyte development and migration. J Immunol. 2002 Mar 15;168(6):2812–2819.
2. S Uehara *et al.* Characterization of CCR9 expression and CCL25/thymus-expressed chemokine responsiveness during T cell development: $CD3^{high}CD69+$ thymocytes and γδ TCR+ thymocytes preferentially respond to CCL25. J Immunol. 2002 Jan 1;168(1):134–142.

Patent Status: HHS Reference No. E–328–2006/0—Research Tool.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

mFPR2 Transgenic and Knockout Mouse Models for Alzheimer's and Other Inflammatory Diseases

Description of Technology: Human Formyl Peptide-Like Receptor 1 (hFPLR1) has been implicated in host defense for disease processes including Alzheimer's disease, infection, and other inflammatory diseases. hFPLR1 and its mouse homologue Formyl Peptide Receptor 2 (mFPR2) are G-protein coupled receptors that are expressed at high levels on phagocytic leukocytes, mediating leukocyte chemotaxis and activation in response to a number of pathogen- and host-derived peptides. Activation of hFPRL1/mFPR2 by lipoxin A4 may play a role in preventing and resolving inflammation. Also, hFPRL1/mFPR2 has been shown to mediate the chemotactic activity of amyloid β 1–42, a key pathogenic peptide in Alzheimer's disease.

Available for licensing are mice expressing the mFPR2 transgene on either the FVB or C58BL background, as well as mFPR2 knockout mice on the C57BL background. These mice are anticipated to be highly useful in the study of a wide variety of inflammatory, infectious, immunologic and neurodegenerative diseases.

Applications: (1) Drug development model for Alzheimer's disease and other inflammatory diseases; (2) Tool to probe the role of hFPRL1/mFPR2 in host responses in a variety of disease processes, including inflammatory, infectious, immunologic, and neurodegenerative disease.

Inventors: Ji Ming Wang *et al.* (NCI).

Related Publications:

1. K Chen, P Iribarren, J Hu, J Chen, W Gong, EH Cho, S Lockett, NM Dunlop, and JM Wang. Activation of Toll-like receptor 2 on microglia promotes cell uptake of Alzheimer disease-associated amyloid beta peptide. J Biol Chem. 2006 Feb 10;281(6):3651–3659.
2. H Yazawa, ZX Yu, Takeda, Y Le, W Gong, VJ Ferrans, JJ Oppenheim, CC Li, and JM Wang. Beta amyloid peptide (Abeta42) is internalized via the G-protein-coupled receptor FPRL1 and forms fibrillar aggregates in macrophages. FASEB J. 2001 Nov;15(13):2454–2462.
3. YH Cui, Y Le, W Gong, P Proost, J Van Damme, WJ Murphy, and JM Wang. Bacterial lipopolysaccharide selectively up-regulates the function of the chemotactic peptide receptor formyl peptide receptor 2 in murine microglial cells. J Immunol. 2002 Jan 1;168(1):434–442.

Patent Status: HHS Reference No. E–303–2006/0—Research Tool.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Tara L. Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute—Frederick, Laboratory of Molecular Immunoregulation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize mFPR2 Transgenic and Knockout Mouse Models for Alzheimer's and Other Inflammatory Diseases. Please contact Betty Tong, Ph.D. at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Vaccine Production Strain for Acellular Pertussis Vaccine

Description of Technology: Available for licensing from the NIH is a vaccine production strain of Bordetella bronchiseptica that produces Bordetella pertussis toxin in high yield. The Bordetella bronchiseptica strain has been modified to eliminate expression of filamentous hemagglutinin, which typically has to be removed in purification of the toxin, thereby

reducing the yield of the active vaccine component. Immediately available for licensing is a strain that encodes a mutated pertussis toxin, which does not have to be chemically detoxified.

Application: Production of Bordatella pertussis toxin for acellular vaccine use.

Inventors: Tod Merkel, Jerry Keith, and Xiaoming Yang (NIDCR).

Patent Status: U.S. Patent No. 7,101,558 issued 05 Sep 2006 (HHS Reference No. E–159–1999/0-US–03).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov*.

HSV–2 Diagnostic

Description of Technology: The present invention relates to novel diagnostic methods for Herpes Simplex Virus Type 2 (HSV–2). HSV–2 infects approximately one fifth of adults in the United States and is the most common cause of genital ulceration. The invention relates to the detection of HSV–2 based on a transforming nucleic acid sequence and its protein product. This DNA sequence harbors the potential to induce the tumorigenic transformation of normal cells in *in vitro* and *in vivo* assays and thus will be useful as a means of prognostic evaluation in predicting the development of genital or cervical cancer. Current HSV–2 diagnostic tests relying on tedious viral culture and/or immunoassays that do not have the sensitivity and the specificity essential for diagnosis. Using PCR, the current invention will provide a superior method for viral detection and subtyping.

Application: HSV–2 diagnostic.

Inventors: Joseph A. DiPaolo (NCI–)

Publication: JA DiPaolo *et al.* Relationship of stable integration of herpes simplex virus-2 Bg/II N subfragment Xho2 to malignant transformation of human papillomavirus-immortalized cervical keratinocytes. Int J Cancer 1998 Jun 10;76(6):865–871.

Patent Status: U.S. Patent 6,617,103 issued 09 Sep 2003 (HHS Reference No. E–091–1999/0-US–03); CA Application 2,259,657 filed 30 Jun 1997 (HHS Reference No. E–091–1999/0-CA–04).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The NCI Division of Basic Science is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HSV–2 Diagnostic. Please contact Betty Tong, Ph.D. at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Dated: October 24, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–18885 Filed 11–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Availability of the Draft NTP Briefs on Genistein and Soy Formula; Request for Public Comments

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for comments.

SUMMARY: CERHR invites the submission of public comments on the draft NTP Briefs on Genistein and Soy Formula. The draft NTP Briefs are available from the CERHR Web site (*http://cerhr.niehs.nih.gov* see ''CERHR Reports & Monographs'') or in hardcopy from CERHR (see **ADDRESSES** below). Public comments will be considered during peer review and finalization of the NTP Briefs.

DATES: Written comments on the draft NTP Briefs on Genistein and Soy Formula should be received by December 8, 2006.

ADDRESSES: Public comments and any other correspondence should be addressed to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Genistein (CAS RN: 446–72–0) is a phytoestrogen found in some legumes, especially soybeans. Genistein is found in many food products, especially soy-based foods such as tofu, soy milk, and soy infant formula, and in some over-the-counter dietary supplements. Soy formula is fed to infants as a supplement or replacement for human milk or cow milk. On March 15–17, 2006, CERHR convened an expert panel to conduct evaluations of the potential reproductive and developmental toxicities of genistein and soy formula. The expert panel reports were released for public comment on May 5, 2006 (**Federal Register** Vol. 71, No. 94, pp. 28368, May 16, 2006). Following this public comment period, CERHR staff prepared draft NTP Briefs on Genistein and Soy Formula that provides in plain language:

- Background information on the substance(s).
- Findings of the expert panel.
- Discussion of any relevant data available after the expert panel meeting.
- NTP's conclusions on the potential for the substance to cause adverse reproductive and/or developmental effects in exposed humans.

Upon finalization, the NTP Briefs on Genistein and Soy Formula will be included in the CERHR Monographs on Genistein and Soy Formula. The draft NTP Briefs on Genistein and Soy Formula and related background materials, including the genistein expert panel report, soy formula expert panel report, and previously received public comments, are available on the CERHR Web site (*http://cerhr.niehs.nih.gov* see Genistein and Soy Formula under ''CERHR Reports & Monographs'').

Request for Comments

The NTP invites written public comments on the draft NTP Briefs on Genistein and Soy Formula. Any comments received will be posted on the CERHR Web site and considered during the peer reviews and finalization of the NTP Brief on Genistein and the NTP Brief on Soy Formula. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and submit comments to Dr. Shelby (see **ADDRESSES** above) for receipt by December 8, 2006.

Background Information on CERHR

The NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Michael Shelby, CERHR Director (see **ADDRESSES**). CERHR selects chemicals

for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies. Expert panels conduct scientific evaluations of agents selected by CERHR in public forums. Following these evaluations, CERHR prepares the NTP–CERHR monograph on the agent evaluated. The monograph is transmitted to appropriate Federal and State agencies and made available to the public.

Dated: October 31, 2006.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–18796 Filed 11–7–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Hazard Mitigation Grant Program reporting requirements.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 44 U.S.C. 5170c, establishes the Hazard Mitigation Grant Program. Grant requirements, and grants management procedures of the program are outlined in 44 CFR Part 13.

Collection of Information

Title: Hazard Mitigation Grant Program Application and Reporting.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0076.

Form Numbers: None.

Abstract: Grantees administer the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitors grantee project activities and expenditure of funds.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours:

ANNUAL BURDEN HOURS

Data collection activities/instruments	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(D=A×B)	(E=C×D)
Project Narrative section 209.8(b)	56	18	12	1008	12,096
Benefit-Cost Determination	56	18	5	1008	5,040
Environmental Review	56	18	7.5	1008	7,560
FEMA 345, HMGP Desk Reference	56	1	4	56	224
Annual Audit & Audit Trail Requirements	56	1	40	56	2,240
Total Burden for HMGP	56	56		3136	27,160

Estimated Cost: The State Hazard Mitigation Office staff is usually comprised of urban and regional planners. Wage rates for urban and regional planners were determined using data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS). Currently, BLS data indicate that the median hourly earnings of urban and regional planners for 2004 were $26.75 for an annualized cost of $726,530.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before January 8, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Chief, Grants Policy Section, Mitigation Division, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: November 2, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18834 Filed 11–7–06; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1666–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1666-DR), dated October 27, 2006, and related determinations.

DATES: *Effective Date:* October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 27, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a fire during the period of August 3–4, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, William M. Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster: The City of Hooper Bay within the Lower Yukon Regional Educational Attendance Area for Public Assistance.

All boroughs and Regional Educational Attendance Areas in the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–18835 Filed 11–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1662–DR]

Indiana; 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 Indiana (FEMA–1662–DR), dated October 6, 2006, and related determinations.

DATES: *Effective Date:* November 1, 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 Indiana 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 October 6, 2006:

Warrick County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–18837 Filed 11–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3268–EM]

New York; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA–3268–EM), dated October 15, 2006, and related determinations.

DATES: *Effective Date:* October 25, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 25, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–18838 Filed 11–7–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Natural Resource Damage Assessment and Restoration Program Office; Notice of Natural Resource Damage Assessment and Restoration Advisory Committee Meeting

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of the Interior, Natural Resource Damage Assessment and Restoration Program Office gives notice of the fourth meeting of the Department's Natural Resource Damage Assessment and Restoration Advisory Committee. The Advisory Committee will meet at the U.S. Department of the Interior, South Building Auditorium, 1951 Constitution Avenue, NW., Washington, DC 20240 from 8:30 a.m. to 5 p.m. on November 29 and November 30, 2006. Members of the public are invited to attend the Committee Meeting to listen to the committee proceedings and to provide public input.

Public Input: Any member of the public interested in providing public input at the Committee Meeting should contact Mr. Steve Glomb, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit those comments to three minutes. This time frame may be adjusted to accommodate all those who would like to speak. Requests to be added to the public speaker list must be received in writing (letter, e-mail, or fax) by noon eastern standard time on November 20, 2006. Anyone wishing to submit written comments should provide a copy of those comments to Mr. Glomb in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file formats are: Adobe Acrobat, WordPerfect, Word, or Rich Text files) by noon eastern standard time on November 20, 2006.

Document Availability: Interested individuals may view the draft agenda for the meeting online at *http://restoration.doi.gov/faca* or may request the draft agenda from Mr. Glomb. In preparation for this meeting of the Advisory Committee, the Committee and the public can find helpful background information at the Restoration Program Web site *http://restoration.doi.gov.* The site provides a good introduction to the program for those who are relatively new to the damage assessment and restoration arena and a useful reference for seasoned practitioners and policy leaders. Links to the statutory and regulatory framework for the program are found at *http://restoration.doi.gov/laws.htm.* DOI Program policies are found at *http://restoration.doi.gov/policy.htm.*

Agenda for Meeting

The agenda will cover the following principal subjects:

—Presentation and discussion on cultural services provided by natural resources.

—Discussion of subcommittee reports.

—Formal public input (if any).

—Committee agreement on each subcommittee scope and plan.

—Develop schedule for next Committee meeting.

We estimate that each subcommittee report, discussion, and associated public input will take approximately three to four hours. However, the timeframes will remain flexible. If a subcommittee report and discussion requires less time, the committee will move directly on to the next topic.

Meeting Access: Individuals requiring special accommodation at this meeting must contact Mr. Steve Glomb (see contact information below) by noon eastern standard time on November 15, 2006, so that appropriate arrangements can be made.

DATES: November 29, 2006, from 8:30 a.m. to 5 p.m. (open to the public). November 30, 2006, from 8:30 a.m. to 5 p.m. (open to the public).

ADDRESSES: Auditorium, U.S Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, DC 20240.

All individuals attending the Committee Meeting will be required to present photo identification to security officers to gain access to the South Interior Building.

FOR FURTHER INFORMATION CONTACT: Steve Glomb, U.S. Department of the Interior, Natural Resource Damage Assessment and Restoration Program, Mail Stop MIB 4449, 1849 C Street, NW., Washington, DC 20240; phone 202–208–4863; fax 202–208–2681; or *steve_glomb@ios.doi.gov*.

Dated: November 3, 2006.

Frank M. DeLuise,

Designated Federal Officer, DOI Natural Resource Damage Assessment and Restoration Advisory Committee.

[FR Doc. E6–18871 Filed 11–7–06; 8:45 am]

BILLING CODE 6820–PE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of a Commercial Park, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of one ITP and Habitat Conservation Plan (HCP)/Application for one incidental take permit. Marsol Development Corporation (Applicant) requests an incidental take permit (ITP) for a duration of 2 years pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking about 7.5 acres of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a commercial park and supporting infrastructure in Brevard County, Florida (Project). The destruction of 7.5 acres of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP at the Jacksonville Field Office (see **ADDRESSES**) on or before December 8, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Jacksonville Field Office. Please reference permit number TE126179–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Ms. Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE126179–0 in all requests or comments. You may mail comments to the Service's Jacksonville Field Office

(see **ADDRESSES**). You may also comment via the internet to *erin_gawera@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at the telephone number listed above (**FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to the Service office listed under **ADDRESSES**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Commercial construction for Marsol Development Corporation will take place within Section 31, Township 26 South, Range 37 East, Port St. Johns, Brevard County, Florida, on the southeast corner of Wickham Road and Summer Brook Drive. This parcel is within locations where scrub-jays were sighted during surveys for this species during the period 1999–2003.

The project encompasses about 9.0 acres, of which there is 7.5 acres of scrub-jay foraging, sheltering, and possibly nesting habitat. The footprint of the commercial park, infrastructure, and landscaping preclude retention of scrub-jay habitat. In order to minimize take on site, the Applicant agrees to avoid construction during the nesting season if active nests are found on site, but no other on-site minimization measures are proposed to reduce take of scrub-jays.

The Applicant proposes to mitigate for the loss of 7.5 acres of scrub-jay habitat by purchasing a minimum of 15 acres of occupied scrub-jay habitat within property in holdings mapped within the Valkaria portion of the Brevard County Environmentally Endangered Lands Program (EEL) Coastal Scrub Ecosystem. In addition, $1,200 per acre will be provided for management of this land.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Authority: This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: October 17, 2006.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E6–18822 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Holland Properties Safe Harbor Agreement, Orange County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

This notice advises the public that Holland Properties Inc. (Applicant), has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539 *et seq.*). The permit application includes a proposed Safe Harbor Agreement (Agreement) for the endangered red-cockaded woodpecker (*Picoides borealis*) (Woodpecker) for a period of 30 years.

We (the Service) announce the opening of a 30-day comment period and request comments from the public on the Applicant's enhancement of survival permit application and the accompanying proposed Agreement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public. For further information and instructions on reviewing and commenting on this application, see the **ADDRESSES** section, below.

DATES: Written comments should be received on or before December 8, 2006.

ADDRESSES: You may obtain a copy of the information available by contacting the Service's Regional Safe Harbor Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive S., Suite 310, Jacksonville, Florida 32216. Alternatively, you may set up an appointment to view these documents at either location during normal business hours. Written data or comments should be submitted to the Atlanta, Georgia, Regional Office. Requests for the documentation must be in writing to be processed, and comments must be written to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Gooch (telephone: 404/679–7124; facsimile: 404/679–7081), or Ms. Annie Dziergowski (telephone: 904/232–2580; facsimile: 904/232–2404).

SUPPLEMENTARY INFORMATION: Under a safe harbor agreement, a participating property owner voluntarily undertakes management activities on its property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act. Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring them they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through safe harbor agreements are found in 50 CFR 17.22 and 17.32.

We have worked with the Applicant to design conservation measures intended to benefit the Woodpecker on about 3,863 acres of pine-dominated forest in southern Orange County. Under the Agreement, the Applicant

will undertake the following actions: (1) Implement a prescribed fire program designed to maintain and enhance pine stand characteristics suitable for the Woodpecker; (2) implement forest management actions to enhance existing pine stocking densities and reduce hardwood canopies; (3) enhance future pine stocking densities by planting; (4) enhance existing Woodpecker clusters through construction of artificial cavities; (5) create potential new cluster sites using artificial cavity inserts; and (6) translocate individual Woodpeckers within the enrolled property to enhance pair-bond formation and establish new groups.

The Applicant's property currently supports seven clusters of Woodpeckers. Conservation measures proposed by the Applicant will enhance existing habitat conditions and contribute to the continued survival of the seven Woodpecker clusters currently residing on the property. In addition, the Applicant intends to similarly manage unoccupied habitat in a similar manner that will create suitable habitat for Woodpeckers. The Applicant anticipates that the proposed conservation measures will lead to additional groups of Woodpeckers inhabiting the enrolled property. Without the proposed Agreement, it would not be possible for the Applicant to undertake the proposed conservation measures and receive regulatory assurances from the Service through the Endangered Species Act.

Consistent with the Service's Safe Harbor policy and implementing regulations, we propose to issue a permit to the Applicant authorizing the incidental take of Woodpeckers, that occur on the enrolled lands through lawful activities on the enrolled land, as long as baseline conditions are maintained and terms of the Agreement are implemented. Future activities of the Applicant could result in a return to the baseline condition, but the Applicant has indicated that a return to baseline condition is not anticipated.

This Notice also advises the public that the Service has made a preliminary determination that issuance of the enhancement of survival permit will not result in significant impacts to the human environment and is, therefore, categorically excluded from review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) (NEPA), pursuant to 516 Departmental Manual 2, Appendix 1 and 516 Departmental Manual 6, Appendix 1. This Notice is provided pursuant to Section 10 of the Endangered Species Act. The Service specifically requests information, views, and opinions from the public.

We will evaluate the proposed Agreement, associated documents, and comments submitted by the public to determine whether the requirements of Section 10(a) of the Endangered Species Act and NEPA regulations have been met. If we determine that the requirements are met, we will issue an enhancement of survival permit under Section 10(a)(1)(A) of the Endangered Species Act to the Applicant in accordance with the terms of the Agreement and specific terms and conditions of the authorizing permit. We will not make our final decision until the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: October 18, 2006.

Jeffrey M. Fleming,

Southeast Region, Acting Regional Director.

[FR Doc. E6–18827 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting Announcement: Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Sporting Conservation Council (Council). This meeting is designed to review wildlife conservation endeavors that benefit recreational hunting and wildlife resources and that encourage partnerships among the public, the sporting conservation community, wildlife conservation groups, and State and Federal governments. This meeting is open to the public, and will include a session for the public to comment.

DATES: We will hold the meeting on November 28, 2006, from 10 a.m. to 4:30 p.m. and on November 29, 2006, from 9 a.m. to 4:30 p.m. From 9 a.m. to 10 a.m. on November 29, we will host a public comment session.

ADDRESSES: The meeting will be held in the Riviera Room at the Omni Corpus Christi Hotel Marina, 707 North Shoreline Blvd., Corpus Christi, Texas 78401.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, Arizona 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Council in February 2006 (71 FR 11220, March 6, 2006). The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture signed an amended charter for the Council in June 2006 and July 2006, respectively. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will hold a meeting on the dates shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment.

Dated: November 2, 2006.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E6–18913 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held December 13–14, 2006, at the University of Alaska—Anchorage campus, Library Building, Third Floor, Anchorage, Alaska. The December 13 meeting starts at 1 p.m. in Room 302A. The December 14 meeting begins at 8 a.m. in Room 307 with a public comment period starting at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *Danielle_Allen@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- National Petroleum Reserve—Alaska
- Community Based Planning
- Lands Transfer Program
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: November 1, 2006.

Julia Dougan,

Acting State Director.

[FR Doc. E6–18836 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, December 6, 2006. The meeting will convene at 4 p.m. at Northeastern University, Shillman Hall, Room 220, Boston, MA.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands national park area.

The Agenda for this meeting is as follows:

1. Call to Order, Introductions of Advisory Council members present.
2. Review and approval of minutes of the September meeting.
3. Preparation for the Annual Meeting in March.
4. Park Update.
5. New Business.
6. Public Comment.
7. Adjourn.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Avenue, Boston, MA 02110, telephone (617) 223–8667.

Dated: October 24, 2006.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. E6–18898 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–8G–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–478]

U.S.-China Trade: Implications of U.S.-Asia-Pacific Trade and Investment Trends

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

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

SUMMARY: Following receipt of a request letter on October 2, 2006, from the Committee on Ways and Means of the U.S. House of Representatives (Committee) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. (332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–478, *U.S.-China Trade: Implications of U.S.-Asia-Pacific Trade and Investment Trends*.

Background: In its October 2, 2006 letter, the Committee requested that the Commission prepare three reports with respect to U.S.-China trade, with the first report to be delivered 12 months after receipt of the letter and the second and third reports, 18 and 24 months after receipt of the letter, respectively. This notice announces institution of the first of three investigations for the purpose of preparing the requested reports. The Commission will issue separate notices relating to the second and third reports at a later date (see below).

As requested by the Committee, in its first report the Commission will analyze the principal trends and patterns in trade and foreign direct investment (FDI) between Asia-Pacific countries and the United States and their implications for the U.S.-China trade relationship. The report will include: (1) A discussion of the main factors influencing these trends; (2) an in-depth examination of the industries that have had a major effect on trade and investment patterns in recent years; and (3), if required, formal quantitative analyses that may help explain these trends and provide an assessment of the reliability of the data used in each analysis. The report will also review the relationship between international trade and FDI, the trade and investment policies in the major countries of the region, and their effect on economic activity both on a global scale and within the Asian and Pacific region. The Commission will provide its first report to the Committee by October 2, 2007.

The Committee also directed that the Commission provide two other reports on U.S.-China trade. For the second report, the Committee asked the Commission to investigate the driving factors behind the rapid growth in U.S.-China trade. The Commission expects to initiate the investigation relating to this report in April 2007 and to provide its report to the Committee by April 2, 2008.

For the third report, the Committee asked the Commission to provide an in-depth examination of China's integration with the global economy through processing trade and FDI, and its implications for U.S.-China trade and investment. The Commission expects to initiate the investigation relating to this report in October 2007 and to provide its report to the Committee by October 2, 2008.

FOR FURTHER INFORMATION CONTACT: Project leaders Nannette Christ (202–205–3263 or *nannette.christ@usitc.gov*) or Dennis Fravel (202–205–3404 or *dennis.fravel@usitc.gov*) for information specific to this investigation (the first report). For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*).

Public Hearing: A public hearing in connection with this first investigation and report will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on March 8, 2007. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., February 22, 2007, in accordance with the requirements in the ''Submissions'' section below.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning this investigation. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Any pre-hearing briefs or statements should be filed not later than 5:15 p.m., February 22, 2007; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 22, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by rule section 201.8 (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules require that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

General information concerning the Commission may also be obtained at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: November 2, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–18846 Filed 11–7–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 21, 2006 and August 24, 2006, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Nabilone (7379)	II
Noroxymorphone (9668)	II

The company plans to manufacture the listed controlled substances in bulk for sales to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than January 8, 2007.

Dated: November 2, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18844 Filed 11–7–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 9–06]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, November 16, 2006, at 10 a.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 06–9160 Filed 11–6–06; 3:48 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 3, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain*, or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 45 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension.

Title: Project GATE.

OMB Number: 1205—0444.

Frequency: Once.

Affected Public: Individuals or households.

Type of Response: Reporting.

Number of Respondents: 400.

Annual Responses: 400.

Average Response Time: 40 minutes.

Total Annual Burden Hours: 267.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Approval is sought for an extension to complete the follow-up survey to be conducted as part of Project GATE. Project GATE is a demonstration program designed to assist individuals interested in self-employment to develop their businesses. To determine whether the program should be replicated on a larger scale, an evaluation is being conducted. Persons interested in Project GATE and who meet the eligibility criteria are randomly assigned to either a program or a control group. Members of both groups are surveyed twice. A survey is the only way to collect information on self-employment services, and household income.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6–18861 Filed 11–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 2, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Provider Enrollment Form.

OMB Number: 1215–0137.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Private sector: Business and other for-profit.

Estimated Number of Respondents: 48,242.

Estimated Number of Annual Responses: 48,242.

Estimated Average Response Time: 8 minutes.

Estimated Total Annual Burden Hours: 6,417.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $17,736.

Description: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, and the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.* These statutes require OWCP to pay for medical and vocational rehabilitation services provided to beneficiaries. In order for OWCP's billing contractor to pay providers of these services with its automated bill processing system, providers must ''enroll'' with one or more of the OWCP programs that administer the statutes by

submitting certain profile information, including identifying information, tax I.D. information, and whether they possess specialty or sub-specialty training. Form OWCP 1168 is used to obtain this information from each provider.

The information provided is used by all four programs to identify the providers of medical and vocational rehabilitation services, and to direct payments to these providers accurately and in a timely manner. The information obtained also provides data for the contractor to carry out a wide range of automated bill ''edits'', such as the identification of duplicate billings, the application of pertinent fee schedules, utilization review, and fraud and abuse detection. The profile information is also used to furnish detailed reports to providers on the status of previously submitted bills.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–18780 Filed 11–7–06; 8:45 am]

BILLING CODE 4510–CN–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

November 1, 2006.

TIME AND DATE: 2 p.m., Wednesday, November 15, 2006.

PLACE: U.S. Department of Labor Main Auditorium, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Jim Walter Resources, Inc.,* Docket No. SE 2005–51. (Issues include whether substantial evidence, including inferences drawn from the record, supports the conclusion of the Administrative Law Judge that the operator violated 30 CFR 75.1725(c) when a miner allegedly performed maintenance work on a conveyor belt without cutting off the power and blocking the belt against motion; whether the judge correctly concluded that the violation was significant and substantial; and whether the judge properly assessed the penalty against the operator.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 06–9144 Filed 11–6–06; 12:47 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 8, 2006 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 23, 2006 (71 FR 49490 and 49491). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Volunteer Service Application.

OMB number: 3095–0060.

Agency form number: NA Form 6045.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 300.

Estimated time per response: 25 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 125 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA needs a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application, will be used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work.

Dated: November 1, 2006.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E6–18833 Filed 11–7–06; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark Reinhold, Center for Human Capital Management Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1402.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review

boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office Of Personnel Management.

Linda M. Springer,

Director.

The following have been designated as members of the Performance Review Board of the Office of Personnel Management:

Dan G. Blair, Deputy Director—Chair.
Patricia L. Hollis, Chief of Staff and Director of External Affairs.
Clarence Crawford, Chief Financial Officer.
Robert Danbeck, Associate Director, Human Resources Products and Services Division.
Nancy Kichak, Associate Director, Strategic Human Resources Policy Division.
Solly Thomas, Acting Associate Director, Human Capital Leadership and Merit System Accountability Division.
Kathy Dillaman, Associate Director, Federal Investigative Services Division.
Ronald C. Flom, Associate Director, Management Services Division and Chief Human Capital Officer.
Kerry McTigue, General Counsel.
William A. Jackson Jr., Deputy Associate Director for Human Capital Management Services—Executive Secretariat.

[FR Doc. E6–18789 Filed 11–7–06; 8:45 am]

BILLING CODE 6325–45–P

POSTAL SERVICE

Sunshine Act Meeting

DATE AND TIME: Tuesday, November 14, 2006, at 2 p.m.; and Wednesday, November 15, 2006, at 8:30 a.m.

PLACE: Washington, DC., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 14—2 p.m.—Closed; November 15—8:30 a.m.—Open.

MATTERS TO BE CONSIDERED:

Tuesday, November 14 at 2 p.m. (Closed).

1. Strategic Planning.
2. Rate Case Updated.
3. Labor Negotiations Update.
4. Audit and Finance Committee Report and Review of 2006 Year-End Financial Statements.
5. Financial Update.
6. Personnel Matters and Compensation Issues.

Wednesday, November 15 at 8:30 a.m. (Open).

1. Minutes of the Previous Meeting, September 11–12, 2006.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Committee Reports.
4. Quarterly Report on Service Performance.
5. Consideration of Fiscal Year 2006 Audited Financial Statements.
6. Tentative Agenda for the December 5–6, 2006, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 06–9131 Filed 11–3–06; 4:14 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17i–4; SEC File No. 270–530; OMB Control No. 3235–0594.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [1] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'' or the ''Exchange Act'') to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[2] In 2004, the Commission promulgated rules, including Rule 17i–4, (17 CFR 240.17i–4.) to create a framework for the Commission to supervise SIBHCs.[3] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated home-country supervisor for SIBHCs and their affiliated broker-dealers.[4]

Rule 17i–4 requires an SIBHC to comply with present Exchange Act Rule 15c3–4 [5] as though it were a broker-dealer, which requires that the firm establish, document and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities (including market, credit, operational, funding, and legal risks). In addition, Rule 17i–4 requires that an SIBHC establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing as part of its internal risk management control system. Finally, Rule 17i–4 requires that an SIBHC periodically review its internal risk management control system for integrity of the risk measurement, monitoring, and management process, and accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

The collection of information required pursuant to Rule 17i–4 is needed so that the Commission can adequately supervise the activities of these SIBHCs, and to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act. Without this information, the Commission would be unable to adequately supervise the SIBHC as provided for under the Exchange Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require, on average, about 3,600 hours to assess its present structure, businesses, and controls, and establish and document its risk management control system. In addition, an SIBHC will require, on average, approximately 250

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] See 15 U.S.C. 78q(i).

[3] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[4] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[5] 17 CFR 240.15c3–4.

hours each year to maintain its risk management control system. Consequently, the total initial burden for all SIBHCs is approximately 10,800 hours[6] and the continuing annual burden is about 750 hours.[7] Thus, the total burden relating to Rule 17i–4 for all SIBHCs is approximately 11,550 hours[8] in the first year, and approximately 750 hours each year thereafter.[9]

We believe that an IBHC likely will upgrade its information technology (''IT'') systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–4.

The records required to be created pursuant to Rule 17i–4 must be preserved for a period of not less than three years.[10] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[11] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18790 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[6] (3,600 hours × 3 SIBHCs) = 10,800 hours.

[7] (250 hours per year × 3 SIBHCs) = 750 hours per year.

[8] (3,600 hours × 3 SIBHCs) + (250 hours per year × 3 SIBHCs).

[9] (250 hours per year × 3 SIBHCs).

[10] 17 CFR 240.17i–5(b)(5).

[11] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17i–2; SEC File No. 270–528; OMB Control No. 3235–0592.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 231 of the Gramm-Leach-Bliley Act of 1999[1] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (the ''Act'' or the ''Exchange Act'') to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[2] In 2004, the Commission promulgated rules, including Rule 17i–2 (17 CFR 240.17i–2) to create a framework for the Commission to supervise SIBHCs.[3] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor[4] for SIBHCs and their affiliated broker-dealers.

Rule 17i–2 provides the method by which an IBHC can elect to become an SIBHC. In addition, Rule 17i–2 indicates that the IBHC will automatically become an SIBHC 45 days after the Commission receives its completed Notice of Intention unless the Commission issues an order indicating either that it will begin its supervision sooner or that it does not believe it to be necessary or appropriate in furtherance of Section 17 of the Act for the IBHC to be so supervised. Finally, Rule 17i–2 sets forth the criteria the Commission would use to make this determination.

The collections of information required by Rule 17i–2 are necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act. In addition, these collections are needed so that the Commission can adequately supervise the activities of these SIBHCs. Finally, these rules enhance the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. Each IBHC that files a Notice of Intention to become supervised by the Commission as an SIBHC will require approximately 900 hours to draft the Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with the Commission staff. Further, each IBHC likely will have an attorney review its Notice of Intention and it will take the attorney approximately 100 hours to complete such a review. Consequently, we estimate the total one-time burden for all three firms to file their Notices of Intention would be approximately 3,000 hours.[5] Rule 17i–2 also requires that an IBHC/SIBHC update its Notice of Intention on an ongoing basis.[6] Each IBHC/SIBHC will require approximately two hours each month to update its Notice of Intention, as necessary. Thus, we estimate that it will take the three

[1] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[2] See 15 U.S.C. 78q(i).

[3] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[4] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[5] (900 hours + 100 hours) × 3 IBHCs/SIBHCs = 3,000 hours.

[6] An IBHC would be required to review and update its Notice of Intention to the extent it becomes inaccurate prior to a Commission determination, and an SIBHC would be required to update its Notice of Intention if it changes a mathematical model used to calculate its risk allowances pursuant to Rule 17i–7 after a Commission determination was made.

IBHC/SIBHCs, in the aggregate, about 72 hours each year to update their Notices of Intention.[7] Thus, the total burden relating to Rule 17i–2 for all SIBHCs would be approximately 3,072 hours in the first year,[8] and approximately 72 hours each year thereafter.

The records required to be created pursuant to Rule 17i–2 must be preserved for a period of not less than three years.[9] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[10] notwithstanding any other provision of law. In addition, Exchange Act Rule 17i–2(d)(1)[11] states that all Notices of Intention, amendments, and other documentation and information filed pursuant to Rule 17i–2 will be accorded confidential treatment to the extent permitted by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18792 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[7] (2 hours × 12 months each year) x 3 SIBHCs = 72.

[8] (3,000 hours to file the Notices of Intention + 72 hours to update them) = first year cost of 3,072.

[9] 17 CFR 240.17i–5(b)(2).

[10] 5 U.S.C. 552(b)(3)(B).

[11] 17 CFR 240.17i–2(d)(1).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17i–6; SEC File No. 270–532; OMB Control No. 3235–0588.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 231 of the Gramm-Leach-Bliley Act of 1999[1] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'' or the ''Exchange Act'') to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[2] In 2004, the Commission promulgated rules, including Rule 17i–6, (17 CFR 240.17i–6) to create a framework for the Commission to supervise SIBHCs.[3] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[4]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[5] Rule 17i–6 requires that an SIBHC file with the Commission certain monthly and quarterly reports and an annual audit report.

The collections of information required by Rule 17i–6 are necessary to allow the Commission to adequately supervise the activities of these SIBHCs and to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act. Rule 17i–6 also enhances the Commission's supervision of an SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without these reports, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require about eight hours each month to prepare and file the monthly reports required by this rule (or approximately 96 hours per year).[6] On average, it will take an SIBHC about 16 hours each quarter (or 64 hours each year)[7] to prepare and file the quarterly reports required by this rule. An SIBHC will require about 200 hours to prepare and file the annual audit reports required by this rule. Consequently, the total annual burden of Rule 17i–6 on all SIBHCs is approximately 1,080 hours.[8]

We believe that an IBHC likely will upgrade its information technology (''IT'') systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–6.

The reports and notices required to be filed pursuant to Rule 17i–6 must be

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] See 15 U.S.C. 78q(i).

[3] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[4] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[5] 15 U.S.C. 78q(i)(3)(A).

[6] (8 hours × 12 months in a year) = 96 hours/year.

[7] (16 hours × 4 quarters in a year) = 64 hours/year.

[8] (96 hours per year to prepare and file monthly reports + 64 hours each year to prepare and file quarterly reports + 200 hours each year to prepare and file annual audit reports) × 3 SIBHCs = 1,080 hours.

preserved for a period of not less than three years.[9] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[10] notwithstanding any other provision of law. In addition, paragraph 17i–6(h) specifies that all reports and statements filed by an SIBHC in accordance with Rule 17i–6 shall be accorded confidential treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18794 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 240.17i–5(b)(3).

[10] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17i–3; SEC File No. 270–529; OMB Control No. 3235–0593.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following rule:

Section 231 of the Gramm-Leach-Bliley Act of 1999[1] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[2] In 2004, the Commission promulgated rules, including Rule 17i–3, (17 CFR 240.17i–3.) to create a framework for the Commission to supervise SIBHCs.[3] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated home-country supervisor for SIBHCs and their affiliated broker-dealers.[4]

Rule 17i–3 permits an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission. The Rule requires that an SIBHC include in its notice of withdrawal a statement that it is in compliance with Rule 17i–2(c) regarding amendments to its Notice of Intention to help to assure that the Commission has updated information when considering the SIBHC's withdrawal request.

The collection of information required by Rule 17i–3 is necessary to enable the Commission to evaluate whether it is necessary and appropriate in the furtherance of Section 17 of the Exchange Act for the Commission to allow an SIBHC to withdraw from supervision. Without this information, the Commission would be unable to make this evaluation.

We estimate, for Paperwork Reduction Act purposes only, that one SIBHC may wish to withdraw from Commission supervision as an SIBHC over a ten-year period. Each SIBHC that withdraws from Commission supervision as an SIBHC will require approximately 24 hours to draft a withdrawal notice and submit it to the Commission. An SIBHC likely would have an attorney perform this task. Further, an SIBHC likely will have a senior attorney or executive officer review the notice of withdrawal before submitting it to the Commission, which will take approximately eight hours. Thus, we estimate that the annual, aggregate burden of withdrawing from Commission supervision as an SIBHC will be approximately 3.2 hours each year.[5]

The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[6] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18795 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] See 15 U.S.C. 78q(i).

[3] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[4] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[5] (1 SIBHC/every 10 years) × (24 hours to draft + 8 hours to review) = 3.2 hours.

[6] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17i–5; SEC File No. 270–531; OMB Control No. 3235–0590.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities

and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [1] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'' or the ''Act'') to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[2] In 2004, the Commission promulgated rules, including Rule 17i–5, (17 CFR 240.17i–5) to create a framework for the Commission to supervise SIBHCs.[3] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[4]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC would be required to make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[5] Rule 17i–5 requires that an SIBHC make and keep current certain records relating to its business. In addition, it requires that an SIBHC preserve those and other records for at least three years.

The collections of information required pursuant to Rule 17i–5 are necessary so that the Commission can adequately supervise the activities of these SIBHCs. In addition, these collections of information are needed to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of section 17 of the Act. Rule 17i–5 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without this information and documentation, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require, on average, approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year. In addition, an SIBHC will generally require about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group. Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty.[6] Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records.

We believe that an IBHC likely will upgrade its information technology (''IT'') systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–5.

The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[7] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18803 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[1] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[2] See 15 U.S.C. 78q(i).

[3] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[4] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[5] 15 U.S.C. 78q(i)(3)(A).

[6] On average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties.

[7] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Industry Guides; OMB Control No. 3235–0069; SEC File No. 270–069. Notice of Exempt Roll-Up Preliminary Communication; OMB Control No. 3235–0452; SEC File No. 270–396.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Industry Guides are used by registrants in certain specified industries as disclosure guidelines to be followed in disclosing information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The Commission estimates for administrative purposes only that the total annual burden with respect to the Industry Guides is one hour. The

Industry Guides do not directly impose any disclosure burden.

A Notice of Exempt Preliminary Roll-Up Communication (''Notice'') (§ 240.14a–104) provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a–2(b)(4) and § 240.14a–6(n). The Notice takes approximately .25 hours per response and is filed by 4 respondents for a total of one annual burden hour.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18830 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27544; 812–13266]

Fidelity Management & Research Company, *et al.*; Notice of Application

November 2, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Fidelity Management & Research Company (''FMR''), Strategic Advisers, Inc. (''Strategic''), Fidelity Rutland Square Trust II (''Rutland II''), Fidelity Rutland Square Trust III (''Rutland III''), Fidelity Rutland Square Trust IV (''Rutland IV''), and Fidelity Commonwealth Trust II (''Commonwealth,'' collectively with Rutland II, Rutland III, and Rutland IV, the ''Trusts'').

Filing Dates: The application was filed on March 6, 2006, and amended on June 1, 2006, and October 9, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 82 Devonshire Street, Boston MA 02109.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Each Trust is a Delaware statutory trust and, prior to relying on the requested order, will be registered under the Act as an open-end management investment company. Each Trust will consist of one or more Portfolios (as defined below).[1] Strategic and FMR are investment advisers registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). Any other Manager relying on the requested order will be an investment adviser registered under the Advisers Act. Strategic and FMR are wholly-owned direct subsidiaries of FMR Corp., a Delaware corporation. It is currently anticipated that Strategic will serve as the Manager to each Portfolio.[2]

2. The Manager will serve as investment adviser to each Portfolio pursuant to an investment management agreement between the Manager and the Trust, on behalf of the Portfolio (the ''Advisory Agreement''). The Advisory Agreement will be approved by the shareholders of the Portfolio and by the applicable board of trustees or directors (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Portfolio or the Manager (the ''Disinterested Trustees'').

3. Under the terms of the Advisory Agreement, the Manager will be responsible for providing a program of continuous investment management to each Portfolio in accordance with the investment objective, policies and limitations of the Portfolio. The Advisory Agreement also authorizes the Manager, subject to Board approval, to enter into investment sub-advisory agreements (''Sub-Advisory Agreements'') with one or more sub-advisers (''Sub-Advisers''). Each Sub-Adviser will be registered as an investment adviser under the Advisers Act. The Manager will monitor and evaluate the Sub-Advisers and recommend to the Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Manager will be selected and approved by the Board, including a majority of the Disinterested Trustees. Each Sub-Adviser will have discretionary authority to invest all or a portion of the assets of the Portfolio it serves. The Manager will compensate each Sub-Adviser out of the fees paid to the

[1] Applicants also request relief with respect to any investment adviser controlling, controlled by or under common control with FMR (individually or collectively, the ''Manager'') and any current or future series of the Trusts that: (a) is advised by the Manager; (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (each such series, a ''Portfolio''). All existing Trusts that currently intend to rely on the requested order are named as applicants. If the name of any Portfolio contains the name of a Sub-Adviser (as defined below), the name of the Manager will precede the name of the Sub-Adviser.

[2] Applicants request that the requested order apply to the Trusts' and any Portfolio's successors in interest. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

Manager under the Advisory Agreement.

4. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, the Portfolios or the Manager, other than by reason of serving as a Sub-Adviser to one or more Portfolios (''Affiliated Subadviser'').

5. Applicants also request an exemption from the various disclosure provisions described below that may require a Portfolio to disclose fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit the Trust to disclose for each Portfolio (as both a dollar amount and as a percentage of the Portfolio's net assets): (a) The aggregate fees paid to the Manager and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, ''Aggregate Fee Disclosure''). If the Manager employs an Affiliated Sub-Adviser on behalf of a Portfolio, the Trust will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Manager's experience to select one or more Sub-Advisers well suited to achieve a Portfolio's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Portfolio, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Sub-Advisers use a ''posted'' rate schedule to set their fees. Applicants state that while Sub-Advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will allow the Manager to negotiate more effectively with each Sub-Adviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Portfolio's shares to the public.

2. The prospectus for the Portfolio will disclose the existence, substance, and effect of any order granted pursuant to the application. The Portfolio will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser, the affected Portfolio's shareholders will be furnished all information about the new Sub-Adviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Sub-Adviser. To meet this obligation, the Portfolio will provide shareholders within 90 days of the hiring of a new Sub-Adviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

5. At all times, at least a majority of the Board will be Disinterested Trustees, and the nomination of new or additional Disinterested Trustees will be placed within the discretion of the then-existing Disinterested Trustees.

6. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Board,

including a majority of the Disinterested Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Portfolio and its shareholders, and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Disinterested Trustees. The selection of such counsel will be within the discretion of the then-existing Disinterested Trustees.

8. The Manager will provide the Board, no less frequently than quarterly, with information about the profitability of the Manager on a per-Portfolio basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the profitability of the Manager.

10. The Manager will provide general management services to each Portfolio, including overall supervisory responsibility for the general management and investment of the Portfolio's assets, and, subject to review and approval of the Board, will: (a) Set the Portfolio's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Portfolio's assets; (c) when appropriate, allocate and reallocate the Portfolio's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Portfolio's investment objective, policies and restrictions.

11. No trustee or officer of a Portfolio, or director or officer of the Manager, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for: (a) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Portfolio will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18890 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54680; File No. SR–CBOE–2006–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

November 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the ''Rule''), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid'') through January 31, 2007. No other changes are being made to the Rule. The text of the proposed rule change is available on the CBOE's Internet Web site (*http://www.cboe.com*), at the CBOE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through October 31, 2006.[7] As the duration period expired on October 31, 2006, the Exchange proposes to extend the effectiveness of the Rule through January 31, 2007.[8]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 5-day pre-filing notice and the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). See discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extending the duration of the Rule through December 14, 2005) and 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extending the Rule through March 14, 2006), 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (extending the duration of the Rule through July 14, 2006) and 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006)(SR–CBOE–2006–60) (extending the duration of CBOE Rule 6.45A(b) through October 31, 2006).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[14] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2006–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–86 and should be submitted on or before November 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18793 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

associated with the member exercises discretion, unless a specific exemption is available. The Exchange issued a regulatory circular to members informing them of the applicability of these Section 11(a)(1) requirements when the duration of the Rule was extended until December 14, 2005, March 14, 2006 and again on July 14, 2006. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006) and RG06–79 (July 31, 2006). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange must provide written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. The Exchange has requested that the Commission waive the 5-day pre-filing notice. The Commission has granted the request. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54681; File No. SR–NASD–2006–103]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to TRACE Requirements in Connection With the Exercise or Settlement of Options, Swaps, or Similar Instruments

November 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing: (1) To adopt NASD IM–6230, which would provide exemptive relief from various reporting requirements for transactions in TRACE-eligible securities executed in connection with the termination or settlement of a credit default swap or a similar instrument; and (2) to amend NASD Rule 6250 to not disseminate information on certain transactions in TRACE-eligible securities executed in connection with the exercise or settlement of an option or similar instrument or the settlement or termination of a credit default swap, any other type of swap, or similar instrument.

The text of the proposed rule change is available on NASD's Web site at *http://www.nasd.com,* at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is proposing NASD IM–6230, ''Reporting Transactions Executed in Connection with the Termination or Settlement of a Credit Default Swap,'' to provide exemptive relief from certain reporting requirements in NASD Rule 6230 for transactions in TRACE-eligible securities that occur in connection with the termination or settlement of CDSs or similar instruments. For certain transactions executed in connection with a broader class of instruments (options or similar instruments and CDSs, any other type of swaps, or similar instruments), NASD is proposing to amend its Rule 6250 to not disseminate information on transactions in TRACE-eligible securities executed in connection with the exercise, settlement, or termination of such instruments.

Background

When a CDS is subject to physical settlement, the buyer effects contract settlement by communicating to the seller, in a single or the first of two or more Notice(s) of Physical Settlement (or a similar document(s)) (''First NOPS'') within a fixed period, the TRACE-eligible security or securities, by CUSIP, that the buyer will deliver to the seller. However, following delivery of the First NOPS, the buyer may have additional business days (for example, three additional business days) to change the specific TRACE-eligible securities the buyer will deliver. Once the TRACE-eligible securities to be delivered are determined, the buyer delivers the TRACE-eligible securities to the seller and the seller delivers cash (*e.g.,* the par value of the securities or some other pre-determined amount per debt security).

Proposed NASD IM–6230

In Notice to Members 05–77 (November 2005), NASD clarified that a member that is a party to a transaction in TRACE-eligible securities that occurs in connection with the termination or settlement of a CDS [3] or a similar instrument must report the transaction to TRACE under NASD Rule 6230.[4] Since publishing this Notice to Members, NASD has received inquiries regarding the application of certain reporting requirements, including requirements relating to the time of execution, the application of the 15-minute reporting period, and how to report transactions when, under certain often-used CDS documentation providing for termination or settlement, parties may be permitted to substitute one TRACE-eligible security for another.

Timely Reporting

Under NASD Rule 6230, a member is required to provide timely reports for transactions in TRACE-eligible securities. In addition, in most instances, such transactions must be reported within 15 minutes of the time of execution to be considered timely.

NASD is proposing to provide exemptive relief from certain provisions of NASD Rule 6230 under proposed NASD IM–6230 for transactions that are executed in connection with the termination or settlement of a CDS, subject to certain conditions. Under proposed NASD IM–6230(a), such transactions would be deemed to be timely reported if they are reported before 8:15:00 a.m. E.T. on the next business day following receipt of the First NOPS, if the First NOPS was received on a business day, or before 6:30:00 p.m. on the next business day, if the First NOPS was received on a non-business day. In addition, a member would have to report such transactions using the TRACE memo field and include a ''CDS'' memo.[5] The CDS memo would allow NASD to properly categorize such transactions for purposes of examining the member for compliance with its reporting obligations and, as discussed below, for decisions to not disseminate the transaction information.

NASD also proposes that the ''time of execution'' be construed as the time the transaction report is submitted. Under proposed NASD IM–6230(b), a member would enter as the ''time of execution'' the time that the member submits the transaction report.[6]

NASD believes that the reporting scheme in proposed NASD IM–6230(a) and (b) is appropriate for several reasons. NASD believes that the ''time

[3] In a CDS, one party purchases protection from third-party credit risk from a counterparty seller. The purchaser of the protection is referred to as the ''buyer'' and the provider of the credit protection is referred to as the ''seller'' in proposed NASD IM–6230. Under a standard CDS agreement, an event such as a default is deemed a ''credit event.'' When a credit event occurs, a ''credit event notice'' is delivered by either the buyer or seller. Within a fixed period from the date a credit event notice is received (*e.g.,* 30 days), the parties must communicate specific information needed to settle the CDS.

[4] NASD Notice to Members 05–77 (November 2005), among other things, clarified that the reporting requirement applies only to those CDSs that are terminated or settled in whole or in part by the physical settlement involving TRACE-eligible securities, and has no application to CDSs that are cash-settled. NASD also addressed the TRACE reporting requirements for TRACE-eligible securities transactions executed in connection with a broader class of instruments—options and similar instruments, and CDSs, any other type of swaps and similar instruments—and not just those TRACE-eligible securities transactions executed in connection with CDSs.

[5] NASD also requires that such transactions be reported using the ''special price'' modifier or flag, which is appropriately used when a transaction is executed at a price based on arm's length negotiation and done for investment, commercial, or trading considerations, but does not appear to reflect current market pricing. *See* Notice to Members 05–77 (November 2005).

[6] If a transaction is reported before 8:15:00 a.m. E.T., NASD would assume that the First NOPS was delivered the prior business day. If a transaction is reported on or after 8:15:00 a.m. E.T., NASD would assume that the transaction was not reported timely. Firms would be expected to retain documentation, including the First NOPS, for transactions reported in connection with the termination or settlement of CDSs.

of execution'' for CDS-related transactions is of less regulatory importance than for other reported transactions in TRACE-eligible securities because the price of a transaction in a TRACE-eligible security executed pursuant to a CDS is arrived at under the terms of the CDS agreement that are established at the time the CDS is agreed upon by the parties. Consequently, NASD believes that a precise time of execution is not required for regulatory purposes because such transactions are terminations or settlements of executory contractual obligations that do not provide useful data in connection with price discovery, determining best execution, or assessing reasonable mark-ups (or mark-downs). Rather, NASD requires the reports of CDS-related transactions in order to facilitate NASD's surveillance of the corporate bond market for the detection of various fraudulent or manipulative acts and unfair practices. Therefore, NASD is proposing that the time of execution of such transactions mirror the time of reporting. Moreover, for the same reasons, NASD believes that applying the 15-minute reporting requirement to such transactions imposes an unnecessary regulatory burden at this time. In addition, NASD believes that waiving the 15-minute reporting requirement will allow CDS buyers and sellers to process the First NOPS in all cases efficiently at some time during the business day that the First NOPS is received or the following morning through the first 15 minutes that the TRACE system is open, or, if the First NOPS is received on a non-business day, throughout the next business day until 6:29:59 p.m. E.T. Finally, NASD represents that the substantial costs to NASD of receiving and reviewing for market surveillance purposes a large number of ''late'' transactions (and the related ''cancel/correct'' late reports, as discussed below) and the substantial costs to members in respect of transactions where the time of execution is not critical for the purposes of NASD's regulatory review are secondary, but significant, reasons for proposing the exemptive relief in proposed IM–6230(a) and (b).

Substitution of Securities; Exemption From Reporting; Exemption From Correction

NASD is also proposing that a limited group of transactions in TRACE-eligible securities that are executed in connection with the termination or settlement of a CDS be exempt from reporting and that a related group be exempt from the requirement to correct a previously transmitted erroneous trade report. Under proposed IM–6230(c), if a buyer submits the First NOPS and triggers the obligation of one or both parties to the CDS to report the TRACE-eligible securities transactions, and then substitutes another TRACE-eligible security for delivery, NASD would not require a member to submit a ''reversal'' trade report (to cancel the previously submitted report for a transaction in a TRACE-eligible security that did not occur as a result of the substitution and delivery of another TRACE-eligible security). In addition, NASD would not require the member to submit a transaction report (*i.e.*, a ''cancel/correct'' trade report using an as/of date) to report the transaction in the substituted TRACE-eligible debt security.

NASD believes that the proposed exemptive relief under NASD IM–6230(c) recognizes the nature of CDS-related transactions and provides for reporting, but does not affect adversely the settlement process or the market in CDSs. Several factors informed NASD's proposed exemptive provision in NASD IM–6230(c). First, NASD notes that certain CDSs—sometimes referred to as ''single name default swaps''—are not viewed as CDSs on a single debt security, but rather are considered a CDS on all of the issuer's debt securities of similar credit and seniority—*i.e.*, securities that are *pari passu*.[7] For purposes of a CDS, such debt securities of similar credit and seniority are viewed as virtually fungible within the issuer's capital structure. As a result, a purchaser of a CDS often may be permitted to choose from among several debt securities that are *pari passu* to make good delivery. NASD believes that the reporting of transactions in TRACE-eligible securities in connection with the termination or settlement of a CDS provides important market surveillance information that is not changed materially even if, subsequently, one or more of the specific TRACE-eligible securities reported initially to the TRACE system is substituted and a different TRACE-eligible security of the same issuer is delivered to effectuate settlement.

Also, NASD has determined that any additional regulatory information and regulatory benefit obtainable from the ''cancel/correct'' trade reports and ''late'' reports (for any TRACE-eligible security delivered in substitution, as described above) are outweighed by the substantial costs that would be incurred by both NASD and members by requiring such follow-up reporting.

Proposed Amendments to NASD Rule 6250

NASD Rule 6250 currently requires that information on all transactions in TRACE-eligible securities be disseminated immediately upon receipt of the transaction report, except transactions in TRACE-eligible securities that are purchased or sold pursuant to Rule 144A of the Securities Act of 1933 (''Rule 144A transactions''). NASD proposes to amend its Rule 6250 to not disseminate information on certain transactions in TRACE-eligible securities executed in connection with the exercise or settlement of an option or similar instrument or the settlement or termination of a CDS, any other type of swap, or similar instrument (hereinafter, the exercise, settlement or termination of such instruments is referred to collectively as ''option exercises and/or swap settlements''). NASD proposes that such information not be publicly disseminated because it does not contribute to price discovery and may cause investor confusion. NASD also proposes to re-number current NASD Rule 6250(b), the exception from dissemination that applies to Rule 144A transactions, as new NASD Rule 6250(b)(1).

As noted previously, NASD clarified that transactions in TRACE-eligible securities occurring as a result of such option exercises and/or swap settlements are required to be reported to TRACE.[8] However, although reported, NASD believes that the dissemination of pricing and other information on such transactions does not appear to provide market participants with information useful for price discovery purposes. NASD believes that this is due primarily to the fact that such options, CDSs, other types of swaps, and similar instruments are generally entered into significantly earlier than the occurrence of the option exercise and/or swap settlement. NASD notes that the agreements setting out the terms for these transactions generally determine the price of the TRACE-eligible securities at arm's length for investment, commercial, or trading purposes in a manner that tends not to be reflective of the current market price of the TRACE-eligible security as of the day and time that the transaction or transactions in TRACE-eligible securities occur (*e.g.*, at the option exercises and/or swap settlement),

[7] Securities that are *pari passu* are those that are entitled to be paid on an equal basis from the same pool of assets.

[8] *See supra* note 4.

which may be several weeks, months, or years later.

In addition, NASD is concerned that for some investors, especially retail investors, the dissemination of such pricing information may cause significant investor confusion. If a significant number of transactions occur in a specific TRACE-eligible security as a result of option exercises and/or swap settlements and, at the same time, other market participants are executing transactions in the same TRACE-eligible security, the pricing information that would be disseminated would reflect divergent prices for the same security during the same period. For example, if a credit event occurs with respect to the issuer of the TRACE-eligible security or securities that are the subject of a CDS, a number of transactions in such TRACE-eligible securities would be reported at par (*i.e.*, a price of 100) to TRACE and disseminated to the public when one or more CDSs are settled. At the same time, other transactions in the same TRACE-eligible security might be reported as executed at a price substantially discounted from par (*e.g.*, a price of 60) and immediately disseminated (unless they are Rule 144A transactions). NASD has seen several such scenarios unfold and believes that such price dissemination may confuse investors, particularly less sophisticated investors.

For these reasons, NASD proposes an exception to the general principle stated in NASD Rule 6250(a) requiring dissemination of transaction information of all TRACE-eligible securities except Rule 144A transactions. Proposed NASD Rule 6250(b)(2) provides that certain transactions that occur as a result of options exercises and/or swap settlements would not be disseminated. However, this proposed exception to dissemination is subject to certain important conditions. NASD represents that these conditions are intended to insure that the options, CDSs, other types of swaps, and similar instruments resulting in such transactions are bona fide and to limit the exception to TRACE transactions occurring as a result of instruments that, by the nature of their terms are not designed, at the time the agreement is entered into, to replicate, as option exercises and/or swap settlements, the then-current market price of the TRACE-eligible security.

First, the proposed exception to dissemination would apply only to options, CDSs, other types of swaps, or similar instruments that are in writing and express legal and enforceable contractual obligations. Second, such instruments must have a term of at least 20 business days and could not be exercised, terminated, or settled earlier than the end of the 20th business day from the date of issuance. NASD represents that this condition is intended to limit the dissemination exception by excluding short-term options or similar instruments because they are more likely to be utilized as proxies for current market transactions in the underlying TRACE-eligible securities.

The third condition is that the instrument must have an exercise or strike price that is fixed and out-of-the-money by at least 10 percent at the date of issuance, or a price formula that is fixed and results in an exercise or strike price that is out-of-the-money by at least 10 percent at the date of issuance, or a price formula that is fixed and results in a final price—combining any premium, installment or similar payment, and any strike or exercise price or similar term—that is out-of-the money by at least 10 percent at the date of issuance. Like the second condition above, NASD represents that this condition is intended to limit the dissemination exception to transactions that are not based on a current market price or negotiation or are not intended as a proxy for a current market transaction. For example, an option written deep in-the-money would be considered a proxy for a current market transaction and the exercise-related transaction would not be eligible for the TRACE dissemination exception. Similarly, the exercise-related transaction of an option with a pricing formula that at exercise utilizes the current market price or calls for a negotiation at the current market would not be eligible for the TRACE dissemination exception.[9] NASD believes that such formulas may result in transactions that provide important price discovery information to the market when disseminated and also are not likely to cause investor confusion if an investor seeks to determine the current market price of a particular TRACE-eligible security. Thus, as part of the third condition, NASD is proposing that the instrument be out-of-the money by at least 10 percent at issuance to ensure that instruments not be written ''near the money'' to serve as proxies for current market transactions. This may occur when two parties enter into an instrument expecting that, after the option or similar instrument is in place, one of them (or another party, as directed) will be able to move the current market price of an illiquid TRACE-eligible security by executing one or a few transactions in the security, resulting in the option or similar instrument becoming ''in-the-money'' and being exercised.

NASD also proposes to re-number current NASD Rule 6250(b), the exception to dissemination that applies to Rule 144A transactions, as new NASD Rule 6250(b)(1).

Effective Date

NASD would announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval, if the Commission approves this proposal. NASD represents that the effective date of the proposed rule change would be not more than 90 days following publication of the *Notice to Members* announcing any Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed limited, conditional exemptive provisions requiring the reporting of transactions executed in connection with the termination or settlement of a CDS or a similar instrument would protect investors and are in the public interest in that they would facilitate and enhance NASD's surveillance of the over-the-counter corporate debt market, while recognizing the particular characteristics of such transactions and practices relating to execution and settlement, and providing sufficient flexibility to avoid adversely affecting the market in CDSs and similar instruments. Further, NASD believes that not disseminating information on TRACE-eligible securities transactions executed in connection with the exercise or settlement of an option or similar instrument or the settlement or termination of a CDS, any other type of swap, or similar instrument is in the public interest and protects investors, particularly retail investors, because the dissemination of such information may cause significant investor confusion,

[9] For example, a transaction in a TRACE-eligible security occurring as a result of the exercise of a ''zero-strike'' option, an option which simply tracks the value of the underlying instrument (in this case, a TRACE-eligible security) and expires (or is exercised) at the then current market value of the instrument it is tracking, would not be eligible for the TRACE dissemination exception.

[10] 15 U.S.C. 78*o*–3(b)(6).

particularly for retail investors, and such information does not appear to contribute to price discovery by market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–103 and should be submitted on or before November 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18798 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54685; File No. SR–NYSE–2006–95]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Include an Additional 32 Securities in the Current Exchange Pilot Operating in Conjunction With the Implementation of Hybrid Market Phase 3

November 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The NYSE filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to include an additional 32 securities to participate in the Exchange's current pilot (''Pilot'') program which puts into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of NYSE HYBRID MARKET℠ (''Hybrid Market'')[6] Phase 3. The additional securities are identified in Exhibit 3 to the filing. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 5, 2006 the Commission approved an Exchange Pilot[7] to, among other things, put into operation certain proposed modifications to Exchange

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NYSE has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] The Hybrid Market was approved on March 22, 2006. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[7] Securities Exchange Act Release No. 54578, 71 FR 60216 (October 12, 2006) (SR–NYSE–2006–82). *See also* Securities Exchange Act Release No. 54610 (October 16, 2006), 71 FR 62142 (October 23, 2006) (SR–NYSE–2006–84) (amending the Pilot).

Rules that are currently pending[8] before the Commission to coincide with the Exchange's implementation of the Hybrid Market Phase 3. The Pilot commenced on October 6, 2006[9] and is scheduled to terminate on the close of business November 30, 2006.[10] The Pilot applies to a group of securities, known as Phase 3 Pilot securities (''Pilot securities'').[11]

The Exchange is currently in the process of phasing in the securities operating under the Pilot. As expected, the Pilot is operating with minimal problems and the benefits are proving invaluable. The Pilot is providing the Exchange with the opportunity to identify and address any system problems. Moreover, the Exchange has the ability to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions.

The Exchange further has the ability to have real time user interface that is proving very useful to the Exchange. In addition to its usefulness to the Exchange, the Pilot is providing the current users with essential practical experience with the new systems and processes in a well-modulated way, in real time and under real market conditions that cannot be completely replicated in the mock-trading environment.

The Exchange therefore seeks through this filing to include an additional 32 securities for participation in the Pilot. Among the securities the Exchange seeks to add to the Pilot is a security that was not listed on the Exchange when the Exchange initially sought approval for the Pilot. Specifically, the security traded under the symbol SAI was an initial public offering that occurred on October 13, 2006 subsequent to the Exchange's request to operate the Pilot and thus was not available to be included at that time.

The Exchange believes that allowing additional securities to participate in the Pilot will increase the number of users that may benefit from the enhanced educational and supervisory training experience that the Pilot provides. Specialist firms will be able to provide an increased number of individual specialists with the educational opportunity of real time experience under real market conditions that cannot be completely replicated in the mock-trading environment. It will further provide an increased number of the specialists firms' supervisory personnel with additional opportunities for supervisory training in real time and under real market conditions.

Accordingly, the Exchange believes that the inclusion of additional securities will only further the Exchange's ability to identify and address any system problems and to identify and incorporate beneficial system changes while providing the new users with real time education.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act[12] that a registered national securities exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[13] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Exchange has requested that the Commission waive the 30-day operative delay period for this ''non-controversial'' proposal.

The Commission has determined to waive the 30-day operative delay.[14] The Exchange states that this waiver will allow the Exchange to immediately implement this proposal, which will allow specialist firms to provide more of their specialists and supervisory personnel with the educational opportunity of real-time experience under real market conditions under the Pilot program. Inclusion of additional securities in the Pilot may allow the Exchange to identify and correct any system problems[15] and formulate any necessary corrective changes. Therefore, the Commission finds that it is consistent with the protection of investors and the public interest that the proposed rule change become effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60-days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] *See* Securities Exchange Act Release No. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (SR–NYSE–2006–65) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes) (''Omnibus Filing''); Securities Exchange Act Release No. 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (SR–NYSE 2006–76) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10). In addition, in SR–NYSE–2006–73, filed on September 13, 2006, and Amendment No. 1 thereto (filed on October 13, 2006), the Exchange proposes to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation.

[9] The changes related to stop orders and stop limit orders proposed in the Omnibus Filing were implemented on October 16, 2006 in order to give customers and member organizations sufficient time to make any changes necessary as a result of the elimination of stop limit orders.

[10] *See* Securities Exchange Act Release No. 54675 (October 31, 2006).

[11] Phase 3 Pilot Securities will also be posted on the Exchange's Web site.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] The Exchange states that, currently, the Pilot is operating with minimal problems.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at NYSE's Office of the Secretary.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–95 and should be submitted on or before November 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18791 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54686; File No. SR–NYSEArca–2006–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Revision of Certain Equity Transaction Fees

November 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE Arca. The Exchange submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') that applies to ETP Holders[5] executing certain round-lot transactions in NYSE-listed (Tape A) equity securities (other than Exchange Traded Fund (''ETF'') securities) on the Exchange. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the new rates became operative on October 1, 2006. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nysearca.com,* at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the section of its Fee Schedule that applies to ETP Holders executing certain round-lot transactions in NYSE-listed (Tape A) equity securities (other than ETF securities) on the Exchange.

The Fee Schedule currently provides that no transaction fee will be charged to ETP Holders for round-lot orders in NYSE-listed equity securities (other than ETF securities) that are executed in the NYSE Arca Book against inbound orders. The Exchange proposes to amend the Fee Schedule to provide that ETP Holders will be entitled to a $0.002 per share credit for such orders. The Exchange proposes to offer this credit in order to compete more effectively with other exchanges that are offering liquidity rebates in NYSE-listed equity securities.

The Exchange's Fee Schedule currently provides that a transaction fee of $0.001 per share will be charged to ETP Holders for round-lot orders in NYSE-listed equity securities (other than ETFs) that take liquidity from the NYSE Arca Book. The Exchange proposes to amend the Fee Schedule to provide that ETP Holders will be charged $0.003 per share for such orders, including orders received through the Intermarket Trading System (''ITS'').[6] In addition, the Exchange proposes to amend footnote 1 to the Fee Schedule to note that such fees will apply to orders received through ITS. The Exchange proposes to increase this fee in order to offset the proposed credit for round-lot orders in NYSE-listed equity securities (other than ETF securities) that are executed in the NYSE Arca Book against inbound orders, as described above.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* NYSE Arca Equities Rule 1.1(n).

[6] Since October 1, 2006, the effective date of the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''Linkage Plan''), connectivity between markets is provided pursuant to the Linkage Plan. The current ITS technology is used to effectuate both the ITS Plan and Linkage Plan. Therefore, the term ''ITS'' applies to the technology used to effectuate both the ITS Plan and the Linkage Plan.

The Exchange will continue to charge $0.001 per share for round-lot orders in NYSE-listed equity securities (other than ETF securities) routed outside the NYSE Arca Book.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by NYSE Arca. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–68 and should be submitted on or before November 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18829 Filed 11–7–06; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before January 8, 2007.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, System Accountant, Office of Investment, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, Office of Investment 202–205–7559 *carol.fendler@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''SBIC Management Assessment Questionnaire & License Application; Exhibits to SBIC License Application/ Management Assessment Questionnaire''.

Description of Respondents: Small business investment companies.

Form No's: 2181, 2182, 2183.

Annual Responses: 680.

Annual Burden: 10,880.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–18920 Filed 11–7–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5612]

60-Day Notice of Proposed Information Collection: DS 3072, Emergency Loan Application and Evacuation Documentation, OMB Control Number 1405–0150

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below.

The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Emergency Loan Application and Evacuation Documentation.
- *OMB Control Number:* OMB Control Number 1405–0150.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 3072.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 1000.
- *Estimated Number of Responses:* 1000.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 166 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from November 8, 2006.

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

- *E-mail: ASKPRI@state.gov.*
- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Monica A. Gaw, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9107 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The purpose of the DS–3072 is to process these emergency loans for destitute citizens and to document the safe and efficient evacuation of private U.S. citizens, dependents and third country nationals from abroad. The information will be used to process the emergency loan, facilitate reception and resettlement assistance in the United States and for debt collection. Respondents are private U.S. citizens and their dependents abroad who are destitute and in need of repatriation to the United States; private U.S. citizens and their dependents abroad who are in need of emergency medical and dietary assistance who are unable to obtain such services otherwise; and private U.S. citizens abroad and their dependents and third country nationals who are in need of evacuation when their lives are endangered by war, civil unrest, or natural disaster.

Methodology: The information is collected in person, by fax, or via mail. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: November 1, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–18870 Filed 11–7–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5611]

Culturally Significant Objects Imported for Exhibition Determinations: ''Jasper Johns: An Allegory of Painting, 1955–1965''

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 ''Jasper Johns: An Allegory of Painting, 1955–1965,'' 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 National Gallery of Art, Washington, DC, from on or about January 28, 2007 to on or about April 29, 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 Wolodymyr Sulzynsky, 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: November 2, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–18876 Filed 11–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5610]

Bureau of Educational and Cultural Affairs (ECA) Request for Proposals for the Fundraising, Construction, Development, Organization and Management of a U.S. Pavilion/ Exhibition at the World Expo 2010 Shanghai, China

Executive Summary: The Bureau of Educational and Cultural Affairs (ECA) of the Department of State requests proposals from private U.S. individuals, firms, associations and organizations (for profit and non-profit) for the fundraising, construction, development, organization and management of a U.S. pavilion/exhibition at the World Expo 2010 Shanghai China. The U.S. pavilion will be situated on a 6,000 square meter plot with a building footprint of 60% to 80% of the plot size. It could have multiple floors to a height not exceeding 20 meters. The Department will issue a ''letter of intent'' to the organization submitting the winning proposal authorizing that organization to proceed with fundraising to complete the U.S. Pavilion project. The letter will include guidelines on fundraising to be followed

by the winning organization and will establish a deadline for completion of all fundraising activities. Note that all prospective donors will be vetted with the Department of State for potential conflict of interest. Cost for a representative U.S. pavilion/exhibit for Expo Shanghai 2010 is estimated to range between $75 million to $100 million and will be the sole responsibility of winning organization. The Department of State is not now authorized, and does not in the future intend to seek authorization from the U.S. Congress, to provide funding for any aspect of the U.S. pavilion/exhibition at the World Expo 2010 Shanghai China. The successful applicant will be responsible for all costs associated with the design, development, construction, and management of all aspects of the U.S. Pavilion, as well as all support for the U.S. Commissioner General. The U.S. Pavilion shall be considered on loan to the U.S. Government, and the successful applicant shall be solely responsible for the disposition of the U.S. Pavilion at the conclusion of the World Expo 2010 Shanghai China. The aforementioned loan shall be treated as a gift to the U.S. Government.

Only after the organization is able to demonstrate that all funding required for this project is in hand will the Department of State sign a Memorandum of Understanding (MOU) with that organization, sign a Participation Contract with the Expo organizing body, and appoint a Commissioner General. Proposals from non-U.S. citizens or non-U.S. firms or organizations shall be deemed *ineligible for consideration.*

Authority: Overall authority for Department of State support for U.S. participation in international expositions is contained in Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452(a)(3), also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Pursuant to this authority, ECA is the Department bureau responsible for coordinating U.S. participation in the World Expo 2010 Shanghai China. Consequently, ECA will represent the U.S. Government in dealings with the organizers of the World Expo 2010 Shanghai China.

Background: The Government of China has invited the United States to participate in the 2010 World Exposition in Shanghai, China and the U.S. Government has advised the Chinese Government of its intention to participate with an official U.S. Pavilion. The World Expo 2010 Shanghai China will be held on specially constructed exhibition grounds. The Expo opens on May 1, 2010 and closes on October 31, 2010.

World Expo 2010 Shanghai China is a large-scale international exposition or ''world's fair'' sanctioned or ''registered'' by the Bureau of International Expositions (BIE), an international treaty organization established to sanction and monitor international exhibitions of long duration (over three weeks) and significant scale. Invitations to world's fairs are extended from the host government to other governments. The United States is not a member of the BIE, and the U.S. Commissioner General will therefore not be a formal member of the Steering Committee of the College of Commissioners General for the World Expo 2010 Shanghai China.

With a projected 70 million visitors, the World Expo 2010 Shanghai China offers an excellent opportunity to educate and inform foreign audiences about the United States and its people and to promote broad U.S. commercial interests around the world. U.S. participation in Expo 2010 Shanghai China will confirm the strength and importance of U.S.-China bilateral ties and promote mutual understanding between the people of China and the United States.

The overall theme of the Expo, ''Better City, Better Life'', will feature ''harmonious co-existence of diverse cultures, harmonious economic development, harmonious living in the age of science and technology, harmonious functioning of communities—the cell of the city—and harmonious interactions between urban and rural areas.''

The theme for the U.S. Pavilion Exhibition should be directly linked to the overall theme of the Expo. ECA would welcome proposals for an exhibition to showcase American expertise and trends in some or all of the following areas: sustainable economic development and urban planning, the history of urban transportation, the role of historic and cultural preservation as well as urban parks in animating urban life and promoting cultural tourism; educating for economically sound environmental practices; the role played by a city as a platform for the construction of social relationships and social space, whether formal or informal. Other exhibit themes related to the overall Expo theme may also be proposed. The design concept for the U.S. Pavilion exhibition should appeal to a general, non-expert audience.

The U.S. Pavilion at World Expo 2010 Shanghai China will be an official representation of the United States; ECA must therefore ensure that the U.S. exhibit is nonpolitical in nature, of the highest possible quality, and balanced and representative of the diversity of American political, social and cultural life. The pavilion/exhibit must maintain the highest level of scholarly integrity and meet the highest standards of artistic achievement and academic excellence.

The U.S. Pavilion will be used to promote U.S. commercial interests as well as highlight outstanding U.S. cultural and artistic achievements. The proposed design for the U.S. Pavilion should include functional space for three purposes: an exhibition area, a live performance area and an administration/hospitality lounge area.

Further information on the World Expo 2010 Shanghai China can be found at the official expo Web site: *http://www.expo2010china.com/*

Funding Limitations: Section 204 of PL 106–113 (22 U.S.C. 2452b) limits the support the Department of State may provide for U.S. participation in international expositions registered by the Bureau of International Expositions (BIE). This includes the World Expo 2010 Shanghai China. This Request for Proposals is intended to help identify a private U.S. individual, firm or organization interested in and capable of providing a complete pavilion/exhibit at the World Expo 2010 Shanghai China as a gift to the United States Government. The Department of State is not now authorized, and does not in the future intend to seek authorization from the U.S. Congress, to provide funding for any aspect of the U.S. exhibition at the World Expo 2010 Shanghai China.

Costs: The U.S. pavilion will be situated on a 6,000 square meter plot with a building footprint of 60% to 80% of the plot size. It could have multiple floors to a height not exceeding 20 meters. It is estimated that a representative US pavilion/exhibit exhibition in that space will cost between $75 million and $100 million costs would include, but not be limited to:

• *Design and construction* of a building to house the exhibit and provide and appealing welcome on the exterior façade; provide exterior landscaping; incorporate appropriate internal and external crowd control features;

• *Design* of the exhibition; development of the story line;

• *Raising all necessary funds;*

• *Production of* exhibits, audio-visual materials, films, DVDs, videos, posters and other promotional materials needed for the exhibit;

• *Promote and advertise* the U.S. exhibition and Pavilion;

• *Manage all administrative, personnel and exhibit costs,* including salaries, benefits, staff housing expenses, contracting and supplier costs and consulting fees as well as funding associated with guides, escorts, and gifts;

• *Transport,* travel, insurance, postage and shipping fees;

• *Security,* development and implementation of a security program for the U.S. Pavilion in consultation with the State Department and appropriate Chinese authorities;

• *Tear-down,* including removal of exhibits and return of the pavilion in the condition required by the Expo organizers;

• *Cultural* and informational programs associated with the exhibition, including, but not limited to, production of U.S. National Day activities;

• *Funding* all expenses associated with the U.S. Commissioner General; and

• *Creation and staffing* of facilities devoted to hosting all VIPs visiting the U.S. Pavilion.

Expo Guidelines: Interested parties may obtain copies of the General Regulations and Expo Guidelines from the World Expo 2010 Shanghai China offices in China at: Bureau of Shanghai World Expo Coordination, 3588 Pudong (S) Road, Shanghai 200125, China.

Proposals should be provided in a narrative of no more than twenty (20) pages, single-spaced, plus a detailed budget with necessary attachments and/or exhibits. The narrative and additional documents should outline in as much detail as possible plans for providing a U.S. exhibition at the World Expo 2010 Shanghai China. Proposals should address the following:

• Willingness to adhere to the General Regulations of the World Expo 2010 Shanghai China as stipulated by the Expo organizers, including restrictions and limitation related to construction;

• Track record of working with exhibitions and on the proposed theme;

• Experienced staff with language facility;

• Clear concept for the exhibit plan and storyline;

• Detailed fundraising plan listing intended individuals and institutions to be approached, description of donation and sample donation agreement;

• Detailed budget showing breakdown of budget items required for each aspect of the project development and implementation;

• Timeline detailing each step in the design, construction, and breakdown of the U.S. Pavilion as well as the development of the U.S. Pavilion content and;

• Commitment to consult closely with and follow the guidance of ECA and U.S. diplomatic officers in China.

Proposals should state clearly that all materials developed specifically for the project will be subject to review and approval by ECA.

Eligible applicants: Applications may be submitted by public and private organizations (non-profit and profit). Non-profit organization must meet the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

Contact Information to Request an Application Package: Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC, 20547, tel.: 202–453–8161; fax: 202–453–8168; or e-mail *OgulJE@state.gov* (with copies to PerezL@state.gov and *HarveyRH@state.gov*) for assistance. Please refer to Citizen Exchanges Shanghai Expo when making your request.

General Information Contact: James Ogul, Program Officer, telephone to 202–453–8161, fax to 202–453–8168 or e-mail at *OgulJE@state.gov.*

Non-profit organizations must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status. Failure to do so will cause your proposal to be declared technically ineligible.

Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, February 9, 2007.

Reference: Citizen Exchanges Shanghai Expo.

Submitting Applications

Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: Citizen Exchanges Shanghai Expo, Shanghai Program Management, ECA/PE, Room 224, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section at the U.S. Embassy in Beijing for its review.

Application Review Information

Review Process

Proposals will be deemed ineligible if they are not submitted by a U.S. citizen, corporation or U.S.-based organization and do not fully adhere to the General Regulations of the World Expo 2010 Shanghai China and the guidelines stated herein.

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as relevant

elements of the U.S. Mission in China will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines. A panel of senior U.S. Government employees and private sector experts will review eligible proposals. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. The final decision on a potential U.S. exhibitor will be at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs.

Review Criteria

Technically eligible proposals will be reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in the evaluation.

1. *Program planning to achieve exhibit objectives:* Proposals should clearly demonstrate how the planned exhibit will educate and inform foreign audiences about the United States and its people and promote broad U.S. commercial interests around the world, as well as how specifically it will address the theme and General Regulations of the Expo. Exhibit objectives should be reasonable, feasible, and flexible. The general concept for the pavilion structure should include three basic areas: an exhibition area, a live performance area and an administration/hospitality lounge area. The proposal should contain a detailed timeline and budget that demonstrate substantive undertakings and fundraising and logistical capacity.

2. *Institutional Capacity/Record/Ability:* Proposed personnel and institutional resources should be defined and adequate and appropriate to achieve the exhibit's goals. Proposals should demonstrate an institutional record of successful exhibit activities, including responsible fiscal management and full compliance with all BIE-registered Expo requirements. ECA will give serious weight to past performance and demonstrated potential of the staffing proposed for the project.

3. *Multiplier effect/impact:* Proposals should clearly state how exhibit content and related activities will strengthen long-term mutual understanding between the United States and China.

4. *Support of Diversity:* Proposals should demonstrate how plans will address ECA's requirement to encourage the involvement of participants from all traditionally underrepresented groups including women, racial and ethnic minorities and people with disabilities.

5. *Monitoring and Project Evaluation Plan:* Proposals that include a plan to measure the impact of the proposed U.S. exhibition, cultural and information programs are encouraged.

6. *Cost-effectiveness:* Proposals must include a proposed action plan and timeline for all aspects of the project with associated budget estimates. Proposals must also present a credible fundraising plan to fund all aspects of the U.S. Pavilion project. Note that prospective donors will be vetted with the State Department for potential conflict of interest.

Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

1. A program and financial reports no more than 90 days after the expiration of the award;

2. A program and financial reports every 90 days after the signature of the Memorandum of Understanding.

Agency Contacts

For questions about this announcement, contact: The Office of Citizen Exchanges, ECA/PE/C, Room 220, Citizen Exchanges Shanghai Expo, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC, 20547; Attention: James E. Ogul Tel.: 202–453–8161; Fax: 202–453–8168; *OgulJE@state.gov.*

For correspondence with the Bureau concerning this RFP should reference Citizen Exchanges Shanghai Expo.

Other Information:

Notice: The terms and conditions published in this Request for Proposals are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of this RFP does not constitute an intention to agree to work with any private sector exhibitor at the World Expo 2010 Shanghai China. ECA reserves the right to select the final U.S. exhibitor for the World Expo 2010 Shanghai China and to approve all elements of the exhibition and project. Decisions made based on indications of interest submitted in response to this RFP will be made solely by ECA and are final.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–18877 Filed 11–7–06; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832 (SC: 00001BH). Comments should be sent to OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, no later than December 8, 2006.

SUPPLEMENTARY INFORMATION: *Type of Request:* Regular Submission, extension of currently approved collection.

Title of Information Collection: TVA Accounts Payable Customer Satisfaction Survey.

Frequency of Use: On occasion.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 200.

Estimated Average Burden Hours per Response: 10 minutes.

Need for and Use of Information: This information collection will be distributed by e-mail to TVA's suppliers that receive remittance information by e-mail. The information collected will be used to evaluate current performance of the Accounts Payable Department (APD) which will identify areas for improvement and enable APD to provide better service to suppliers and facilitate commerce between TVA and its suppliers.

Terry G. Tyler,

General Manager, Architecture, Planning & Compliance, Information Services.

[FR Doc. E6–18820 Filed 11–7–06; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832 (SC: 000V7DC). Comments should be sent to the Agency Clearance Officer no later than January 8, 2007.

SUPPLEMENTARY INFORMATION:

Type of Request: Extension.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 4000.

Estimated Total Annual Burden Hours: 6000.

Estimated Average Burden Hours per Response: 1.5.

Need For and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs and determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

Terry G. Tyler,

General Manager, Architecture, Planning & Compliance, Information Services.

[FR Doc. E6–18867 Filed 11–7–06; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 453X)]

BNSF Railway Company—Abandonment Exemption—in King County, WA

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.65 miles of rail line, extending between milepost 10.60 and milepost 11.25, near Wilburton, in King County, WA. The line traverses United States Postal Service Zip Code 98005.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line will be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 8, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 20, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 28, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 13, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by November 8, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 30, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–18647 Filed 11–7–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34944]

Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—BNSF Railway Company

Pursuant to a written trackage rights agreement, BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Portland & Western Railroad, Inc. (PNWR), extending from the facilities of the Portland Terminal Railroad Company at Portland, OR, to Willbridge, OR, on (a) BNSF main track #1 between milepost 0.69 and milepost 4.32 and (b) BNSF main track #2 between milepost 0.91 and milepost 4.25 (including use of the crossover), a distance of approximately 3.6 miles.

The transaction was scheduled to be consummated on or after October 30, 2006, and the temporary trackage rights are scheduled to expire on December 30, 2006.

This transaction is related to two concurrently filed notices of exemption in STB Finance Docket No. 34945, *Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Union Pacific Railroad Company, and STB Finance Docket No. 34946, Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Portland Terminal Railroad Company*. In STB Finance Docket No. 34945, Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to PNWR over a 50-mile line of railroad extending between milepost 0.0 on UP's Portland Subdivision at Portland, OR, and milepost 720.9 on UP's Brooklyn Subdivision at Labish, OR. In STB Finance Docket No. 34946, Portland Terminal Railroad Company has agreed to grant temporary overhead trackage rights to PNWR over a 1.5-mile line of railroad extending between milepost 0.91 on BNSF's Fallbridge Subdivision and milepost 0.0 on UP's Portland Subdivision, all located near Union Station in Portland, OR. The trackage rights in these proceedings will connect to make a continuous detour route between Willbridge and Labish, OR, that will allow PNWR to continue to handle traffic while its line is undergoing rehabilitation and reconstruction.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34944, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided November 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–18899 Filed 11–7–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 2006.

The Department of 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 December 8, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1535–0105.
Type of Review: Revision.
Title: App. for recognition as natural guardian of minor not under legal guardianship & disposition of securities.
Form: PD F 2481.
Description: Used by natural guardian of minor to request disposition of securities.
Respondents: Individuals and households.
Estimated Total Burden Hours: 5 hours.

OMB Number: 1535–0104.
Type of Review: Revision.
Title: Application by survivors for payment of bond or check issued under Armed Forces Leave Act of 1946.
Form: PD F 2066.
Description: Used by survivors for payment of bonds issued under Armed Forces Leave Act of 1946.
Respondents: Individuals or households.
Estimated Total Burden Hours: 75 hours.

OMB Number: 1535–0068.
Type of Review: Revision.
Title: Regulations governing book-entry Treasury Bonds, Notes and Bills.
Description: Beginning in 1986, U. S. Treasury bonds, notes and bills were offered exclusively in book-entry form.
Respondents: Individuals or households.
Estimated Total Burden Hours: 1 hours.

OMB Number: 1535–0087.
Type of Review: Revision.
Title: Payment by banks and other financial institutions of U.S. Savings Bonds
Description: Qualified financial institutions are authorized to redeem eligible savings bonds and receive settlement through FRB check collection system.
Respondents: Business or other for-profits.
Estimated Total Burden Hours: 56,227 hours.

OMB Number: 1535–0009.
Type of Review: Revision.
Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.
Form: PD F 1851.
Description: Used to request reissue of savings bonds in the name of a trustee of a personal trust estate.

Respondents: Individuals or households.

Estimated Total Burden Hours: 12,500 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–18848 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 2006.

The Department of 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 December 8, 2006 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–XXXX.

Type of Review: New.

Title: Application, Permit and Report—Wine and Beer (Puerto Rico)—Application, Permit and Report—Distilled Spirits Products (Puerto Rico).

Form: TTB 5100.21 and 5110.51.

Description: TTB Form 5100.21 is a permit to compute the tax on, tax pay, and withdraw shipments of wine or beer from Puerto Rico to the United States, as substantively required by 27 CFR 26.93. TTB Form 5110.51 is a permit to compute the tax on, tax pay, and withdraw shipments of distilled spirits products from Puerto Rico to the United States, as substantively required by 27 CFR 26.78.

Respondents: Business or other for-profits.

Estimated Total Burden Hours: 6 hours.

OMB Number: 1513–0016.

Type of Review: Reinstatement.

Title: Drawback on Wines Exported.

Form: TTB 5120.24.

Description: Exporters of wines that were produced, packaged, manufactured, or bottled in the U.S. may file a claim for drawback of the taxes that have been paid or determined on the wine. This form enables TTB to protect the revenue and prevent fraudulent claims.

Respondents: Business or other for-profits.

Estimated Total Burden Hours: 94 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–18849 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before January 8, 2007.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following records and questionnaires:

Title: Tobacco Products Manufacturers—Notice for Tobacco Products TTB REC 5210/12, and Records of Operations, TTB REC 5210/1.

OMB Number: 1513–0091.

TTB Record Numbers: 5210/12 and 5210/1.

Abstract: Tobacco products manufacturers maintain a record system

showing tobacco and tobacco products receipts, production, and dispositions which support removals subject to tax; transfer in bond; and inventory records. These records are vital to tax enforcement.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 180.

Estimated Total Annual Burden Hours: One (1).

Title: Recordkeeping for Tobacco Products and Cigarette Papers or Tubes Brought from Puerto Rico to the U.S.

OMB Number: 1513–0108.

TTB Form or Record Number: None.

Abstract: The prescribed recordkeeping requirements apply to persons who ship tobacco products or cigarette papers or tubes from Puerto Rico to the United States. The records verify the amount of taxes to be paid and that any required bond is sufficient to cover unpaid liabilities.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Total Annual Burden Hours: One (1).

Title: Customer Survey Questionnaires for Applicants, Permittees, Claimants, and Others Doing Business with TTB.

OMB Number: 1513–XXXX (To be assigned).

TTB Form or Record Number: None.

Abstract: TTB, in an effort to improve its Customer Service, uses these questionnaires to keep track of its customer service quality and progress, as well as to identify potential needs, problems, and opportunities for improvement. These questionnaires will be used primarily in telephone interviews, but may be used on other occasions as well. The respondents are applicants, permittees, and claimants pursuant to the Federal Alcohol Administration Act, the Internal Revenue Code, and the TTB regulations. There is no cost to respondents other than their time, and responding to these customer service questionnaires is voluntary.

Current Actions: This is a new collection and it is being submitted for approval.

Type of Review: Regular (New Collection).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden Hours: 625.

Dated: November 2, 2006.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E6–18878 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change: American Re-Insurance Company (NAIC #10227)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: American Re-Insurance Company, a Delaware corporation, has formally changed its name to Munich Reinsurance American, Inc., effective September 5, 2006. A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to Munich Reinsurance American, Inc., Wilmington, Delaware. This new Certificate replaces the Certificate of Authority issued to this company under its former name. The underwriting limitation of $304,138,000 established for this company as of July 1, 2006, remains unchanged until June 30, 2007. Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2006 Revision, to reflect this change.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the company remains qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: November 1, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–9107 Filed 11–7–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 522a, the Department of the Treasury, Internal Revenue Service gives notice of a newly proposed system of records entitled ''Treasury/IRS 42.002—Excise Compliance Programs.''

DATES: Comments must be received no later than December 8, 2006. This new system of records will be effective December 18, 2006 unless the IRS receives comments which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Act Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: W. Ricky Stiff, Chief, Excise Tax Program, 1111 Constitution Ave., NW., Room 2016, Washington, DC 20224. Telephone number (202) 622–5521.

SUPPLEMENTARY INFORMATION: Currently the excise tax records in the proposed system are covered by IRS systems of records 24.046, 26.019, 42.001, and 42.021. However, the Excise Tax Compliance Programs have grown and become so distinct that they merit their own system of records. The Excise Tax Program covers a wide range of commercial business interests to

include, but not limited to: Highway Use Tax; Wagering; Communication and Air Transportation; Fuel Taxes; Retail (Truck and Trailer); Ship Passenger; Luxury (Passenger Vehicle) Tax; Manufacturer Taxes (Coal—Highway Tires—Gas Guzzler); Foreign Insurance; Sport Fishing, and Ozone Depleting Chemicals.

Excise Tax matters generally involve businesses. However, the requirement to report activity and submit information, applies to individuals, as well as businesses, engaged in activity subject to Excise Tax. For an example, an individual, sole proprietor, independent, or tanker truck owner who carries fuel, would be required to file Form 2290 (Highway Use Tax) and Form 720–CS (Carrier Summary), an information return on fuel shipments. This is also applicable when an IRS Fuel Compliance Officer discovers an IRC section 6715 dyed diesel penalty, if the discovery was witnessed by a police officer participating in the roadside check. In such an instance, the name of the police officer may be recorded as part of the case record.

A proposed rule to exempt this system of records from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) will be published separately in the **Federal Register**.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records entitled ''Treasury/IRS 42.002—Excise Compliance Programs'' is published in its entirety below.

Dated: September 27, 2006.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

TREASURY/IRS 42.002

SYSTEM NAME:

Excise Compliance Programs—Treasury/IRS.

SYSTEM LOCATION:

SBSE (Excise Program) area offices and IRS Campuses. See IRS Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information about individuals engaged in any taxable activity related to Excise Taxes; the filing, preparing, or transmitting of Federal Excise Taxes; or witnesses or other parties with knowledge of such taxable activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information about individuals that are the subject of Excise Compliance Programs administered by the Internal Revenue Service or records pertaining to witnesses or other parties with knowledge of such taxable activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 26 U.S.C. 7801.

PURPOSE:

These records are used to administer the Federal Excise Compliance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Disclosure of return and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrievable by individual name, taxpayer identification number (Social Security Number, employer identification number or other IRS assigned identification number), and document locator number.

SAFEGUARDS:

Access controls are not less than those published in IRM 25.10.1, Information Technology (IT) Security Policy and Guidance, and IRM 1.16, Physical Security Program.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM 1.15, Records Management.

SYSTEM MANAGER(S) AND ADDRESS:

Commissioner SB/SE (Excise Program), See IRS appendix A for addresses.

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining whether the system contains a record pertaining to a particular individual. The records are exempt under 5 U.S.C. 552a(k)(2) from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, subpart C, appendix B. The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Filed IRS Forms 720, 720–TO/CS, 637, 2290, 8849; Customs Form 7501, Entry Summary; Dyed diesel fuel inspections; individuals engaged in any activity related to excise taxes, or the filing, preparing, or transmitting of excise taxes; witnesses or other parties with knowledge of such activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

[FR Doc. E6–18851 Filed 11–7–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
November 8, 2006

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142

National Primary Drinking Water Regulations: Ground Water Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141 and 142

[EPA–HQ–OW–2002–0061; FRL–8231–9]

RIN 2040–AA97

National Primary Drinking Water Regulations: Ground Water Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is promulgating a National Primary Drinking Water Regulation, the Ground Water Rule, to provide for increased protection against microbial pathogens in public water systems that use ground water sources. This final rule is in accordance with the Safe Drinking Water Act as amended, which requires the Environmental Protection Agency to promulgate National Primary Drinking Water Regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems.

The Ground Water Rule establishes a risk-targeted approach to target ground water systems that are susceptible to fecal contamination, instead of requiring disinfection for all ground water systems. The occurrence of fecal indicators in a drinking water supply is an indication of the potential presence of microbial pathogens that may pose a threat to public health. This rule requires ground water systems that are at risk of fecal contamination to take corrective action to reduce cases of illnesses and deaths due to exposure to microbial pathogens.

DATES: This final rule is effective on January 8, 2007. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 8, 2007. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern time on November 22, 2006, as provided in 40 Code of Federal Regulations (CFR) 23.7. The compliance date, unless otherwise noted, for the rule requirements is December 1, 2009.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OW–2002–0061. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 54815 (September 19, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Crystal Rodgers, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5275; e-mail address: *rodgers.crystal@epa.gov.* For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

Entities potentially regulated by the Ground Water Rule (GWR) are public water systems (PWSs) using ground water as a drinking water source. Regulated categories and entities include the following:

Category	Examples of regulated entities
Industry	Public ground water systems.
State, Local, Tribal or Federal Governments.	Public ground water systems.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria found in § 141.400 of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations Used in This Document

AIDS Acquired Immune Deficiency Syndrome
AGI Acute Gastrointestinal Illness
AWWA American Water Works Association
ASDWA Association of State Drinking Water Administrators
AWWARF American Water Works Association Research Foundation
AWWSCo American Water Works Service Company
BGLB Brilliant green lactose bile broth
BGM Buffalo Green Monkey
BMPs Best Management Practices
CAFO Concentrated Animal Feeding Operation
CBI Confidential Business Information
CCR Consumer Confidence Report
CDBG Community Development Block Grant
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulation
COI Cost of Illness
CT The Residual Concentration of Disinfectant (mg/L) Multiplied by the Contact Time (in minutes)
CWS Community Water System
CWSS Community Water System Survey
DBPs Disinfection Byproducts
DWSRF Drinking Water State Revolving Fund
EA Economic Analysis
EPA United States Environmental Protection Agency
FR Federal Register
GAO United States Government Accountability Office
GI Gastrointestinal
GWUDI Ground Water Under the Direct Influence of Surface Water
GWR Ground Water Rule
GWS Ground Water System
HAV Hepatitis A Virus
HRRCA Health Risk Reduction and Cost Analysis
HSA Hydrogeologic Sensitivity Assessment
ICR Information Collection Request
IESWTR Interim Enhanced Surface Water Treatment Rule
IRFA Initial Regulatory Flexibility Analysis
LTB Lauryl tryptose broth
m Meters
mL Milliliters
MCL Maximum Contaminant Level
mg/L Milligrams per Liter
MPNIU Most Probable Number of Infectious Units
MRDL Maximum Residual Disinfectant Level
MWCO Molecular Weight Cut-Off
NCWS Non-Community Water System
NDWAC National Drinking Water Advisory Council
NF Nanofiltration
NODA Notice of Data Availability
NTNCWS Non-Transient Non-Community Water System
NTTAA National Technology Transfer and Advancement Act of 1995
NPDWR National Primary Drinking Water Regulation
O&M Operation and Maintenance

OMB Office of Management and Budget
P–A Presence-absence
PCR Polymerase Chain Reaction
PNR Public Notification Rule
PWS Public Water System
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RO Reverse Osmosis
RT–PCR Reverse Transcriptase—Polymerase Chain Reaction
SAB Science Advisory Board
SBREFA Small Business Regulatory Enforcement Fairness Act
SD Standard Deviation
SDWA Safe Drinking Water Act
SDWIS Safe Drinking Water Information System
SEFA Small Entity Flexibility Analysis
Stage 2 DBPR Stage 2 Disinfectants and Disinfection Byproducts Rule
SWAP Source Water Assessment Program
SWTR Surface Water Treatment Rule
TCR Total Coliform Rule
TNCWS Transient Non-Community Water System
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act
US United States
USGS United States Geological Survey
UV Ultraviolet Radiation
VSL Value of Statistical Life
WHO World Health Organization
WTP Willingness To Pay

Table of Contents

I. General Information
II. Summary
A. Why Is EPA Promulgating the GWR?
B. What Does the GWR Require?
1. Sanitary Surveys
2. Source Water Monitoring
3. Treatment Technique Requirements
4. Compliance Monitoring
C. How Has the Final Rule Changed From What EPA Proposed?
D. Does This Regulation Apply to My Water System?
III. Background
A. What Is the Statutory Authority for the GWR?
B. What Is the Regulatory History of the GWR and How Were Stakeholders Involved?
C. What Public Health Concerns Does the GWR Address?
1. Introduction
2. Waterborne Disease Outbreaks in Ground Water Systems
3. Microbial Contamination in Public Ground Water Systems
4. Potential Risk Implications From Occurrence Data
IV. Discussion of GWR Requirements
A. Sanitary Surveys
1. What Are the Requirements of This Rule?
2. What Is EPA's Rationale for the GWR Sanitary Survey Requirements?
3. What Were the Key Issues Raised by Commenters on the Proposed GWR Sanitary Survey Requirements?
B. Source Water Monitoring
1. What Are the Requirements of This Rule?
2. What Is EPA's Rationale for the GWR Source Water Monitoring Requirements?
3. What Were the Key Issues Raised by Commenters on the Proposed GWR Source Water Monitoring Requirements?
C. Corrective Action Treatment Techniques for Systems With Significant Deficiencies or Source Water Fecal Contamination
1. What Are the Requirements of This Rule?
2. What Is EPA's Rationale for the GWR Treatment Technique Requirements?
3. What Were the Key Issues Raised by Commenters on the Proposed GWR Treatment Technique Requirements?
D. Providing Notification and Information to the Public
1. What Are the Requirements of This Rule?
2. What Is EPA's Rationale for the Public Notice Requirements?
3. What Were the Key Issues Raised by Commenters on the Proposed GWR Public Notification Requirements?
E. What Are the Reporting and Recordkeeping Requirements for Systems?
1. Reporting Requirements
2. Recordkeeping Requirements
3. What Were the Key Issues Raised by Commenters on the Proposed GWR Reporting and Recordkeeping Requirements for Systems?
F. What Are the Special Primacy, Reporting, and Recordkeeping Requirements for States?
1. Primacy Requirements
2. Reporting Requirements
3. Recordkeeping Requirements
4. What Were the Key Issues Raised by Commenters on the Proposed GWR Special Primacy, Reporting, and Recordkeeping Requirements for States?
G. Variances and Exemptions
1. Variances
2. Exemptions
V. Explanation of Extent of GWR
A. Mixed Systems
B. Cross-Connection Control
VI. Implementation
VII. Economic Analysis (Health Risk Reduction and Cost Analysis)
A. How Has the Final Rule Alternative Changed From the Proposed Rule Alternative?
B. Analyses That Support This Rule
1. Occurrence Analysis
2. Risk Analyses
C. What Are the Benefits of the GWR?
1. Calculation of Baseline Health Risk
2. Calculation of Avoided Illnesses and Deaths
3. Derivation of Quantified Benefits
4. Nonquantifiable Benefits
5. How Have the Benefits Changed Since the Proposal?
D. What Are the Costs of the GWR?
1. Summary of Quantified Costs
2. Derivation of Quantified Costs
3. Nonquantifiable Costs
4. How Have the Costs Changed Since the Proposal?
E. What Is the Potential Impact of the GWR on Households?
F. What Are the Incremental Costs and Benefits of the GWR?
G. Are There Any Benefits From Simultaneous Reduction of Co-Occurring Contaminants?
H. Is There Any Increase in Risk From Other Contaminants?
I. What Are the Effects of the Contaminant on the General Population and Groups Within the General Population That Are Identified as Likely To Be at Greater Risk of Adverse Health Effects?
1. Risk of Acute Viral Illness to Children and Pregnant Women
2. Risk of Viral Illness to the Elderly and Immunocompromised
J. What Are the Uncertainties in the Risk, Benefit, and Cost Estimates for the GWR?
1. The Baseline Numbers of Ground Water Systems, Populations Served, and Associated Disinfection Practice
2. The Numbers of Wells Designated as More Versus Less Vulnerable
3. The Baseline Occurrence of Viruses and *E. coli* in Ground Water Wells
4. For the Sanitary Survey Provisions, the Percentage of Systems Identified as Having Significant Deficiencies, the Percentage of These Deficiencies That Are Corrected, and State Costs for Conducting Surveys
5. The Predicted Rates at Which Virally Contaminated (and Non-Contaminated) Wells Will Be Required To Take Action After Finding *E. coli* Ground Water Sources
6. The Infectivity of Echovirus and Rotavirus Used to Represent Viruses That Occur in Ground Water
7. The Costs of Illnesses Due to Ingestion of Contaminated Ground Water
8. The Costs of Taking Action After Finding *E. coli* in Ground Water Sources
9. Nonquantifiable Benefits
10. Optional Assessment Source Water Monitoring
11. Corrective Actions and Significant Deficiencies
12. Uncertainty Summary
K. What Is the Benefit/Cost Determination for the GWR?
L. What Were Some of the Major Comments Received on the Economic Analysis and What Are EPA's Responses?
1. Costs
2. Benefits
3. Risk Management
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
1. Energy Supply
2. Energy Distribution
3. Energy Use

I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Analysis of the Likely Effect of Compliance With the GWR on the Technical, Financial, and Managerial Capacity of Public Water Systems
IX. Consultation With Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services; and Peer Review
X. References

II. Summary

This section includes a discussion of the purpose of the Ground Water Rule (GWR) and a summary of the GWR requirements.

A. Why Is EPA Promulgating the GWR?

EPA is promulgating the GWR to provide for increased protection against microbial pathogens, specifically viral and bacterial pathogens, in public water systems (PWSs) that use ground water sources. EPA is particularly concerned about ground water systems (GWSs) that are susceptible to fecal contamination because these systems may be at risk of supplying water that contains harmful microbial pathogens. Viral pathogens found in GWSs may include enteric viruses such as Echovirus, Coxsackie viruses, Hepatitis A and E, Rotavirus and Noroviruses (*i.e.*, Norwalk-like viruses) and enteric bacterial pathogens such as *Escherichia coli* (most *E. coli* is harmless but a few species are pathogenic, including *E. coli* O157:H7), *Salmonella* species, *Shigella* species, and *Vibrio cholerae*. Ingestion of these pathogens can cause gastroenteritis or, in certain cases, serious illnesses such as meningitis, hepatitis, or myocarditis. Health implications in sensitive subpopulations (*e.g.*, children, elderly, immuno-compromised) may be severe (*e.g.*, hemolytic uremic syndrome) and may cause death.

One goal of the GWR is to identify and target GWSs that are susceptible to fecal contamination because such contamination is the likely source of viral and bacterial pathogens in drinking water supplies. Ground water is fecally contaminated when fecal indicators (*e.g., E. coli*, enterococci, or coliphage) are present. While fecal indicators typically are not harmful when ingested, their presence demonstrates that there is a pathway for pathogenic viruses and bacteria to enter ground water sources. Another key objective of the rule is to protect public health by requiring these higher risk GWSs to monitor and, when necessary, take corrective action. Corrective action can include correcting all significant deficiencies; providing an alternate source of water; eliminating the source of contamination; or providing treatment that reliably achieves at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) for each contaminated ground water source. Each of these corrective actions is intended to remove all or nearly all fecal contamination, including both viral and bacterial pathogens. This rule implements section 1412(b)(8) of the 1996 Safe Drinking Water Act (SDWA) Amendments to promulgate a rule requiring GWSs to disinfect ''as necessary.'' The risk-targeted approach in this rule is a critical distinction from the approach outlined in the 1986 SDWA, which would have required all PWSs using surface water or ground water to disinfect. Because there are so many GWSs (approximately 147,000) in the United States, such a requirement would have been a great challenge for systems and States to implement.

This rule is necessary to protect public health because current regulatory provisions for GWSs (for example, sanitary survey requirements in the Total Coliform Rule (TCR) (54 FR 27544, June 29, 1989) (USEPA, 1989a)) do not adequately address fecal contamination at the ground water source. In fact, no Federal regulation exists that requires either monitoring of ground water sources or corrective action upon finding fecal contamination or identifying a significant deficiency during a sanitary survey. In addition, the U.S. Government Accountability Office (GAO) 1993 report (USGAO, 1993) found that many sanitary surveys did not evaluate one or more of the components that EPA recommended be evaluated, and that efforts to ensure correction were often limited. Also, GAO found that follow-up on major problems was often lacking. Moreover, the report found that problems associated with system infrastructure identified during sanitary surveys frequently remain uncorrected. The GWR provides much needed public health protection by requiring systems that do not treat their ground water sources to monitor their ground water source and to take corrective actions when fecal contamination or a significant deficiency is found.

In addition, EPA has evaluated data on outbreaks and the occurrence of waterborne viral and bacterial pathogens and indicators of fecal contamination in ground water supplying PWS wells. These data indicate that there is a subset of GWSs that are susceptible to fecal contamination; therefore, EPA believes that risk management strategies are needed to protect public health. Specifically, the Centers for Disease Control and Prevention (CDC) reports that between 1991 (the year in which the TCR became effective) and 2000, GWSs were associated with 68 waterborne disease outbreaks that caused 10,926 illnesses (Moore *et al.* (1993); Kramer *et al.* (1996); Levy *et al.* (1998); Barwick *et al.* (2000); and Lee *et al.* (2002)). These outbreaks accounted for 51 percent of all waterborne disease outbreaks in the United States during that time period. The major deficiencies identified by the CDC report as the likely cause of the outbreaks were source water contamination and inadequate treatment (or treatment failures); see Section III.C.2 for a summary of these outbreak data. Studies of viral and bacterial pathogens and/or fecal indicator occurrence in ground waters that supply PWSs show that dozens of the public ground water wells sampled had fecal indicator or viral presence in their wells. See Section III.C.3 of this preamble for a summary of occurrence studies. Based on these outbreak and occurrence data, along with concern about lack of monitoring and follow-up actions for GWSs, EPA has concluded that GWSs need to implement targeted, risk management strategies to protect public health from bacterial and viral pathogens in fecally contaminated ground water sources.

To provide a flexible, risk-targeted approach to achieve public health protection, this rule builds on existing State programs—some that emphasize the importance of disinfection and others that emphasize assessments and technical assistance—to identify and target susceptible GWSs. In addition, the GWR establishes treatment technique requirements, which provide public GWSs with multiple options to correct source water fecal contamination and significant deficiencies that present a public health risk. Furthermore, this rule establishes compliance monitoring requirements to ensure that treatment effectiveness is maintained.

B. What Does the GWR Require?

The GWR establishes a risk-targeted approach to identify GWSs susceptible to fecal contamination and requires corrective action to correct significant deficiencies and source water fecal contamination in public GWSs. A central objective of the GWR is to identify the subset of ground water sources that are at higher risk of fecal contamination among the large number

of existing GWSs (approximately 147,000), and then further target those systems that must take corrective action to protect public health. This risk-targeting strategy includes the following:

- Regular GWS sanitary surveys to check for significant deficiencies in eight key operational areas;
- A flexible program for identifying higher risk systems through existing TCR monitoring and State determinations; and
- Ground water source monitoring to detect fecal contamination at targeted GWSs that do not provide 4-log treatment of viruses.

Measures to protect public health include the following:

- Treatment technique requirements to address sanitary survey significant deficiencies and fecal contamination in ground water; and
- Compliance monitoring to ensure that 4-log treatment of viruses is maintained where it is used to comply with this rule.

To meet the treatment technique requirements of this rule, GWSs with a significant deficiency or evidence of source water fecal contamination, following consultation with their primacy agency (herein referred to as ''the State''), must implement one or more of the following corrective action options: Correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) for each ground water source. Each of these corrective actions is intended to remove all or nearly all fecal contamination, including both viral and bacterial pathogens. In addition, the GWS must inform its customers of any uncorrected significant deficiencies or fecal indicator-positive ground water source samples.

The following sections provide more detailed information on the provisions of the GWR.

1. Sanitary Surveys

Sanitary surveys are an important tool for identifying potential vulnerabilities to fecal contamination at GWSs. The final GWR includes Federal sanitary survey requirements for all GWSs for the first time. This rule requires States, as a condition for primacy, to perform regular comprehensive sanitary surveys of the following eight critical components to the extent that they apply to the individual water system being surveyed: (1) Source; (2) treatment; (3) distribution system; (4) finished water storage; (5) pumps, pump facilities, and controls; (6) monitoring, reporting, and data verification; (7) system management and operation; and (8) operator compliance with State requirements. This rule includes conditions of primacy in 40 CFR part 142 under which States will have until December 31, 2012 to complete the initial sanitary survey cycle for community water systems (CWSs), except those that meet performance criteria, and until December 31, 2014 to complete the initial sanitary survey cycle for all non-community water system (NCWSs) and CWSs that meet performance criteria (refer to Section IV.A.1 for crtieria). Following the initial sanitary survey cycle, States must conduct these surveys every three years for CWSs (defined in § 141.2), and every five years for all NCWSs and CWSs that meet certain performance criteria as discussed in Section IV.A.1.

If a significant deficiency is identified as a result of a sanitary survey, the system must take corrective action. If the system does not complete corrective action within 120 days of receiving notification from the State, or is not in compliance with a State-approved corrective action plan and schedule, the system will be in violation of the treatment technique requirements of this rule.

The final GWR sanitary survey provision provides comprehensive and effective public health protection by specifying the scope and frequency of sanitary surveys and by requiring corrective action for systems with significant deficiencies.

2. Source Water Monitoring

This rule requires triggered source water monitoring and provides States with the option to require assessment source water monitoring. Source water monitoring is an effective tool to target at-risk systems that must take corrective action to protect public health. Indications of risk may come from total coliform monitoring, hydrogeologic sensitivity analyses, or other system-specific data and information.

In this rule, a GWS with a distribution system TCR sample that tests positive for total coliform is required to conduct triggered source water monitoring to evaluate whether the total coliform presence in the distribution system is due to fecal contamination in the ground water source. A GWS that does not provide at least 4-log treatment of viruses must conduct triggered source water monitoring upon being notified that a TCR sample is total coliform-positive. Within 24 hours of receiving the total coliform-positive notice, the system must collect at least one ground water sample from each ground water source (unless the GWS has an approved triggered source water monitoring plan that specifies the applicable source for collecting source samples). The GWS must test the ground water source sample(s) for the presence of one of three State-specified fecal indicators (*E. coli,* enterococci, or coliphage). If the source sample is fecal indicator-positive, this rule requires the GWS to notify the State and the public. Unless directed by the State to take immediate corrective action, the GWS must collect and test five additional source water samples for the presence of the same State-specified fecal indicator within 24 hours. If any one of the five additional source water samples tests positive for the State-specified fecal indicator (*E. coli,* enterococci, or coliphage), this rule requires the GWS to notify the State and the public and comply with the treatment technique requirements, which require the system to take one of four corrective actions discussed in the following section. The compliance date of the triggered source water monitoring requirement is December 1, 2009.

As a complement to the triggered source water monitoring provision, States have the option of requiring GWSs to conduct assessment source water monitoring. This flexible provision gives States the opportunity to target higher risk GWSs for additional source water monitoring and evaluation. The State may require a GWS to conduct assessment source water monitoring as needed. EPA recommends that States use Hydrogeologic Sensitivity Assessments (HSAs) and TCR/triggered source water monitoring results, along with other information to identify higher risk systems for assessment source water monitoring. For assessment source water monitoring, EPA recommends that GWSs take 12 monthly samples and test them for one of the GWR indicators (*E. coli*, enterococci, or coliphage). Corrective action for systems performing assessment source water monitoring is determined by the State.

3. Treatment Technique Requirements

This rule requires a GWS to comply with the treatment technique requirements if a significant deficiency is identified during a sanitary survey. Also, the rule requires a GWS to comply with the treatment technique requirements if one of the five additional ground water source samples (or at State discretion, the initial source

sample) has tested positive for fecal contamination (*i.e.*, the sample is positive for one of the three fecal indicators and is not invalidated by the State). The treatment technique requires that a GWS implement at least one of the following corrective actions: correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses. Furthermore, the GWS must inform the public served by the water system of any uncorrected significant deficiencies and/or fecal contamination in the ground water source. The compliance date of the treatment technique requirements is December 1, 2009.

4. Compliance Monitoring

Compliance monitoring requirements are the final defense against viral and bacterial pathogens provided by this rule. All GWSs that provide at least 4-log treatment of viruses using chemical disinfection, membrane filtration, or a State-approved alternative treatment technology must conduct compliance monitoring to demonstrate treatment effectiveness. The compliance date of the compliance monitoring requirement is December 1, 2009.

C. How Has the Final Rule Changed From What EPA Proposed?

The primary elements of the proposed GWR were sanitary surveys, triggered monitoring, HSAs, routine monitoring, corrective action, and compliance monitoring. EPA received numerous comments on the proposed GWR and has carefully considered those comments in developing the final GWR. This consideration has led to a number of changes that the Agency believes will result in a more flexible, more targeted, more protective final GWR.

Most of the changes are minor and are discussed throughout this preamble in the pertinent sections. The most significant change from the proposed rule to the final rule is to the routine monitoring provision. The proposed routine monitoring provision would have required GWSs in sensitive aquifers, as defined by a State performed HSA, to collect monthly source water samples.

EPA received many negative comments on the HSA provision. Some States said that the proposed GWR did not allow sufficient time to conduct the HSA prior to the start of routine monitoring, which would result in GWSs in non-sensitive aquifers being required to monitor. Others stated that they would not do the HSA; rather, they would require all GWSs to conduct routine monitoring. In addition, EPA received comments that the routine monitoring provision was too burdensome.

If the HSA provision would not be implemented in many States to target the routine monitoring to systems in sensitive aquifers that are most at risk, then the Agency agrees with the commenters that the routine monitoring provision would be overly burdensome. This is because some systems, located in non-sensitive aquifers, would be conducting routine monitoring unnecessarily. Moreover, EPA now believes that it is more difficult to capture contamination than estimated in the proposal, which further highlights the importance of correctly identifying systems for which source water monitoring would be prudent. Furthermore, commenters strongly supported revision of the GWR proposal to maximize State flexibility and discretion in making system-specific decisions.

Given the importance of correctly targeting systems for source water monitoring, in conjunction with the State's desire for enough flexibility to ensure sensible decisions on a case-by-case basis, EPA decided to redesign the source water monitoring provision. Accordingly, the final rule does not include a national requirement for HSAs and routine monitoring for systems in sensitive aquifers. Rather, EPA concludes that the States are in the best position to assess which systems would most benefit from a source water monitoring program. The final provision is similar to routine monitoring but is now optional for States and has been renamed assessment source water monitoring. States argued in their comments that the information available to them from other programs such as source water assessments, wellhead protection plans, and historical data would be important factors to consider when determining the need for source water monitoring. Because States are best able to identify higher risk systems, the final GWR provides States with the option to require GWSs to perform assessment source water monitoring. The Agency finds the comments received on the proposal to be persuasive and to support the approach in the final GWR.

The purpose of the optional assessment source water monitoring requirement is to allow States to target such monitoring to GWSs that the State believes are at higher risk for fecal contamination. States specifically requested this flexibility and discretion in their comments to EPA. The flexibility of this provision provides many benefits. First, it gives States the ability to make case-by-case determinations of the need for source water monitoring. Given the variety of aquifer and well conditions across the United States and even within each State, State programs make more sense than a nationally-directed program. Second, the optional assessment source water monitoring requirement allows States to require assessment source water monitoring as needed. System conditions change over time and the ability of States to target this requirement to a specific system and time period will reduce burden and be critical to protecting public health by allowing States to focus attention on problem systems. The lack of time constraints will also allow States to prioritize susceptibility assessments and further target those systems most in need.

EPA recommends that States use HSAs as one tool to identify high risk systems for assessment source water monitoring. HSAs can be an effective screening tool to identify sensitive hydrogeologic settings that transmit water, and any pathogens in that water, quickly from the surface to the aquifer. States have other information available to them to target high risk systems, such as source water assessments, wellhead protection plans, and historical monitoring data. Data on past indications of source water fecal contamination, particularly from TCR monitoring, in combination with GWR triggered source water monitoring results, can be another important tool.

D. Does This Regulation Apply to My Water System?

The requirements in this final rule apply to all PWSs (CWSs and NCWSs) that use ground water sources, in whole or in part (including consecutive systems that receive finished ground water from another PWS), except that they do not apply to PWSs that combine all of their ground water with surface water or ground water under the direct influence of surface water (GWUDI) prior to treatment under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (USEPA, 1989b). The GWR ensures that the same level of public health protection is provided to persons served solely by GWSs as to those served by mixed systems supplied by both ground water and surface water sources. See Section V.A of this preamble for more information on mixed systems.

III. Background

This section includes a discussion of the statutory requirements, regulatory

history, stakeholder involvement, and the public health concerns that this rule addresses.

A. What Is the Statutory Authority for the GWR?

Section 1412(b)(8) of the SDWA, as amended on August 6, 1996, requires EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) requiring disinfection as a treatment technique for all PWSs, including surface water systems and, as necessary, GWSs. In addition, section 1412(b)(8) requires EPA to promulgate criteria as part of the regulations for determining whether disinfection should be required as a treatment technique for any PWS served by ground water. In contrast, the 1986 Amendments to the SDWA directed EPA to promulgate regulations requiring disinfection at all PWSs using either surface water or ground water. The SWTR implemented that requirement for surface water systems, but when Congress amended the SDWA again in 1996, EPA had not promulgated regulations requiring disinfection for PWSs that use ground water. In the legislative history of the 1996 Amendments to the SDWA, Congress identified several reasons for the delay, including the recognition that not all GWSs are at risk of contamination, as well as the high cost of across-the-board disinfection. This rule implements section 1412(b)(8) of the SDWA, as amended, by establishing a regulatory framework for determining which GWSs are susceptible to fecal contamination and requiring those systems to implement corrective action options, only one of which is to provide 4-log treatment of viruses (*e.g.*, disinfection).

Section 1413(a)(1) of the SDWA allows EPA to grant a State primary enforcement responsibility (''primacy'') for NPDWRs when EPA has determined that the State has adopted regulations that are no less stringent than EPA's. To obtain primacy for this rule, States must adopt comparable regulations within two years of EPA's promulgation of the final rule, unless EPA grants the State a two-year extension. State primacy requires, among other things, adequate enforcement (including monitoring and inspections) authority and reporting requirement. EPA must approve or deny State primacy applications within 90 days of submission to EPA (SDWA section 1413(b)(2)). In some cases, a State submitting revisions to adopt an NPDWR has primacy enforcement authority for the new regulation while EPA's decision on the revision is pending (SDWA section 1413(c)). Section 1445 of the SDWA authorizes the Administrator to establish monitoring, recordkeeping, and reporting regulations to assist the Administrator in determining compliance with the SDWA and in advising the public of the risks of unregulated contaminants. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his or her functions under the Act.

B. What Is the Regulatory History of the GWR and How Were Stakeholders Involved?

EPA has devoted a tremendous effort to engage stakeholders in the development of the GWR. EPA began developing the GWR in 1987 to address potential fecal contamination of GWSs by requiring across-the-board disinfection, as directed by the 1986 Amendments to the SDWA. A preliminary public meeting on issues related to GWSs was held in 1990 (55 FR 21093, May 22, 1990) (USEPA, 1990). By 1992, EPA had developed a draft proposed rule that would have required disinfection for all GWSs (57 FR 33960, July 31, 1992) (USEPA, 1992). The draft proposed rule incorporated stakeholder input and was made available for stakeholder review. While some stakeholders supported the increased public health protection for people drinking ground water, most stakeholders were concerned that the rule was crafted such that all GWSs were assumed to be contaminated until monitoring proved otherwise and that disinfection waivers would be difficult to obtain.

Throughout the early and mid-1990s, EPA conducted technical discussions with *ad hoc* working groups during more than 50 conference calls, with participation of EPA Headquarters, EPA Regional offices, States, local governments, academicians, and trade associations. In 1996, Congress amended the SDWA and required EPA, under section 1412(b)(8), to develop regulations requiring disinfection as a treatment technique for GWSs ''as necessary.'' As discussed previously, this Amendment to the SDWA called for a different regulatory framework to address fecal contamination in GWSs. In light of this statutory change in direction, EPA determined that further stakeholder involvement would be crucial to establishing an effective approach for regulating fecal contamination in PWSs that use ground water sources.

Technical meetings were held in Irvine, California in July 1996 (USEPA, 1996), and in Austin, Texas in March 1997 (USEPA, 1997a). These technical discussions focused primarily on establishing a reasonable means for determining if a ground water source was vulnerable to fecal contamination. EPA evaluated the possibility of developing a vulnerability assessment tool that would consider hydrogeologic information and sources of fecal contamination.

In addition, EPA held a series of stakeholder meetings (in Portland, OR; Madison, WI; Dallas, TX; Lincoln, NE; and Washington, DC) designed to engage all stakeholders in developing a risk-based regulatory framework. The purpose of these meetings was to review available information on risk and to discuss methods to identify GWSs that are susceptible to fecal contamination, and therefore, should be required to take corrective actions. EPA also held three early involvement meetings with State representatives (in Portland, OR; Chicago, IL; and Washington, DC) and received valuable input from small system operators as part of an Agency outreach initiative under the Small Business Regulatory Enforcement Fairness Act. Over the course of these stakeholder meetings, the participants evaluated a continuum of regulatory approaches. The meetings fostered EPA's understanding of how State strategies fit together as a part of a national strategy. Taken together, the meetings were crucial in guiding the Agency's development of regulatory components for the GWR proposal.

On February 3, 1999, EPA distributed a preliminary draft preamble using the approach developed during the stakeholder meetings. Eighty individual comment letters were received from representatives of State and local governments, trade associations, academic institutions, individual PWSs, and other Federal agencies. EPA considered all of the comments received from this informal process as the Agency revised the draft proposal.

The proposed GWR was published in the **Federal Register** in 2000 (65 FR 30194, May 10, 2000) (USEPA, 2000a). The comment period closed on August 9, 2000, and EPA received comments from over 250 individuals, corporations, organizations, PWSs, States and Tribes, industry and trade associations, and environmental groups. EPA has carefully considered all of these comments in developing this final rule. Comments received on the proposed rule, along with EPA's responses, are compiled in the *Public Comment and Response Document for the Final Ground Water Rule* (USEPA, 2006c).

EPA published a Notice of Data Availability (NODA) in the **Federal Register** in 2006 (71 FR 15105, March

27, 2006) (USEPA, 2006e). The purpose of the NODA was to present additional studies that the Agency was considering in conducting its economic analysis for the final rule. The comment period closed on April 26, 2006. EPA received 14 sets of comments from individuals, trade associations, State and local governments, an organization, and a university. Comments received on the NODA, along with EPA's responses, are also compiled in the *Public Comment and Response Document for the Final Ground Water Rule* (USEPA, 2006c).

C. What Public Health Concerns Does the GWR Address?

This section explains the public health concerns associated with fecal contamination in GWSs by summarizing information on how ground water sources could become fecally contaminated, the causes of ground water outbreaks, and the health effects of consuming contaminated water.

1. Introduction

EPA estimates that approximately 114 million people consume drinking water from PWSs that use ground water sources (Table III–1). These PWSs (total of about 147,000) distribute disinfected or undisinfected ground water to their customers. Approximately 18 percent (20 million) of people served by PWSs that use ground water sources receive undisinfected water, while over 60 percent (70 million) receive either undisinfected water or water treated to less than 4-log inactivation or removal of viruses.

Over 100 million people receive ground water from community water systems (CWSs) (Table III–1), while about 14 million people receive ground water from non-community water systems (NCWSs); non-transient non-community water systems (NTNCWSs) serve ground water to about five million people and transient non-community water systems (TNCWSs) serve ground water to about nine million people. Table III–1 shows that, of the number of people receiving water from CWSs, NTNCWSs, and TNCWSs, approximately 9.3 million (9.2 percent), 3.6 million (71 percent), and 7.2 million, (83 percent), respectively, receive water that is not disinfected at all. The Table also shows that 56.8 million people served by CWSs, 4.7 million people served by NTNCWSs, and 8.6 million people served by TNCWSs receive water that is either undisinfected or treated to less than 4-log.

TABLE III–1.—POPULATION SERVED BY GROUND WATER SYSTEMS

[Millions]

	Total population served by ground water systems	Population served untreated ground water	Population served ground water that is either undisinfected or treated to less than 4-log
CWSs	100.4	9.3	56.8
NTNCWSs	5.1	3.6	4.7
TNCWSs	8.7	7.2	8.6

Source: Exhibit 4.4 of the GWR EA (USEPA, 2006d).

As discussed previously in Section II.A, the CDC identified source water contamination and inadequate treatment as the major causes for ground water-related outbreaks between 1991 and 2000. Untreated or inadequately treated ground water may contain viral and bacterial pathogens. Therefore, undisinfected ground water or water treated to less than 4-log may pose a public health risk to consumers.

Waterborne disease attributable to viral and bacterial pathogens is a significant public health problem. EPA's Science Advisory Board cited drinking water contamination, particularly contamination by pathogenic microorganisms, as one of the most important environmental risks (USEPA/SAB, 1990). The CDC reports significant numbers of recent waterborne disease outbreaks and cases of illness associated with ground waters (Moore *et al.* (1993); Kramer *et al.* (1996); Levy *et al.* (1998); Barwick *et al.* (2000); Lee *et al.* (2002)).

Most waterborne pathogens, including viral and bacterial pathogens, cause gastrointestinal (GI) illness with diarrhea, abdominal discomfort, nausea, vomiting, and other symptoms. The effects of a waterborne disease are usually acute, resulting from a single exposure. Most GI illnesses are generally of short duration and result in mild illness, but some can result in severe illness and even death. For example, during a recent ground water outbreak in New York, a healthy three-year old child died from hemolytic uremic syndrome (kidney failure) (New York State Department of Health, 2000). Waterborne pathogens also cause other serious disorders such as hepatitis, Legionnaires Disease, myocarditis, paralysis, acute hemorrhagic conjunctivitis, meningitis, and reactive arthritis. Waterborne pathogens have also been associated with diabetes, encephalitis, and other diseases (Lederberg, 1992).

Sensitive populations are at greater risk from waterborne disease from viral and bacterial pathogens than the general population. These sensitive subpopulations include children (especially the very young); the elderly; the malnourished; pregnant women; chronically ill patients (*e.g.*, those with diabetes or cystic fibrosis); and a broad category of those with compromised immune systems, such as AIDS patients, those with autoimmune disorders (*e.g.*, rheumatoid arthritis, lupus erythematosus, and multiple sclerosis), organ transplant recipients, and those receiving chemotherapy (Rose, 1997). Sensitive subpopulations (or those with compromised immune systems) represent almost 20 percent of the population in the United States (Gerba *et al.*, 1996). The severity and duration of illness is often greater in sensitive subpopulations than in healthy individuals, and may occasionally result in death.

When humans are exposed to and infected by an enteric pathogen, such as a bacterium or virus, the pathogen becomes capable of reproducing in the gastrointestinal tract. As a result, healthy humans shed pathogens in their feces for a period ranging from days to weeks. This shedding of pathogens often occurs in the absence of any signs of clinical illness. Regardless of whether a pathogen causes clinical illness in the person who sheds it in his or her feces, the pathogen being shed may infect other people directly (by person-to-person spread, contact with contaminated surfaces, etc.), which is referred to as secondary spread.

Waterborne pathogens thus may infect people via a variety of routes.

Fecal contamination of drinking water is a primary cause of waterborne disease (Szewzyk *et al.*, 2000). Viral and bacterial pathogens associated with fecal contamination can reach ground water via pathways in the subsurface and near surface. First, fecal contamination from, for example, improper storage or management of manure, runoff from land-applied manure, leaking sewer lines, or failed septic systems can reach the ground water source by traveling—sometimes great distances—through the subsurface (especially through transmissive materials such as karst, gravel, or fractured bedrock). Twenty-five million households in the United States use conventional onsite wastewater treatment systems, according to the 1990 Census. These systems include septic systems and leach fields. A national estimate of failure rates of these systems is not available; however, a National Small Flows Clearinghouse survey reports that in 1993 alone, 90,632 failures were reported (USEPA, 1997b). The volume of septic tank waste alone that is released into the subsurface has been estimated at one trillion gallons per year (Canter and Knox, 1984). This contamination may eventually reach the intake zone of a drinking water well.

Second, fecal contamination from the surface may enter a drinking water well along the casing or through cracks in the sanitary seal if it is not properly constructed, protected, or maintained. In addition to source contamination, fecal contamination may also enter the distribution system when cross-connection controls fail or when negative pressure in a leaking pipe allows contaminant infiltration. A subset of GWSs is susceptible to contamination by one or more of these routes.

2. Waterborne Disease Outbreaks in Ground Water Systems

The Centers for Disease Control and Prevention (CDC) reports that between 1991 (the year in which implementation of the TCR began) and 2000, GWSs (both CWSs and NCWSs) were associated with 68 outbreaks that caused 10,926 illnesses (Table III–2). These account for 51 percent of all waterborne disease outbreaks in the United States during that period. The outbreak data illustrate that the major deficiency in GWSs was source water contamination. Contaminated source water was the cause of 79 percent of the outbreaks in GWSs (63 percent of CWS outbreaks and 86 percent of NCWS outbreaks), shown as untreated ground water and treatment deficiencies in Table III–2. Consumers of undisinfected water are especially vulnerable to source water contamination. Approximately 70 percent of GWSs provide either untreated ground water or provide treatment of less than 4-log virus inactivation or removal as discussed in the GWR EA (USEPA, 2006d).

Of the 68 outbreaks in GWSs, 14 (21 percent) were associated with specific bacterial pathogens (see Table III–3). The fecal bacterial pathogen *Shigella* caused more reported outbreaks (five, seven percent) than any other bacterial agent. Identified viral pathogens were associated with four (six percent) reported outbreaks. Etiologic agents were not identified in 39 (57 percent) outbreaks; however, EPA suspects that many of these outbreaks were caused by viruses given that it is generally more difficult to analyze for viral pathogens than bacterial pathogens. EPA regulates for protozoa, including *Giardia* and *Cryptosporidium,* under the SWTRs, which also cover GWUDI systems. For the most part, the outbreaks associated with protozoa that occurred in GWSs were later determined by the State to be GWUDI systems.

BILLING CODE 6560–50–P

Table III-2: Sources of Waterborne Disease Outbreaks in Ground Water Systems, 1991 – 2000

Cause of Contamination	Number of Outbreaks	Percent Outbreaks	Cases of Illness	Percent Illnesses	Cases per Outbreak
Community Water Systems					
Untreated Ground Water	5	26%	167	6%	33
Treatment Deficiency	7	37%	1,624	58%	232
Distribution System Deficiency	5	26%	803	29%	161
Miscellaneous/Unknown	2	11%	183	7%	92
Total	**19**	**100%**	**2,777**	**100%**	**146**
Noncommunity Water Systems					
Untreated Ground Water	23	47%	4,057	50%	176
Treatment Deficiency	19	39%	3,264	40%	172
Distribution System Deficiency	6	12%	442	5%	74
Miscellaneous/Unknown	1	2%	386	5%	386
Total	**49**	**100%**	**8,149**	**100%**	**166**
Combined					
Untreated Ground Water	28	41%	4,224	39%	151
Treatment Deficiency	26	38%	4,888	45%	188
Distribution System Deficiency	11	16%	1,245	11%	113
Miscellaneous/Unknown	3	4%	569	5%	190
Total	**68**	**100%**	**10,926**	**100%**	**161**

Sources: Moore *et al.* (1993); Kramer *et al.* (1996); Levy *et al.* (1998); Barwick *et al.* (2000); and Lee *et al.* (2002).

Table III-3: Etiology of Waterborne Outbreaks in Ground Water Systems, 1991-2000

	CWSs			NCWSs			TOTAL		
Causative Agent	Outbreaks	Cases of Illness	Percent of Total Outbreaks	Outbreaks	Cases of Illness	Percent of Total Outbreaks	Outbreaks	Cases of Illness	Percent of Total Outbreaks
Protozoa	**8**	**1,675**	**42.1%**	**3**	**576**	**6.1%**	**11**	**2,251**	**16.2%**
Giardia	5	136	26.3%	2	25	4.1%	7	161	10.3%
Cryptosporidium	3	1,539	15.8%	1	551	2.0%	4	2,090	5.9%
Virus	**-**	**-**	**0.0%**	**4**	**1,806**	**8.2%**	**4**	**1,806**	**5.9%**
Hepatitis A	-	-	0.0%	-	-	0.0%	-	-	0.0%
Norwalk Virus	-	-	0.0%	4	1,806	8.2%	4	1,806	5.9%
Bacteria	**6**	**1,037**	**31.6%**	**8**	**1,309**	**16.3%**	**14**	**2,346**	**20.6%**
Shigella	1	83	5.3%	4	473	8.2%	5	556	7.4%
Campylobacter	1	172	5.3%	2	51	4.1%	3	223	4.4%
Salmonella, non-typhoid	1	625	5.3%	-	-	0.0%	1	625	1.5%
S. typhimurium	1	124	5.3%	-	-	0.0%	1	124	1.5%
E. coli	1	22	5.3%	2	785	4.1%	3	807	4.4%
Vibrio	1	11	5.3%	-	-	0.0%	1	11	1.5%
Undetermined	**5**	**65**	**26.3%**	**34**	**4,458**	**69.4%**	**39**	**4,523**	**57.4%**
Total	**19**	**2,777**	**100.0%**	**49**	**8,149**	**100.0%**	**68**	**10,926**	**100.0%**

Note: Detail may not add to totals due to independent rounding.
Sources: Moore *et al.* (1993); Kramer *et al.* (1996); Levy *et al.* (1998); Barwick *et al.* (2000); and Lee *et al.* (2002).

BILLING CODE 6560–50–C

Large outbreaks are rarely associated with GWSs because most GWSs are small. In addition, the number of identified and reported outbreaks in the CDC database is believed to substantially understate the actual incidence of waterborne disease outbreaks and cases of illness (Craun and Calderon, 1996; National Research Council, 1997). This underestimation is due to a number of factors. Many people experiencing gastrointestinal illness do not seek medical attention. Where medical attention is provided, testing to identify the pathogenic agent is often not done and even if it is, the pathogenic agent may not be identified through correct testing (*e.g.*, when a sample is tested for a limited number of pathogens). Physicians often lack sufficient information to attribute gastrointestinal illness to any specific origin, such as drinking water, and few

States have an active outbreak surveillance program. Furthermore, the outbreak reporting system in the U.S. is paper-based and voluntary. Consequently, waterborne disease outbreaks are often not recognized in a community or, if recognized, are not traced to a drinking water source even though it may be the cause of the outbreak. Although it occurred in a community served by a surface water source, the 1993 *Cryptosporidium* outbreak in Milwaukee, Wisconsin is an example of how difficult it is to recognize a drinking waterborne disease outbreak. In one study of this large outbreak, only six percent sought health care and only six percent of those health care cases were tested for parasites (with only four percent of those cases specifically tested for *Cryptosporidium*) (Juranek, 1997). Thus, over 99 percent of estimated cases of illness went undiagnosed in this outbreak. In addition to epidemic illness, an unknown but probably significant portion of waterborne disease is endemic (*i.e.,* isolated cases not associated with an outbreak) and is even more difficult to recognize.

Collectively, the data indicate that outbreaks in GWSs are a problem and that source water contamination and inadequate treatment (or treatment failures) are responsible for the great majority of outbreaks.

3. Microbial Contamination in Public Ground Water Systems

The extent to which viral and bacterial pathogens occur in public ground water supplies influences the risk of exposure to populations consuming ground water from PWSs. Such risks of exposure pertain to populations using both undisinfected and disinfected water supplies. For undisinfected supplies, pathogens in the water are an immediate risk, since no treatment barrier exists prior to consumption. For disinfected supplies, if disinfection is inadequate or if treatment plant upsets occur, pathogens can reach consumers. These exposure risks were discussed in Section III.C.2 from an outbreak perspective. This section will discuss data on the occurrence of waterborne viral pathogens and indicators of fecal contamination in ground water supplying PWS wells.

a. *Occurrence studies and data.* For this rule, EPA examined the occurrence of viral pathogens and some fecal indicators. EPA reviewed data from 24 studies on pathogen and fecal indicator occurrence in ground water wells that supply PWSs. This total includes 16 studies described in the proposal, seven studies that became available since proposal as described in the NODA (USEPA, 2006e), and one study that was provided to EPA in comment as a result of the NODA. Each study was conducted independently and with a different objective and scope. The *Occurrence and Monitoring Document for the Final Ground Water Rule* (USEPA, 2006b) provides a detailed discussion of each examined occurrence study. The available data show a wide range of enterovirus and fecal indicator occurrence in water drawn from wells across the U.S. EPA selected 15 studies to estimate national viral and fecal indicator occurrence in ground water. To arrive at the conclusion that these 15 studies provide the best possible representation of ground water contamination at a national level, EPA evaluated all available studies (24 studies) that were applicable to the risk assessment analyses (USEPA, 2006d). See Section VII.B.1 of this preamble for a discussion of study selection.

Enterovirus cell culture data from the 15 studies were used to estimate the baseline risk related to virus occurrence in ground water. EPA believes that enterovirus cell culture measurements provide the best available basis for estimating pathogenic viral occurrence since they capture viruses that are infectious. However, because the cell culture procedure only captures a portion of all viruses that may actually occur in well water due to assay limitations, use of this method may underestimate viral occurrence.

EPA used data on the indicator *E. coli* from these same studies to inform estimates of fecal contamination occurrence. Indicator data are important because illness can result from consuming ground water with fecal contamination in the absence of identified viruses. For example, some viruses such as infectious norovirus are not recoverable, other viruses such as enteroviruses have variable and limited recovery, and a variety of bacteria of fecal origin can cause disease. EPA chose to use *E. coli* data instead of other fecal indicator data for this analysis. This choice was driven by EPA's assessment that *E. coli* will be the most likely fecal indicator used when PWSs implement the GWR, because *E. coli* is frequently used to fulfill follow-up monitoring requirements under the TCR. Therefore national estimates of *E. coli* occurrence can be used to inform potential cost implications for implementing the GWR. EPA recognizes that any indicator organism, including *E. coli,* may or may not co-occur with pathogens and that co-occurrence could be intermittent. *E. coli* is an imperfect indicator of viral occurrence. Some wells with *E. coli* have no viral occurrence. Some wells with viral occurrence have no *E. coli.*

b. *Estimates of national occurrence of viral and fecal indicator contamination.* This section discusses national occurrence of viral and fecal indicator (*E. coli*) contamination, which includes estimates of viral concentrations in contaminated wells and estimates of the probability that a well may have detectable viral and/or fecal indicator contamination. For purposes of this analysis, EPA uses the term ''sometime contamination'' as contamination that occurs at one or more points in time. Because fecal contamination is intermittent, viruses and *E. coli* will only be present at detectable levels some fraction of the time in a contaminated well. These fractions will vary from well to well. Some wells may be frequently contaminated but others may only be contaminated for a small fraction of time.

EPA analyzed the 15 studies for data to inform the concentration analysis. Among the 15 studies used for the national occurrence analysis, 12 provided data on occurrence of enterovirus cell culture and 11 provided data on occurrence of *E. coli.* Among the 12 data sets with enterovirus cell culture measurement, three included viral concentration data. Concentration measurements in the three surveys ranged from 0.09 to 212 enteric virus infectious units (plaque forming units) per 100 liters. Although the measurement methods were often not capable of detecting viruses at concentrations below 0.2 units per 100 liters, it is likely that viruses also occur at levels below the detection limit.

Data from each of the 15 studies were combined into one complete data set to determine the probabilities of sometime well contamination for viral (indicated by enterovirus cell culture) or fecal indicator (indicated by *E. coli*) contamination. The results of this effort led naturally to a combined analysis, which models occurrence and co-occurrence of viruses and *E. coli.* EPA's analysis also considers uncertainty and variability about these estimates. The model serves as the basis of EPA's national quantitative occurrence estimates. See the *Occurrence and Monitoring Document for the Final Ground Water Rule* for more information (USEPA, 2006b).

Overall, the analysis indicates a public health concern in that approximately 26 percent of the wells sometimes have fecal contamination (indicated by *E. coli*) and approximately 27 percent of the wells sometimes have

viral contamination. Due to the intermittent nature of fecal contamination, some of these wells are only contaminated for a small fraction of time. On average, wells with sometime virus occurrence have detectable concentrations about 11 percent of the time, and wells with sometime *E. coli* occurrence have detectable concentrations about 14 percent of the time. The remainder of the time, the well's water is essentially virus free (assuming that concentration is zero when not detected by measurement methods like those used in the occurrence studies). Compared to the analysis in the proposal, the number of wells with fecal contamination is greater but the frequency at which contamination occurs in each well is less.

In summary, EPA's occurrence analysis shows that fecal contamination is intermittent and that some individuals are at risk because pathogens and/or fecal indicators occur at PWSs that use ground water as a source of drinking water. The next section discusses this risk.

4. Potential Risk Implications From Occurrence Data

As discussed previously, to assess the public health risk associated with drinking ground water, EPA evaluated information and conducted analyses on (1) Health effects data from a range of pathogens, (2) waterborne disease outbreak data, and (3) occurrence data from ground water studies and surveys. As a result of this evaluation and analysis, EPA concludes that the potential risk to public health posed by a subset of PWSs with contaminated ground water sources is significant enough to warrant regulation.

When a PWS uses contaminated source water, its customers are at risk of infection and illness. Their risk depends on a number of factors including whether the system provides at least 4-log treatment of viruses, the frequency at which the well is contaminated, the level of contamination (*i.e.*, concentration), and the infectivity of the pathogens that are present.

To develop risk estimates from viral exposure, EPA considered two types of viruses, Type A (represented by data available on rotavirus) and Type B (represented by data available on enterovirus or echovirus), which are used to estimate risk from exposure to viral-contaminated wells. These two virus types have different infection morbidity and disease severity characteristics. Type A viruses are considered to be highly infectious but cause primarily mild illness, while Type B viruses are considered much less infectious but may cause more severe illnesses.

The infectivity of a virus relates the probability of infection to a given amount, or dose, of virus consumed. Together with infectivity, morbidity (risk of illness given infection) and mortality (risk of premature death given an illness) are used to predict the disease burden associated with a particular virus level in drinking water. As discussed in the previous section, a typical contaminated well may have detectable virus concentrations 11 percent of the time. The remainder of the time, the well's water is essentially virus free (assuming that concentration is zero when not detected by measurement methods like those used in the occurrence studies). EPA has viral concentration data from the three studies as discussed in Section III.C.3.b of this preamble. Virus concentration data combined with viral exposure data can be used to predict infection rates given viral dose-response information. Figure III–1 indicates the annual risk of infection from exposure to rotavirus, assuming one liter of water consumed per day, based on a range of possible mean annual source water concentrations and different levels of treatment. For example, if an untreated ground water source had a mean annual source water concentration of 0.1 viruses per 100 L (*e.g.*, a source water concentration of one virus per 100 L, 10 percent of the time), people consuming one liter of this water per day would have approximately a seven percent probability of being infected in the course of the year (90 percent confidence interval of three percent to 13 percent). The risk of infection implications from exposure to echovirus are 10 to 100 times less than those from rotavirus, assuming the same levels of exposure. However, illness resulting from infection of echovirus may be more severe than illness resulting from infection by rotavirus.

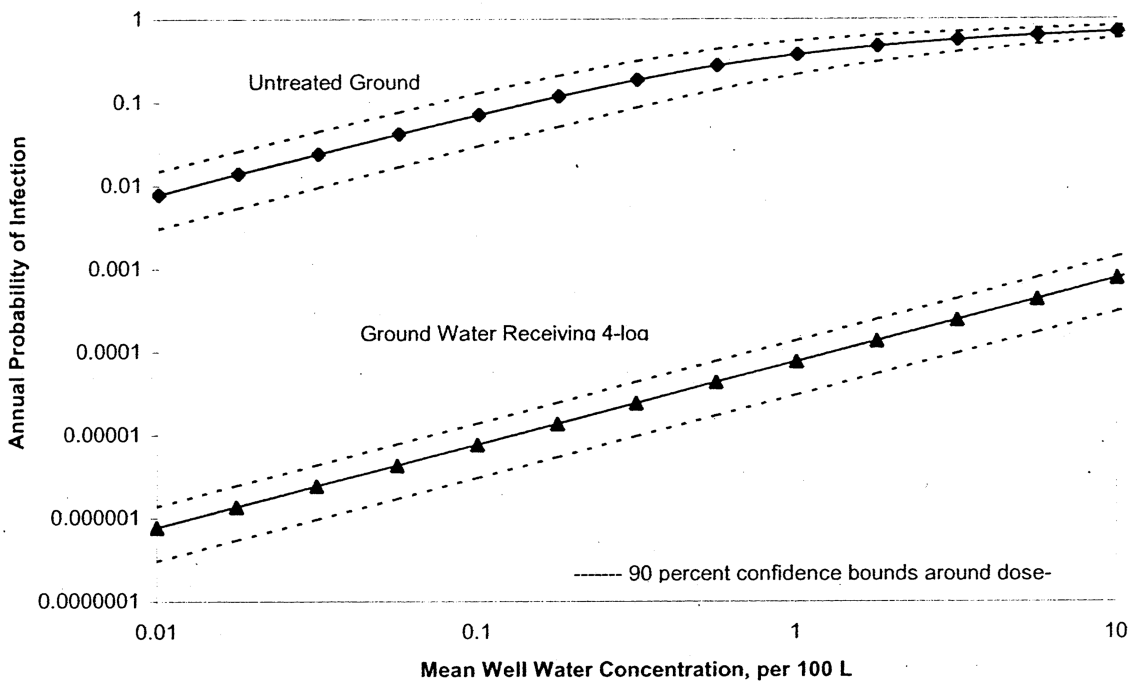
It is important to recognize that EPA's quantitative risk analysis is limited by the data available, specifically data on rotavirus and echovirus. Other pathogenic viruses also cause disease and may be more or less infectious than those modeled. Pathogens may cause chronic and acute illnesses in addition to those considered in the quantitative risk analysis. Furthermore, EPA's quantitative risk analysis does not consider bacterial illness and deaths resulting from contaminated drinking water due to limited data. Taken together, these limitations imply an underestimate of the actual illnesses and deaths that result from exposure to contaminated ground water when only these sources of uncertainty are considered. The GWR national risk implications from exposure to pathogenic viruses and bacteria are discussed in Section VII of this preamble and more fully discussed in the GWR EA (USEPA, 2006d).

Even at the levels EPA is able to quantify, the risk analysis supports the conclusion that a substantial number of people served by GWSs are at risk of exposure to waterborne pathogens. EPA's occurrence analysis (USEPA, 2006b) demonstrates that some wells have high viral occurrence while others have lower occurrence, and thus lower risk. For public health protection, it is most important to target those wells with higher occurrence. In addition, the occurrence analysis demonstrates that contamination is intermittent. Because of the intermittent nature of contamination, an ongoing monitoring program is critical to effectively target higher risk systems.

The intent of the GWR is to reduce risk by targeting susceptible systems for corrective action. The corrective action options are: Correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses. As illustrated in Figure III–1, treatment will provide large improvements in public health. Thus, the final GWR components of sanitary surveys, source water monitoring, and corrective action are each critical steps to improving public health in communities served by undisinfected (or inadequately disinfected) GWSs.

Implementation of this rule is expected to result in approximately 42,000 avoided viral illnesses and one avoided death annually. The analysis is uncertain and these estimates could be an over-or under-estimate of actual illnesses and deaths. The nonquantified benefits are those that the Agency was unable to quantify due to data limitations, which include decreased incidence of other acute viral disease endpoints, decreased incidence of chronic viral illness sequelae, decreased incidence of bacterial illness and death, decreased incidence of waterborne disease outbreaks and epidemic illness, and decreased illness through minimizing treatment and distribution system failures. The nonquantified benefits associated with this rule are significant and are discussed in detail in Section 5.4 of the GWR EA (USEPA, 2006d).

Figure III-1: Estimated Annual Risks of Infection from Rotavirus for Different Exposure Conditions



IV. Discussion of GWR Requirements

This section describes the rule requirements and rationale for each component of the risk-targeted strategy of this rule. A summary of, and responses to, key comments on the proposed rule are also provided.

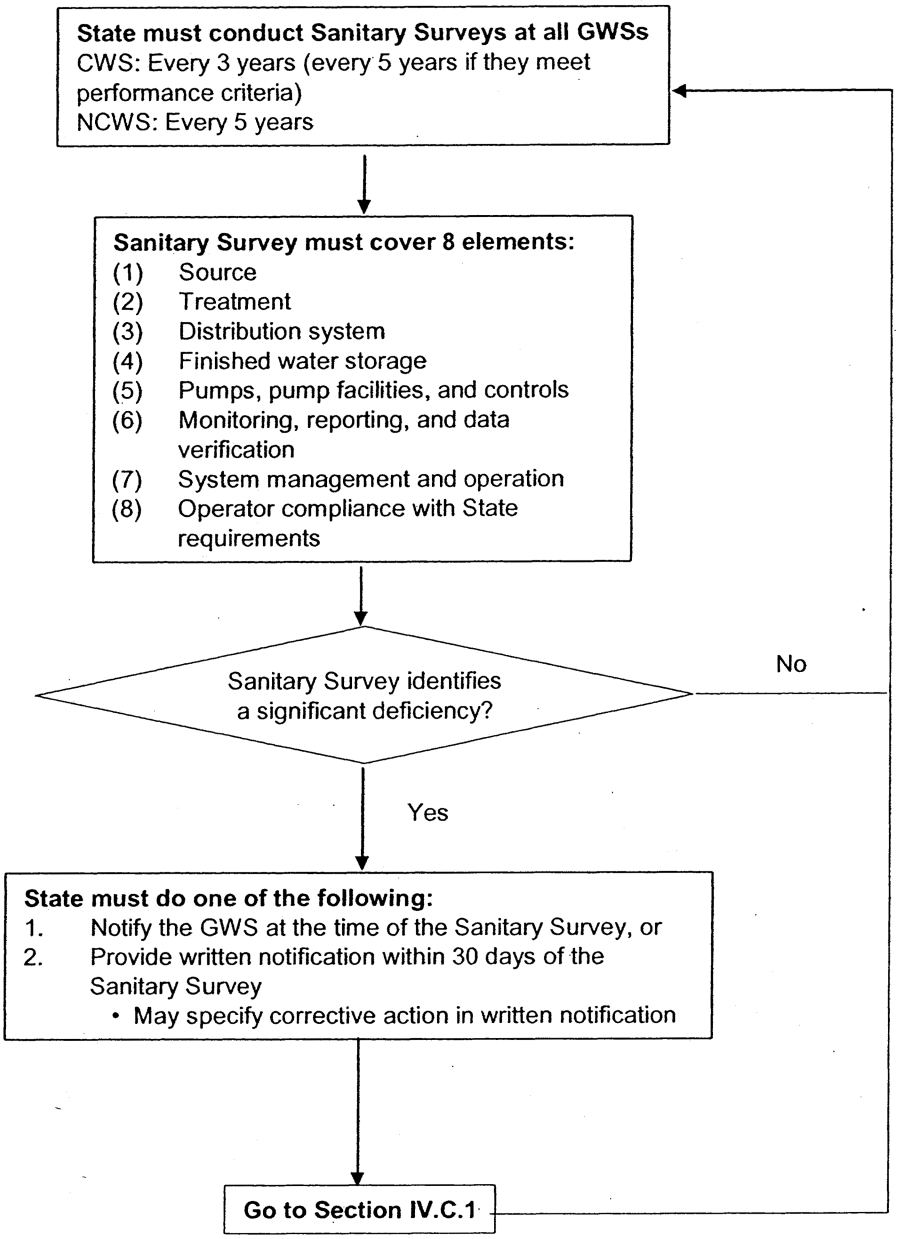
A. Sanitary Surveys

EPA believes that comprehensive, periodic sanitary surveys and the identification and correction of significant deficiencies are indispensable for ensuring the long-term safety of drinking water supplies. They are an important tool for identifying potential vulnerabilities to fecal contamination at GWSs. The final GWR includes Federal requirements for sanitary surveys of all GWSs for the first time.

This rule provides the States with flexibility to prioritize and carry out the sanitary survey process, while ensuring that the survey is an effective, preventive tool for GWSs. The sanitary survey provision in this rule builds on existing State sanitary survey programs established under the 1989 TCR and the Interim Enhanced Surface Water Treatment Rule (IESWTR) (63 FR 69477, December 16, 1998) (USEPA, 1998b) and gives States the authority to define both outstanding performance and significant deficiencies. At the same time, the GWR's sanitary survey requirements for minimum frequencies, scope, documentation, and mandatory corrective action strengthen existing sanitary survey programs and address many of the concerns associated with current sanitary survey programs as identified by the GAO (USGAO, 1993).

BILLING CODE 6560–50–P

Figure IV-1: Sanitary Survey Requirements



BILLING CODE 6560–50–C

1. What Are the Requirements of This Rule?

This rule requires States to perform sanitary surveys for all GWSs. Ground water systems must provide the State with any pertinent, existing information that will enable the State to perform the sanitary survey. This rule goes beyond the existing definition of sanitary survey at § 141.2, explicitly references the use and relevance of source water assessments required under the 1996 SDWA Amendments, and specifies in more detail the scope of a sanitary survey. Specifically, this rule requires that States evaluate eight components as part of the sanitary survey to the extent that they apply to an individual system: (1) Source; (2) treatment; (3) distribution system; (4) finished water storage; (5) pumps, pump facilities, and controls; (6) monitoring, reporting, and data verification; (7) system management and operation; and (8) operator compliance with State requirements. This rule outlines the eight minimum elements using broad categories and recognizes that certain elements may not be present in a particular system depending on its size or complexity.

This rule requires States to conduct sanitary surveys of ground water CWSs every three years (every five years for CWSs that meet performance criteria as described in the following paragraph) and of ground water NCWSs every five years. States are required to complete the initial sanitary survey cycle by December 31, 2012 for CWSs, except those that meet performance criteria, and December 31, 2014 for all NCWSs and CWSs that meet performance criteria. States may conduct more frequent sanitary survey cycles for any GWS as appropriate.

This rule allows individual components of a sanitary survey to be conducted according to a phased review process (*e.g.*, as part of ongoing State assessment programs). While all

applicable components need not be evaluated at the same time, they must be evaluated within the required three-or five-year frequency interval. Also, this rule allows the three-year CWS schedule to be extended to a five-year frequency if the system meets certain criteria (referred to in this preamble as ''performance criteria''). These performance criteria are:

• Provides 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for all its ground water sources, or

• Has an outstanding performance record (as defined by the State) documented in previous sanitary surveys, and has no history of total coliform MCL or monitoring violations under the TCR since the last sanitary survey.

Finally, this rule requires that GWSs correct any significant deficiencies identified in sanitary surveys. Significant deficiencies, as determined by the State, include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or have the potential for causing, the introduction of contamination into the water delivered to consumers.

Significant deficiencies may include, but are not limited to, the following:

Source

• Well near a source of fecal contamination (*e.g.*, failing septic systems or a leaking sewer line).

• Well in a flood zone.

• Improperly constructed well (*e.g.*, improper surface or subsurface seal).

• Spring boxes that are poorly constructed and/or subject to flooding.

Treatment

• Inadequate application of treatment chemicals (*e.g.*, disinfection contact time is inadequate).

• Lack of redundant mechanical components where disinfection is required.

• Unprotected cross-connections with treatment chemical systems.

• Inadequate treatment process monitoring.

Distribution System

• Negative pressures that could result in the entrance of contaminants.

• Inadequate disinfectant residual monitoring, when required.

• Unprotected cross-connections.

Finished Water Storage

• Inadequate internal cleaning and maintenance of storage tanks.

• Lack of proper screening of overflow pipes, drains, or vents.

• Storage tank roofs or covers need repair (*e.g.*, holes or hatch of improper construction).

Pumps, Pump Facilities, and Controls

• Inadequate pump capacity.

• Inadequate maintenance.

• Inadequate/inoperable control system.

Monitoring, Reporting, and Data Verification

• Failure to properly monitor water quality.

• Failure to meet reporting requirements.

• Inadequate recordkeeping.

System Management and Operation

• Failure to meet water supply demands/interruptions to service (*e.g.*, unreliable water source or lack of auxiliary power).

• Lack of approved emergency response plan.

• Inadequate follow-up to deficiencies noted in previous assessment/survey.

Operator Compliance with State Requirements

• Operator is not certified as required by the State.

• Lack of operator training.

The State must provide the GWS with written notification, which describes any significant deficiencies found, no later than 30 days after the State identifies the significant deficiency. The notice may be sent to the PWS, or it may be provided on-site either at the time the sanitary survey is conducted or the significant deficiency is identified. The State may specify appropriate follow-up corrective action steps in the notice or may notify the GWS of appropriate corrective actions during the consultation period. After receiving the written notification, the GWS has 30 days to consult with the State regarding corrective actions. However, the State may prescribe corrective actions and completion dates, including immediate and/or interim corrective actions, in lieu of the consultation process. Under this rule, a GWS must complete corrective action or be in compliance with a State-approved corrective action plan and schedule within 120 days of receiving written notice from the State, as described in Section IV.C of this preamble. Failure to do so will result in a treatment technique violation. This rule requires systems to notify customers of uncorrected significant deficiencies. When a significant deficiency is identified at a PWS that uses both ground water and surface water sources, the GWR treatment technique requirements apply except in cases where the State determines that the significant deficiency is in a portion of the distribution system that is served by surface water (or ground water under the direct influence of surface water).

2. What Is EPA's Rationale for the GWR Sanitary Survey Requirements?

As discussed in the proposed GWR, sanitary surveys enable States (and systems) to provide a comprehensive and accurate review of the components of water systems, to assess the operating conditions and adequacy of the water system, and to determine if past recommendations have been implemented effectively. A GWS has the responsibility of providing the information necessary to conduct a sanitary survey to the State upon request to enable a comprehensive assessment of the system. The purpose of the sanitary survey is to evaluate and document the capabilities of the water system's sources, treatment, storage, distribution network, operation and maintenance, and overall management to ensure the provision of safe water. In addition, sanitary surveys provide an opportunity for PWS inspectors to visit the water system and educate operators about proper monitoring and sampling procedures and to provide technical assistance.

Historically, sanitary surveys have been conducted by State drinking water programs as preventative tools for identifying water system deficiencies before contamination occurs. In 1976, EPA regulations required, as a condition of primacy, that States develop a systematic program for conducting sanitary surveys, but EPA did not define the scope of sanitary surveys or specify minimum criteria at that time. In 1989, the TCR included a provision requiring sanitary surveys for systems collecting fewer than five TCR samples per month (systems serving fewer than 4,100 people). For those systems, sanitary surveys are required under the TCR once every five years for CWSs and NCWSs (but once every 10 years for NCWSs that use protected or disinfected ground water). However, the TCR did not establish what must be evaluated in a sanitary survey or specifically address significant deficiencies.

Consequently, a number of concerns have been raised regarding post-TCR sanitary survey practices. For example, the GAO investigated sanitary survey practices in 1993 and found that many surveys did not evaluate one or more of the major components and operations that EPA requires be evaluated under the final GWR and that efforts to ensure that deficiencies were corrected were often limited (USGAO, 1993). A review of State regulations found that many States do not specifically require systems to correct deficiencies. These

factors, coupled with information on contaminant occurrence and analysis of microbial waterborne disease outbreak data, indicated that public health protection can be strengthened by requiring regular sanitary surveys, specifying the scope of surveys, and requiring corrective action of significant deficiencies.

In 1995, EPA and the States (through the Association of State Drinking Water Administrators) issued a joint guidance on sanitary surveys entitled *EPA/State Joint Guidance on Sanitary Surveys* (USEPA/ASDWA, 1995). Recognizing the essential role of sanitary surveys and the need to define the broad areas that all sanitary surveys should cover, the guidance recommended eight elements for a comprehensive sanitary survey. The guidance also recommended the development of assessment criteria, proper documentation of results, and thorough follow-up, tracking, and enforcement after the survey. The IESWTR, (USEPA, 1998b), requires States to address the same eight elements in sanitary surveys conducted at surface water systems and at GWUDI systems. The GWR incorporates the same eight elements into the sanitary survey requirements for GWSs to be consistent with, and as comprehensive as, the IESWTR. Based on consultation with the States and EPA regions, EPA believes that the majority of States today include the eight elements in their sanitary survey programs for both surface water and GWSs.

In addition to requiring these eight elements, the GWR requires the State to conduct sanitary surveys no less frequently than every three years for CWSs and every five years for NCWSs. This rule provides the State with the flexibility to reduce the frequency for CWSs to every five years for systems that meet performance criteria (refer to Section IV.A.1 for criteria). These frequencies are consistent with the recommendations for surface water systems made by the Microbial/Disinfection Byproducts Federal Advisory Committee, which included various stakeholders representing a wide range of sectors in the drinking water community. Given this, EPA believes that the same three- and five-year interval for conducting sanitary surveys is appropriate for GWSs. The GWR requires the first sanitary survey cycle to be completed by December 31, 2012 for CWSs, except those that meet performance criteria, and December 31, 2014 for all NCWSs and CWSs that meet performance criteria. See Section VI of this preamble for explanation of initial sanitary survey completion dates.

As noted earlier, this regulation attempts to build on existing State public health programs to the extent possible. Consequently, the GWR allows individual elements of a sanitary survey to be conducted on a phased review schedule as part of ongoing State assessment programs within the established three-or five-year frequency interval. This allows States to more efficiently use existing assessment schedules and maximize the effective allocation of staff resources and expertise across a State in conjunction with other priorities. EPA believes that the frequency of sanitary surveys and the required eight sanitary survey elements in this rule ensure greater public health protection while providing adequate flexibility for States and systems to effectively implement the requirements. The GWR requires the initial sanitary surveys to be completed six years after rule promulgation for CWSs and eight years after rule promulgation for NCWSs. The six to eight year time frame for initial sanitary surveys is based on several considerations. First, States need time to adopt the rule and obtain primacy (two to four years allowed by the SDWA at 1413(a)(1)). In addition, systems are given three years to comply with drinking water regulations by the SDWA at (1412(b)(10)). Finally, States need three to five years to complete the first cycle of sanitary surveys because there are many GWSs and States have limited resources.

A key finding of the GAO report was that deficiencies identified in one sanitary survey were often found still uncorrected at the next sanitary survey. For example, in a four-State sample of 200 sanitary surveys, GAO found approximately 60 percent of the surveys cited deficiencies that were also cited in previous surveys. While the report indicated that smaller systems (serving 3,300 or fewer people) were in the greatest need of improvement, GAO found that, regardless of system size, previously identified deficiencies frequently went uncorrected. GAO found that some States lacked the authority to ensure that water system owners and operators correct documented deficiencies. Additional causes for uncorrected deficiencies included a lack of documentation or ineffective tracking of survey results. The Agency believes that a sanitary survey is an effective tool for identifying significant deficiencies. Once identified, it is also essential that such deficiencies be corrected in a timely manner. A study of the effectiveness of a range of best management practices shows that follow-up and correction of sanitary survey deficiencies were correlated with lower levels of total coliform, fecal coliform, and *E. coli* (ASDWA, 1998). Thus, this rule requires that systems coordinate with the State within 30 days of being notified of the significant deficiency and that the systems correct the significant deficiency (or be on an enforceable State-prescribed schedule) within 120 days of being notified of the significant deficiency. See Section IV.C for details on corrective action time frames.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Sanitary Survey Requirements?

The majority of commenters on the GWR proposal were supportive of a sanitary survey requirement for all GWSs. Most commenters supported the proposed frequencies of three years for CWSs and five years for NCWSs. Several commenters noted that some States conduct surveys at more frequent intervals than required in this rule. However, a few commenters suggested extending the frequency interval for CWSs, because they believed that CWSs would be less likely to have significant deficiencies.

The Agency believes that frequent, comprehensive sanitary surveys are an important proactive public health measure and that the minimum frequencies of sanitary surveys under this rule balance public health protection with State implementation issues. This rule requirement is consistent with the frequency required for surface water systems under the IESWTR. The GWR provides flexibility in allowing States to perform more frequent sanitary surveys or to reduce the frequency for CWSs to five years if the CWS meets performance criteria (Section IV.A.1). States also have the flexibility to phase-in the evaluation of sanitary survey elements within the required frequency interval. The Agency believes that a frequency of three years for CWSs and five years for NCWSs, combined with flexibility on both timing and implementation, appropriately considers limited resource issues while advancing public health protection.

EPA specifically requested comments on ''grandfathering'' sanitary surveys conducted under the TCR to satisfy the initial sanitary survey requirements of the GWR. The majority of comments favored allowing the use of sanitary surveys conducted under the TCR or existing State programs to meet the initial sanitary survey requirements of the GWR. These comments were largely based on an interest in reducing State

implementation burden and allowing States to transition their existing sanitary survey programs into programs and schedules that meet the requirements of the GWR.

Because of the time frames laid out in the GWR for initial and repeat sanitary surveys, grandfathering sanitary surveys is not practicable. States must complete their initial CWS sanitary surveys six years after rule promulgation for CWSs and eight years for NCWSs. The deadline for completing the first round of sanitary surveys is longer than the minimum required sanitary survey frequency, so grandfathering would not result in a burden reduction for the State. For example, if a State were to grandfather a CWS sanitary survey from 2005, they would be required to complete a second sanitary survey by 2008 and a third by 2011, whereas a State that completed their first sanitary survey in 2009 would not be required to complete their second sanitary survey until 2012. As described in Section IV.A.2, the six to eight year time frame for initial sanitary surveys is based on several considerations. First, States need time to adopt the rule and obtain primacy (two to four years allowed under the SDWA at 1413(a)(1)). In addition, systems are given three years to comply with drinking water regulations by the SDWA at (1412(b)(10)). Finally, States need three to five years to complete the first cycle of sanitary surveys because there are many GWSs and States have limited resources.

EPA believes that it is important to reduce State implementation burden and that information from existing sanitary surveys and other sources is an important resource. Thus, this rule allows States to reduce the frequency of sanitary surveys for CWSs that meet performance criteria (Section IV.A.1) at any time subsequent to the effective date of this rule from every three to every five years. This allows States to reduce the implementation burden of sanitary surveys based on information collected under the TCR and existing sanitary survey programs while still ensuring a minimum sanitary survey frequency of five years for both CWSs and NCWSs. Since a significant proportion of GWSs are small NCWSs and the GAO report found the greatest need for improvement in smaller systems, EPA believes that a reduction in frequency for NCWSs would not advance public health protection. EPA notes that surveys or elements of sanitary surveys conducted under the TCR or as part of site assessment or other State programs may be used to meet the GWR requirements if they meet the criteria specified in the GWR (*i.e.*, if the minimum eight elements specified in the GWR are addressed at the specified GWR frequency).

EPA received a number of comments on the 30-day time frame that States have to notify a system when a significant deficiency is identified in the sanitary survey. Some commenters noted that this requirement is consistent with current procedures; notice of significant deficiencies is often provided to a system much sooner. However, other commenters were concerned that this requirement placed an unnecessary deadline on the State and that current State policies and practices adequately address timely notification of systems with significant deficiencies.

The Agency believes that timely notification of significant deficiencies is essential to the timely correction of those deficiencies and to the safety of drinking water. EPA believes requiring a 30-day maximum notification period in all States is reasonable, given the potential public health risk of significant deficiencies, and ensures equitable protection of public health across the nation.

EPA also received comments on what constitutes a significant deficiency under the GWR. EPA proposed defining significant deficiencies as a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has the potential for causing, the introduction of contamination into the water delivered to consumers. Several commenters urged EPA to go beyond that definition and require States to specify a minimum list of significant deficiencies under each of the applicable eight sanitary survey components set out in the EPA/State Joint Guidance on Sanitary Surveys. EPA also received comments regarding specific examples of significant deficiencies in each applicable component. Section IV.A.1 of this preamble includes specific examples of some significant deficiencies provided by commenters.

The Agency believes that to provide adequate public health protection, States must identify and require correction of all significant deficiencies. Also, EPA recognizes the importance for the State to include additional case-specific deficiencies. This rule states that significant deficiencies ''include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has the potential for causing, the introduction of contamination into the water delivered to consumers.'' The GWR requires each State, in its primacy application, to define and describe at least one specific significant deficiency in each of the eight sanitary survey elements. This enables States to work within their existing programs to define significant deficiencies as part of their primacy application and to define and describe significant deficiencies that may be unique to system size, type, location, or State requirements. EPA also recognizes that some systems may not have all eight components; for example, some TNCWSs may not have storage or require certified operators.

EPA requested comment on having public involvement and/or meetings for certain PWSs to discuss the results of sanitary surveys and specifically what approaches might be practical and not overly burdensome to involve the public in working with water systems to address the results of sanitary surveys. Some commenters suggested publishing the results in the system's Consumer Confidence Report (CCR) or reviewing the results at a public meeting. Others supported notifying the public that the results were available and how those results could be obtained. Some commenters noted that significant deficiencies would be corrected rapidly and that involving or informing the public after the correction might not be useful. One commenter suggested posting the results of surveys in a public place for non-community systems.

EPA believes that adequate opportunities exist for customers to obtain information on the complete sanitary survey of their water supplier. Results of sanitary surveys and notification from the State to the water supplier of significant deficiencies would be available to the public upon request from the State or the water supplier. However, EPA also believes that the public served by the water system should be made aware of significant deficiencies found in sanitary surveys that remain uncorrected and be fully informed as to how and when those deficiencies will be corrected. This rule requires systems to notify customers of such significant deficiencies including the date and nature of the significant deficiency, the schedule for correction, any interim measures taken, and the progress to date. The State may require the system to notify customers of corrected significant deficiencies. This requirement is described further in Section IV.D of this preamble.

EPA received comments suggesting that the sanitary survey provisions of

the TCR are sufficient to address viral and bacterial pathogens in GWSs and there is no need for sanitary surveys under the GWR. While EPA believes the TCR was a significant step forward for public health protection in 1989, the TCR does not require systems to correct significant deficiencies or require a minimum frequency of sanitary surveys for all systems. Thus, the GWR sanitary survey requirement better addresses the potential public health consequences of uncorrected significant deficiencies.

B. Source Water Monitoring

This rule requires ground water source monitoring as an essential element in its risk-targeted approach for identifying those GWSs with source water fecal contamination that need corrective action. Systems targeted for source water monitoring are those with an indication that they may be at risk for fecal contamination. Indicators of risk may come from total coliform monitoring, hydrogeologic sensitivity analyses, or other system-specific data and information. This rule requires triggered source water monitoring and provides States with the option to require assessment source water monitoring. Source water monitoring is not required for any GWS that is already providing at least 4-log treatment of viruses.

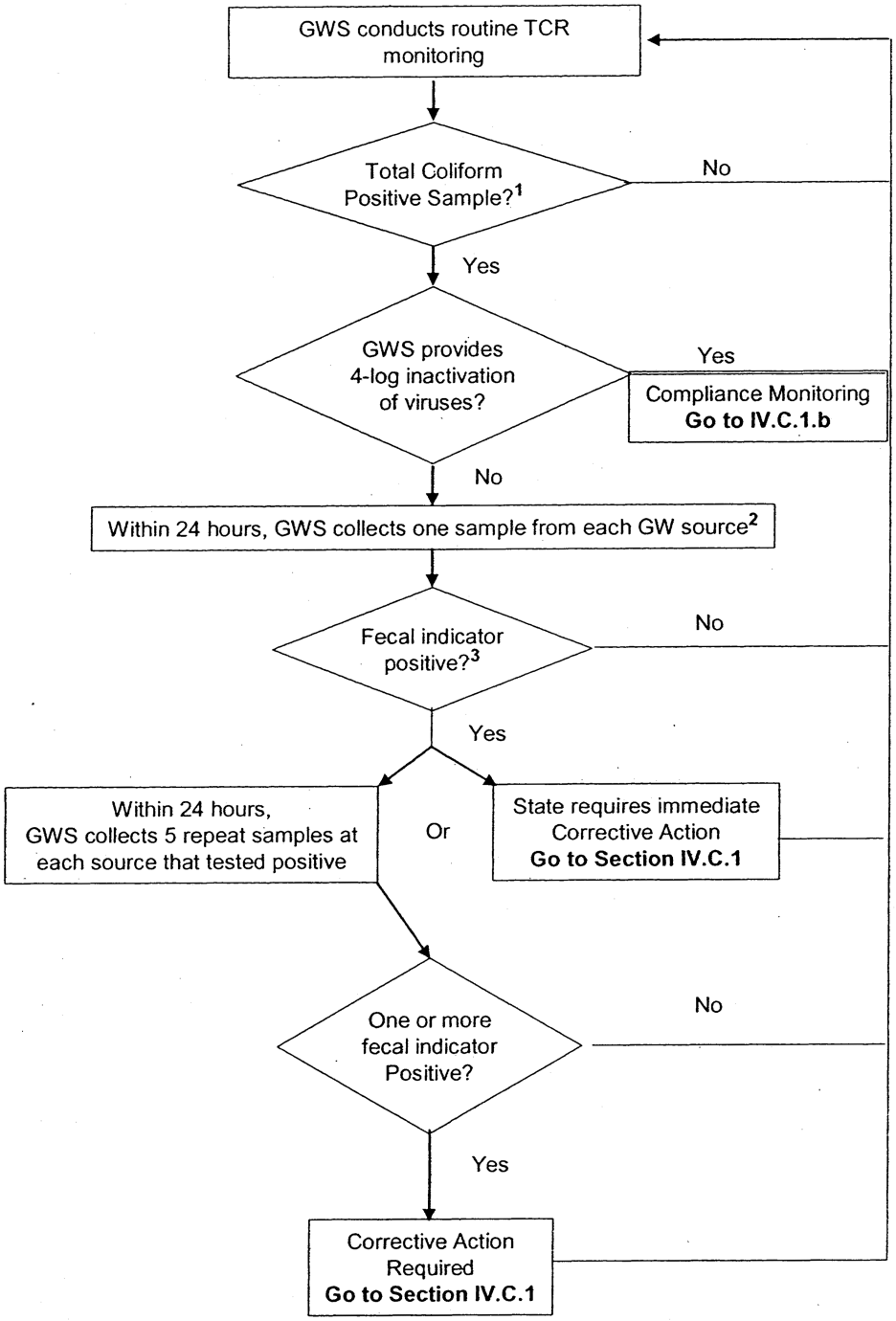
A GWS with a distribution system TCR sample that tests positive for total coliform is required to conduct triggered source water monitoring to evaluate whether the total coliform presence in the distribution system is due to fecal contamination in the ground water source. Triggered source water monitoring provides a critical ongoing evaluation of GWSs.

As a complement to the triggered source water monitoring provision, the GWR gives States the flexibility to require more comprehensive assessment source water monitoring on a case-by-case basis. The purpose of this optional assessment source water monitoring requirement is to target source water monitoring to systems that the State determines are at higher risk for fecal contamination. States are in the best position to assess which systems are at risk and would most benefit from source water monitoring.

EPA believes that source water monitoring targeted at higher risk systems, namely triggered source water monitoring, in conjunction with optional assessment source water monitoring, will be effective in identifying systems with source water fecal contamination. With implementation of the follow-up corrective action requirements outlined in Section IV.C, these requirements will provide meaningful opportunities to reduce public health risk for a substantial number of people served by GWSs.

BILLING CODE 6560–50–P

Figure IV-2: Triggered Source Water Monitoring Requirements



[1]Answer "no" if the sample is invalidated under 141.21(c) or the State determines that the cause of the total coliform-positive sample directly relates to the distribution system

[2]If approved by the State, systems with more than one ground water source may monitor at representative ground water source(s) according to a triggered source water monitoring plan

[3]*E. coli*, enterococci, or coliphage

BILLING CODE 6560–50–C

1. What Are the Requirements of This Rule?

a. *Triggered source water monitoring.* A GWS must conduct triggered source water monitoring within 24 hours of receiving notification that a routine sample collected in accordance with § 141.21(a) (TCR) is total coliform-positive. A GWS must collect at least one ground water source sample from each ground water source (*e.g.*, a well or spring) in use at the time the total coliform-positive sample was collected. Triggered source water monitoring is required unless: (1) The system provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; (2) the system is notified that a positive sample collected in accordance with § 141.21(a) (TCR) has been invalidated under § 141.21(c); or (3) the cause of the total coliform-positive collected under § 141.21(a) directly relates to the distribution system as determined by the system according to State criteria or as determined by the State. The State may extend the 24-hour limit on a case-by-case basis if the State determines that the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

Systems are not required to conduct triggered source water monitoring if, according to State criteria or a State determination, the cause of the total coliform-positive sample collected under § 141.21(a) directly relates to the distribution system. If the GWS makes the decision according to State criteria, the GWS must document the decision in writing; if the decision is made by the State, the State must document the decision in writing. In the primacy application, the State must include criteria that will be used to determine that the cause of a total coliform-positive sample collected under § 141.21(a) is directly related to the distribution system.

If the State approves the use of *E. coli* as a fecal indicator for triggered source water monitoring, GWSs serving 1,000 people or fewer may use a TCR repeat sample collected from a ground water source to simultaneously meet the requirements of § 141.21(b) and satisfy the GWR's triggered source water monitoring requirements for that ground water source only.

If approved by the State, systems with more than one ground water source may conduct triggered source water monitoring at a representative ground water source or sources. The State may require systems with more than one ground water source to submit for approval a triggered source water monitoring plan that the system will use for representative sampling. A triggered source water monitoring plan must identify ground water sources that are representative of each monitoring site in the system's TCR sample siting plan.

If any initial triggered source water sample is fecal indicator-positive, the system must collect five additional source water samples within 24 hours at that site, unless the State requires immediate corrective action to address contamination at that site. The samples must be tested for the same fecal indicator for which the initial source water sample tested positive.

Ground water systems that purchase or sell finished drinking water (referred to as consecutive or wholesale systems, respectively) must comply with triggered source water monitoring provisions for their own sources.

Consecutive and wholesale systems must also comply with other triggered source water monitoring requirements. A consecutive GWS that has a total coliform-positive sample collected under § 141.21(a) (TCR) must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample. If a wholesale GWS receives notice from a consecutive system it serves that a sample collected under § 141.21(a) (TCR) is total coliform-positive, the wholesale GWS must conduct triggered source water monitoring. If the sample is fecal indicator-positive, in addition to notifying its own customers, the wholesale GWS must notify all consecutive systems served by that ground water source. The consecutive system is responsible for providing any required public notice to the persons it serves.

b. *Assessment source water monitoring.* The GWR provides States with the option to require systems to conduct assessment source water monitoring at any time and require systems to take corrective action. See Section IV.B.2.b for EPA's recommendations of when assessment source water monitoring may be appropriate and how to structure the monitoring program. If the State chooses to use HSAs to determine the appropriateness of assessment source water monitoring, then systems must comply with State requests for information.

c. *Source water microbial indicators and analytical methods.* A system that collects a source water sample to comply with this rule must analyze the sample for one of the three fecal indicators (*E. coli*, enterococci, or coliphage). Under this rule, GWSs must use one of seven specified analytical methods for *E. coli*, one of three methods specified for enterococci, or one of two methods specified for coliphage. The system is required to test at least a 100 mL sample volume for one of the three fecal indicators (*E. coli*, enterococci, or coliphage). All analyses must be conducted by a laboratory certified by the State or EPA.

d. *Invalidation of a fecal indicator-positive ground water source sample.* This rule allows systems to obtain written State invalidation of a fecal indicator-positive ground water source sample under either of the following conditions: (1) The system provides the State with written notice from the laboratory that improper sample analysis occurred; or (2) the State determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is due to a circumstance that does not reflect source water quality. If the State invalidates a fecal indicator-positive ground water source sample, the system must collect another ground water source sample within 24 hours of being notified of the invalidation by the State and have it analyzed for the same fecal indicator. The State may extend the 24-hour limit on a case-by-case basis if it determines that the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond the system's control. In the case of an extension, the State must specify how much time the system has to collect the sample.

2. What Is EPA's Rationale for the GWR Source Water Monitoring Requirements?

a. *Triggered source water monitoring.*

i. Overall basis for provision. The GWR builds on the public health protection provided by the TCR by requiring systems to collect a ground water source sample when a TCR distribution system sample is total coliform-positive. Because a total coliform-positive sample in the distribution system may be caused by either a distribution system problem or source water contamination, the GWR triggered source water monitoring provision is necessary to distinguish between these two possible sources of fecal contamination. Thus, using the total coliform indicator is an efficient way to target higher risk systems where source water monitoring is warranted to investigate potential fecal

contamination. EPA believes that the GWR triggered source water monitoring provisions provide an effective means for improving public health protection.

Total coliform monitoring in the distribution system is already required under the TCR. Thus, total coliform monitoring provides a no-cost screening for potential fecal contamination and pathogen occurrence at the source. Total coliform is a sensitive indicator for the presence of potential fecal contamination. In the occurrence studies evaluated for the GWR, wells that were monitored with high frequency for enterovirus and total coliforms detected both enterovirus and total coliform in their source water (*i.e.*, Lieberman *et al.*, 2002; Karim *et al.*, 2004; Wisconsin Department of Health, 2000). Total coliform presence in source water can also be an indicator of recent surface and near surface water inflow to ground water, and pathogens originate at or near the surface.

Triggered source water monitoring provides an ongoing evaluation of fecal contamination in the source water of all GWSs. Because well conditions and sources of fecal contamination can change over time, EPA believes that the ongoing continuous assessment provided by triggered source water monitoring is important.

EPA believes that the triggered source water monitoring requirements of the GWR will effectively target higher risk GWSs. EPA's analysis indicates that the triggered source water monitoring provisions will identify nearly 40 percent of those wells with fecal contamination in their source water (See Chapter 6 of USEPA, 2006d). In addition, the wells with the highest frequencies of fecal contamination occurrence (which EPA believes are the highest risk wells from a public health perspective) will likely be captured first and wells with less frequent fecal contamination will be identified over time (USEPA, 2006d).

ii. Reduced burden for small systems. Under the final GWR, a GWS serving 1,000 people or fewer may use a TCR repeat sample to simultaneously meet requirements of the TCR and the GWR. Under the TCR, when a total coliform sample at a small system (serving 1,000 people or fewer) is positive, the TCR requires the system to collect four repeat samples (one upstream and proximate to the initial total coliform-positive, one at the same location, one downstream and proximate to the original total coliform-positive, and one at another unspecified location). If the State approves the use of *E. coli* as a fecal indicator for ground water source monitoring, the GWR allows these small systems to meet the repeat monitoring requirements of § 141.21(b) (TCR) by collecting their unspecified fourth repeat sample at the ground water source, thereby satisfying the GWR's triggered source water monitoring requirements for that ground water source at the same time. The purpose of this provision is to mitigate the triggered fecal indicator source water monitoring burden for small systems and to improve upon the diagnostic value of repeat sampling under the TCR.

The TCR repeat sample can be used for satisfying both the TCR repeat sample requirement and the initial source water fecal indicator under the GWR because the TCR methods and requirements provide the information necessary for complying with the GWR. If the repeat sample is negative for total coliform bacteria, then it is also negative for *E. coli* bacteria, and no further testing under the GWR is required. Under the TCR, if a repeat sample is positive for total coliform bacteria, the sample must then be further analyzed for the presence of either *E. coli* or fecal coliforms. If the sample is analyzed for *E. coli*, that will satisfy the GWR triggered monitoring requirements.

Total coliform bacteria are a group of bacteria that include *E. coli*. The methods approved for the analysis of the water samples taken under the TCR can be found at § 141.21. Most of these methods are also approved for *E. coli* monitoring under the GWR (see Table IV–1 and § 141.402(c)). The analytical methods approved for use under the TCR listed in Table IV–1 may all be used for both total coliform detection, and most can be used for subsequent *E. coli* detection under the GWR. Two of the methods approved under the TCR (and listed with an asterix in Table IV–1) can be used for total coliform detection only. In these two techniques (one of which is multiple tube fermentation and the other of which is membrane filtration using m-Endo medium), total coliforms are first cultured and confirmed. The laboratory analyst could then proceed to further analyze the total coliform-positive culture for either fecal coliforms or *E. coli* by simply choosing which subsequent medium to inoculate. Testing for fecal coliforms requires EC-Broth while testing for *E. coli* requires use of EC-MUG broth. These two broths are similar, and require the same incubation temperatures and conditions. The only difference between the two media is the addition of the substrate 4-methylumbelliferone-β-D-glucuronide (MUG) to EC Broth, which is added to detect *E. coli*. Thus, if the State has approved *E. coli* as the fecal indicator for the GWR, the *E. coli* sample analyzed under the TCR will meet the GWR source water sample requirements. For the TCR repeat sample, a PWS must collect a 100 mL water sample and analyze it for total coliform bacteria, and further analyze it for a fecal indicator if it is total coliform-positive. This means that small systems (serving 1,000 people or fewer) have no additional sampling burden or costs from the GWR triggered source water monitoring requirement for an initial source water sample.

TABLE IV–1.—METHODS APPROVED FOR DETECTION OF TOTAL COLIFORMS UNDER THE TCR AND FOR THE DETECTION OF *E. coli* UNDER THE GWR (SEE § 141.402(C) FOR DETAILS REGARDING THESE METHODS) **

Method technology type	Method	Total coliforms detected	E. coli detected	TCR/GWR approval
Multiple tube fermentation	(LTB/P–A → BGLB)*	X		X
	EC–MUG		X	X
	NA–MUG		X	X
Enzyme Substrate	Colilert/Colilert-18	X	X	X
	Colisure	X	X	X
	E* Colite Test	X	X	X
Membrane filtration	(m-Endo→LTB/BGLB)*	X		X
	EC–MUG		X	X
	MI Agar	X	X	X

TABLE IV–1.—METHODS APPROVED FOR DETECTION OF TOTAL COLIFORMS UNDER THE TCR AND FOR THE DETECTION OF *E. coli* UNDER THE GWR (SEE § 141.402(C) FOR DETAILS REGARDING THESE METHODS) **—Continued

Method technology type	Method	Total coliforms detected	E. coli detected	TCR/GWR approval
	m-ColiBlue 24 Test	X	X	X

* Methods in parentheses detect total coliforms but not *E. coli*; if a total coliform sample is determined by this method in the source water sample, the analyst can choose the appropriate inoculation medium to analyze for *E. coli*.

** If a total coliform sample is determined negative, no further testing under the GWR is required. If it is positive, the analyst can choose the appropriate *E. coli* method.

iii. Provision for total coliform-positive result directly related to the distribution system. EPA recognizes that some systems may have a known problem in their distribution system that causes total coliform-positive results. In cases when the cause of a total coliform-positive result collected under § 141.21(a) is directly related to the distribution system according to State criteria or a State determination, systems are not required to collect ground water source samples to investigate potential fecal contamination in the source water. A State must include in its primacy application the criteria it will use to determine whether the cause of a total coliform-positive sample collected under § 141.21(a) is directly related to the distribution system. Systems will use these criteria to determine if the cause of a total coliform-positive sample is directly related to the distribution system. If the sample meets the criteria, the system is not required to do triggered source water monitoring. The State needs to determine these criteria as part of their primacy package so that GWSs that collect a total coliform-positive sample can decide whether they need to collect a source water sample(s) within the required 24 hour timeframe. The system must document this determination to the State within 30 days so the State can ensure that the criteria are used correctly and that no potential public health risk from source water contamination has been overlooked. For issues not covered by the pre-determined criteria, the State can also make a determination that the cause of the total coliform-positive sample directly relates to the distribution system.

iv. Basis for additional fecal indicator sampling following triggered source water monitoring. Numerous public comments on the proposal expressed concern that a corrective action should not be required based on one source water indicator-positive sample, as EPA proposed for triggered source water monitoring. The rationale for the proposal was that the likelihood of a false positive result occurring in both the distribution system sample and the fecal indicator source water sample would be small, and therefore it would be likely that the source water positive result was caused by true contamination.

EPA has re-evaluated the use of repeat samples under the triggered source water monitoring provisions. Given that total coliform-positives in the distribution system can result from either distribution system or source water causes, a total coliform-positive in the distribution system does not necessarily predict fecal contamination of the source water. The possibility of false positives at the source and the associated potential for unnecessary follow-up corrective actions, even if relatively infrequent, prompted EPA to revise the final rule triggered source water monitoring provisions to require five additional samples following the initial positive sample before requiring corrective action (if one or more additional sample is positive), unless the State determines that immediate corrective action is necessary. In addition, the potential cost implications for a corrective action could be substantial, especially for small systems.

EPA believes that in most cases these five additional samples should capture the fecal contamination event since the samples are taken within 24 hours. Discrete contamination releases, such as fecal septage, together with discrete precipitation events, become dispersed by hydrogeological processes over time. As a result, shorter duration events at the original contamination source may become longer duration (*i.e.*, days or weeks) but more diluted events at the well. Thus, if an initial fecal indicator-positive is detected at the well, that occurrence should be detectable again with additional samples within 24 hours. Nevertheless, since the nature and source of contamination and the subsurface condition vary from site to site, prompt resampling within 24 hours is needed to capture events that may not be dispersed over time. Prompt resampling is particularly important in cases where the initial sampling event transpires at the tail-end of the well contamination event.

b. *Assessment source water monitoring.* As a complement to the triggered source water monitoring provision, States have the option of requiring systems to conduct assessment source water monitoring. This flexible provision gives States the opportunity to target higher risk systems for additional source water monitoring and require corrective action, if necessary. EPA decided not to include requirements for assessment source water monitoring in the GWR for the reasons given in Section II.C of the preamble. Rather, EPA decided to give States flexibility to require assessment source water monitoring on a case-by-case basis. The purpose for this optional source water monitoring provision is to target systems that the States believe are at high risk from fecal contamination for a thorough evaluation of source water quality. Also, this allows lower risk GWSs to avoid unnecessary sampling (as determined by States).

While EPA believes that triggered source water monitoring will capture many high risk systems, EPA also recognizes that the triggered source water monitoring provisions have limitations. Triggered source water monitoring under the TCR may not be timely (soon enough) or frequent enough to identify systems with intermittent fecal contamination. Also, coliforms are not a good indicator in certain aquifers in which viruses travel faster and further than bacteria. EPA believes that assessment source water monitoring can be an important complement to triggered source water monitoring because assessment source water monitoring provides a thorough examination of the source water at those systems that States deem to be at potentially high risk from fecal contamination. The flexibility of this requirement allows States to require assessment source water monitoring when and where it is needed most. Source water quality can change over time, so it is important for States to be

able to use assessment source water monitoring at any point in time. State programs work closely with PWSs on a daily basis and are thus knowledgeable about system specific conditions and issues. Therefore, EPA believes that the States are in the best position to assess for which systems the thorough evaluation of source water quality provided by assessment source water monitoring is most appropriate. EPA believes that assessment source water monitoring programs within the States' discretion will be important to identify fecally contaminated systems for which corrective action is necessary to protect public health. EPA expects that States may use assessment source water monitoring for high-risk systems that are potentially susceptible to fecal contamination, especially where contamination is often present but intermittent enough to be missed by triggered source water monitoring.

i. EPA's recommendations for targeting systems for assessment source water monitoring. Information on a system's potential susceptibility to fecal contamination is available to the States from many sources. For example, HSAs, source water assessments, wellhead protection plans, past microbial monitoring data particularly triggered source water monitoring results and frequency, and sanitary survey findings are available to States. In addition to these sources of information, EPA recommends that States consider the following risk factors in targeting susceptible systems for assessment source water monitoring: (1) High population density combined with on-site wastewater treatment systems, particularly those in aquifers with restricted geographic extent, such as barrier island sand aquifers; (2) aquifers in which viruses may travel faster and further than bacteria (*e.g.* alluvial or coastal plain sand aquifers); (3) shallow unconfined aquifers; (4) aquifers with thin or absent soil cover; (5) wells previously identified as having been fecally contaminated; and (6) sensitive aquifers. These factors are described in more detail below.

Some localities may be at high risk because they serve large, sometimes seasonal, populations in areas without centralized sewage treatment and their aquifers are of restricted geographic extent, such as barrier island sand aquifers and Great Lakes island karst limestone aquifers. In these locations, the large population using septic tanks can overload the subsurface attenuation capability. Outbreaks have occurred in such resort communities (*e.g.*, South Bass Island, OH, Ohio EPA, 2005, CDC, 2005; Drummond Island, MI, Ground Water Education in Michigan, 1992; Chippewa County Health Department, unpublished report, 1992) due to overloaded septic tanks.

Viruses travel faster and further than bacteria in some aquifers. In barrier island sand aquifers, traditional bacterial fecal indicator organisms such as total coliform and *E. coli* may not be mobile or sufficiently long-lived in the subsurface so as to adequately indicate the hazard from longer-lived and more mobile viral pathogens. Thus, a system could have fecal contamination and yet not be triggered for source water monitoring by TCR monitoring results. In such cases, assessment source water monitoring using coliphage would be the best means for identifying fecal contaminants because coliphage is a viral fecal indicator and thus is more likely to reach the well than bacterial indicators such as *E. coli* and enterococci.

Shallow, unconfined aquifers are high risk because the vertical flow path to the aquifer is short and unrestricted by barriers. Pathogens originate at or near the surface and may be more likely to contaminate well water when the travel time for infiltrating precipitation is short and unhindered.

Wells previously identified as having been fecally contaminated should be considered high risk because such fecal contamination can reoccur. For example, wells in this category may include wells associated with a previous acute TCR violation related to the source or those wells that had an initial fecal indicator-positive triggered source water sample but had five negative additional samples (especially wells with highly variable source water such as those in sensitive aquifers). Wells with highly variable source water may be subject to occasional short-lived contamination events. Thus it is possible to have a true fecal indicator-positive sample followed by true fecal indicator-negative samples. Exposures during intermittent contamination events can be significant, so it is important to identify such high-risk systems. This is best accomplished through a thorough source water evaluation program such as assessment source water monitoring.

Sensitive aquifers (*e.g.*, karst, fractured bedrock, or gravel) can have fast (kilometers per day) and direct ground water flow through large interconnected openings (void spaces) during which very little pathogen attenuation may occur (either by natural inactivation or attachment) between a fecal source of contamination and the well. Consequently, sensitive aquifers are efficient at transmitting pathogens, if present, from surface and near-surface sources to PWS wells. Ground water flow in non-sensitive aquifers (such as a sand aquifer) tends to be very slow (feet per day), takes a very indirect path around a very large number of sand grains, and provides more opportunities for pathogen die-off and attachment. The faster flow travel time within a sensitive, as opposed to a non-sensitive, aquifer enables a much larger contaminant plume from potential fecal contamination events (*e.g.*, failing septic systems or a leaking sewer line).

When ground water flow is fast and direct as in sensitive aquifers, contamination can be short and intermittent and difficult to capture. The frequency by which triggered source water monitoring is prompted via detection of a total coliform-positive sample under the TCR may not be timely enough to recognize that a well is at risk from fecal contamination. First, TCR monitoring at some systems is infrequent. Small systems conduct limited total coliform monitoring in the distribution system under the TCR and thus intermittent fecal contamination of the source could be missed (*i.e.*, these systems may conduct triggered source water monitoring infrequently under the GWR). Second, the lag time between an initial fecal contamination event and total coliform presence in the distribution system may be several days. Thus, if the fecal contamination event is of short duration, triggered source water monitoring may not capture the initial event.

Some of the largest reported waterborne disease outbreaks in GWSs have occurred among systems drawing water from sensitive aquifers. Table IV–2 provides a summary of recent outbreaks reported in sensitive aquifers. The number and nature of recent waterborne outbreaks shown in the table suggest that additional measures are necessary to protect those consuming water from PWS wells in sensitive aquifers. Noteworthy among these outbreaks is the South Bass Island, Ohio outbreak. After that outbreak in 2004, 16 of the 18 TNCWSs on South Bass Island tested positive for fecal indicator organisms (Ohio EPA, 2005; CDC, 2005). Thus, the monitoring protections offered by the TCR were inadequate to protect the community from experiencing a waterborne disease outbreak in this karst limestone aquifer.

TABLE IV–2.—RECENT WATERBORNE DISEASE OUTBREAKS (PWSS) REPORTED IN KARST LIMESTONE AND FRACTURED BEDROCK (SENSITIVE) AQUIFERS

Location	Reference	Number of illnesses/agent
Outbreaks in Karst Limestone Aquifers		
South Bass Island, OH	Ohio EPA, 2005; CDC, 2005	1,450/Norovirus, *Campylobacter, Salmonella.*
Walkerton, Ontario, Canada	Health Canada, 2000; Bopp *et al.*, 2003; Worthington *et al.*, 2002.	1,346 cases/*E. coli* O157:H7 (+ *Campylobacter*); 7 deaths.
Brushy Creek, TX	Bergmire-Sweat *et al.*, 1999; Lee *et al.*, 2001	1,300–1,500 cases/*Cryptosporidium* (not recognized as GWUDI until after the outbreak).
Reading, PA	Moore *et al.*, 1993	551 cases/*Cryptosporidium* (not recognized as GWUDI until after the outbreak).
Racine, MO	MO Department of Health, unpublished report, 1992.	28 cases/HAV.
Drummond Island, MI	Ground Water Education in Michigan, 1992; Chippewa County Health Department, unpublished report, 1992.	39 cases/Unknown.
Cabool, MO	Swerdlow *et al.*, 1992	243 cases/E. coli O157:H7; 4 deaths.
Outbreaks in Fractured Bedrock Aquifers		
Big Horn Lodge, WY	Anderson *et al.*, 2003	35/Norovirus.
Atlantic City, WY	Parshionikar *et al.*, 2003	84/Norovirus.
Couer d'Alene, ID	Rice *et al.*, 1999	117/Arcobacter butzleri.
Island Park, ID	CDC, 1996	82 cases/Shigella.
Northern AZ	Lawson *et al.*, 1991	900 cases/Norwalk virus.

Where the type of aquifer is unknown, EPA recommends that the State conduct an HSA to identify sensitive aquifers and to determine if assessment source water monitoring is appropriate. In sensitive aquifers, more frequent monitoring could more quickly identify wells with fecal contamination. EPA recommends that States use HSAs as a tool to determine at-risk GWSs, and EPA intends to provide guidance on how to conduct HSAs.

Several means can be used to evaluate wells without site-specific inspections to determine if they are located in sensitive hydrogeologic settings. For example, hydrogeologic data are available from published and unpublished materials such as maps, reports, and well logs. As discussed in more detail in the GWR proposal (USEPA, 2000a), the United States Geologic Survey (USGS), U.S. Department of Agriculture's Natural Resource Conservation Service, USGS Earth Resources Observation System Data Center, the EPA Source Water Assessment Program and Wellhead Protection Program, State geological surveys, and universities have substantial amounts of regional site-specific information. States can also base assessments on available information about the character of the regional geology, regional maps, and rock outcrop studies.

In summary, HSAs can be an effective screening tool for identifying GWSs susceptible to fecal contamination for which assessment source water monitoring would be appropriate and beneficial.

ii. EPA's recommendations for assessment source water monitoring program. EPA recommends that States require systems that are conducting assessment source water monitoring to collect a total of 12 ground water source samples that represent each month the system provides ground water to the public. The 12 sample minimum is based on several considerations:

- The sampling frequency should consider diminishing returns on the effectiveness of identifying fecally contaminated wells;
- The sampling should be frequent enough to capture a range of conditions that can vary over the course of a year; and
- The sampling frequency should consider ground water source monitoring costs incurred by GWSs.

EPA estimates that about 26 percent of all wells have *E. coli* occurrence at some time, but the periods of such contamination may be very short and thus difficult to detect by the triggered source water monitoring requirements for some systems. With 12 assessment ground water source samples alone (*i.e.*, absent any triggered source water monitoring), at least half of the wells with sometime *E. coli* contamination would be expected to test positive at least once. Table IV–3 shows that as sampling frequency increases above 12 samples, the ability to identify additional wells that have *E. coli* presence rises more slowly and that relatively smaller percentages of additional wells with *E. coli* are identified per additional sample assay. This table shows that the sampling with 12 assays (*i.e.*, tests) captures 52 percent of the wells with sometime *E. coli* contamination, but sampling with 24 assays only captures an additional nine percent.

TABLE IV–3.—NUMBER OF *E. coli* ASSAYS AND PERCENT CONTAMINATED WELLS IDENTIFIED

Number of assays (N)	Fraction identified (Mean in percent)
3	28
6	40
12	52
24	61
36	65
48	68
60	70

The wells that the assessment source water monitoring identifies as contaminated tend to be those that have frequent occurrence of *E. coli*. Those wells with highly infrequent *E. coli* occurrence would be difficult to capture even with a significant increase in number of samples because the overall period of time of indicator occurrence is small relative to when the sampling occurs.

Considering the costs of additional assays (beyond 12 assessment ground water source samples) and the reduced efficiency at identifying additional

contaminated wells, EPA believes that 12 assays are appropriate.

EPA recommends that the assessment source water monitoring program be representative of the system's typical operation. Using a minimum of 12 samples for assessment source water monitoring would also ensure sampling for each month that most systems are in operation, which is important because of the impact that seasonal events can have on contamination (*e.g.*, heavy rain events). For seasonal systems, EPA recommends equally distributing 12 samples or sampling during consecutive years.

The option under the GWR for States to specify assessment source water monitoring requirements allows States to initiate a more thorough source water monitoring program than that resulting from the triggered source water monitoring provisions alone on a case-by-case basis, as deemed appropriate. For example, a sanitary survey may indicate that there has been a recent development of added source water vulnerability that would warrant additional source water sampling to discern whether there is potential fecal contamination beyond that which would be triggered through the TCR. Additionally, belated recognition of the significance of karst limestone after an outbreak (*e.g.*, Walkerton, Ontario; South Bass Island, Ohio) suggests that States may choose to specify identification of sensitive aquifers combined with assessment source water monitoring to enhance multi-barrier protection.

c. *Source Water Samples*

i. Source water microbial indicators. The final GWR requires GWSs that are performing triggered source water monitoring to monitor their ground water source(s) for one of three fecal indicators (*E. coli*, enterococci, or coliphage). The State must specify which fecal indicator the GWSs must test for in their ground water source(s). EPA recommends that States use these same requirements for GWSs performing assessment source water monitoring.

In this rule, EPA is authorizing the use of *E. coli* and enterococci as bacterial indicators of fecal contamination. Both of these indicators are closely associated with fresh fecal contamination and are found in high concentrations in sewage and septage. Approved analytical methods for these indicators are commercially available, simple, reliable, and inexpensive. *E. coli* is monitored under the TCR and therefore GWSs are familiar with its measurement and interpretation. Enterococci are recommended as one of the indicators for fecally contaminated recreational waters and therefore have widespread use. Enterococci may be a more sensitive fecal indicator than *E. coli* in certain aquifer settings and therefore may be the preferred indicator in such locations.

EPA is also authorizing the use of coliphage as a viral indicator of fecal contamination. Coliphage are viruses that infect the bacterium *E. coli*. They are closely associated with fecal contamination because they do not tend to infect other non-fecal bacteria. Because they are viruses, their stability and transport through soil and certain aquifer types are similar to the fate and transport of pathogenic viruses. There are two categories of coliphage—somatic coliphage and male-specific coliphage. Local knowledge of hydrogeological conditions may inform which of the indicators may be most effective for identifying fecal contamination (USEPA, 2006b). EPA plans to publish a guidance manual to help to inform such decisions. This rule gives States the discretion to specify use of *E. coli*, enterococci, or one of the coliphage types to monitor for potential presence of fecal contamination in ground water sources.

ii. Basis for requiring one versus more than one fecal indicator. EPA's Science Advisory Board (SAB) and the National Drinking Water Advisory Council (NDWAC) recommended that EPA require monitoring for coliphage *and* either *E. coli* or enterococci for source water monitoring. The reasons stated by SAB and NDWAC were that (1) Ground water occurrence data show that no single indicator can fully capture all fecal contamination, (2) coliphage is an important indicator of enteric virus contamination in terms of transport and survival characteristics, and (3) a significant portion of waterborne disease risk is associated with exposure to pathogenic viruses in ground water sources utilized by a subset of PWSs (USEPA, 2000h and 2000i).

EPA had insufficient data to evaluate the effectiveness, on a national level, of using both coliphage and either *E. coli* or enterococci as source water indicators of fecal contamination. While coliphage data is available for many of the occurrence studies used to estimate national occurrence for *E. coli*, the methods used to measure coliphage are often based on high volume analysis and a variety of methods different than those specified under the final GWR. Thus, EPA could not determine whether SAB's proposal would provide additional effectiveness.

EPA is concerned with the potential increase in sampling burden relative to the additional number of fecally contaminated wells that would be identified using two indicators compared to the use of one indicator. The analytical cost for coliphage (viral fecal indicator) monitoring is estimated to be about two to three times the cost for bacterial fecal indicator monitoring. Therefore, requiring a GWS to monitor for both bacterial and viral fecal indicators would more than double the analytical costs for GWSs. Based on the limited data available, EPA believes that it is not reasonable to require all GWSs to monitor for both a bacterial and a coliphage indicator in their source water.

EPA believes that the most appropriate indicator may vary from State to State or site to site. This may be due to regional or site-specific differences or other reasons that may be identified by the State. EPA intends to provide guidance on how to determine which indicator may be most appropriate to use.

For the reasons discussed above, EPA believes that the use of a single fecal indicator (*E. coli*, enterococci, or coliphage) provides a cost-effective means for identifying fecally contaminated wells and protecting public health.

iii. Sample volume and analytical methods. This rule requires GWSs performing triggered source water monitoring to collect and test at least a 100 mL sample volume. EPA recommends that States use this requirement for assessment source water monitoring. The final GWR requires a minimum sample volume of 100 mL because most utilities are familiar with this sample volume for bacterial indicator analysis, and the two EPA approved coliphage methods include at least this volume in their procedures. EPA believes that specifying a higher minimum sample volume would unduly increase the cost per sample (especially due to shipping). Furthermore, if a higher minimum sample volume were specified in the GWR, small systems would not be able to realize the considerable monitoring cost savings from use of TCR repeat sampling previously discussed in Section IV.B.2.a.ii.

With regard to analytical methods used for ground water source monitoring under this rule, four of the seven methods for the analysis of *E. coli* in source waters allowed under this rule are consensus methods described in *Standard Methods for the Examination of Water and Wastewater* (20th editions) (APHA, 1998). The three *E. coli* methods that are not consensus methods are as follows: MI agar (a membrane filter method), the ColiBlue 24 test (a

membrane filter method), and the E*Colite test (a defined dehydrated medium to which water is added). EPA has already evaluated and approved these three methods for use under the TCR. In the proposed rule § 141.403(d), footnotes 4 and 5, the use of MI agar with Membrane Filtration Method was allowed. Membrane Filtration Method is an EPA-approved drinking water method, as indicated in footnote 4, while footnote 5 cites a manuscript describing MI agar. Subsequent to the proposal of the GWR, EPA developed EPA method 1604 ''Total Coliforms and *Escherichia coli* in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium)'' (USEPA, 2002c). This method was created to ensure consistency with other EPA microbiological methods and was promulgated under the Clean Water Act for use in ambient water monitoring July 21, 2003 (68 FR 43272–43283) at 40 CFR 136.3, Table 1A, footnote 22. Method 1604 is equivalent to both the manuscript and the EPA-approved Membrane Filtration Method, and EPA has indicated in Section 5.4.2.1.3 of the *Manual for the Certification of Laboratories Analyzing Drinking Water* (USEPA, 2005b) that Method 1604 is identical. EPA Method 1604 is available on the EPA Web site at *http://www.epa.gov/microbes*. This rule allows EPA Method 1604 because the Agency believes it will be easily available to the public.

Three enterococci methods for the analysis of source water are allowed under this rule; two of these are consensus methods in *Standard Methods* (APHA, 1998), and the third (Enterolert) was published in a peer-reviewed journal article (Budnick *et al.*, 1996). The description for each of the *E. coli* and enterococci methods explicitly states that the method is appropriate for fresh waters or drinking waters. The proposed rule, § 141.403(d), footnote 8 of the table, also proposed to allow EPA Method 1600 (USEPA, 1997d) as an approved variation of one of the two consensus methods, *Standard Method* 9230C, for enterococci. However, subsequent to the proposal of the GWR, EPA slightly modified EPA Method 1600 (USEPA, 2002a) and promulgated the new version under the Clean Water Act on July 21, 2003 (68 FR 43272–43283), at § 136.3, Table 1A, Footnote 25. The revised method replaced the 1997 version on the EPA Web site (*http://www.epa.gov/microbes*). EPA does not regard the changes in the newer version of Method 1600 as substantive and, aside from changes in format, contact, and grammar, has indicated the differences between the two versions in a memo dated March 12, 2004 that is included in the Water Docket for the GWR. This rule allows the more recent version of EPA Method 1600 because, and in addition to a few updates and more clarifications, the Agency believes that it will be much more easily available to the public.

EPA proposed to allow, and continues to allow under this rule, the use of the two coliphage methods, U.S. EPA Methods 1601 and 1602 (USEPA, 2001a, 2001b), for source water testing—a new two-step enrichment method (Method 1601) and a single-agar layer method (Method 1602) recently optimized for ground water samples. These methods have been round-robin tested (USEPA, 2003a and b) and the Agency has also conducted performance studies, using 10 laboratories, on the two proposed methods. A full report of each of the two performance studies is available in the Water Docket. They are entitled (1) *Results of the Interlaboratory Validation of EPA Method 1601 for Presence/Absence of Male-specific (F+) and Somatic Coliphage in Water by Two-Step Enrichment* (USEPA, 2003a), and (2) *Results of the Interlaboratory Validation of EPA Method 1602 for Enumeration of Male-specific (F+) and Somatic Coliphage in Water by Single Agar Layer* (SAL) (USEPA, 2003b).

With regard to method cost, EPA queried seven laboratories that participated in the round-robin performance testing of the proposed coliphage tests. Based upon this survey, EPA estimates that the coliphage tests (not including sampling or shipping costs) will cost about $59–$65 per test (DynCorp, 2000). This compares to about $20–25 for bacterial indicators.

iv. Invalidation of a fecal indicator-positive ground water source sample. This rule allows the State to invalidate a fecal indicator-positive triggered source water monitoring sample if the system provides the State with written notice from the laboratory that improper sample analysis occurred, or if the State determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is not related to source water quality. These provisions are consistent with the sample invalidation criteria under the TCR and provide a necessary flexibility to States.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Source Water Monitoring Requirements?

a. *Triggered source water monitoring.*

i. Use of total coliform-positive result as a trigger for source water fecal indicator monitoring. Many commenters maintained that a single total coliform-positive sample was too sensitive of a trigger to prompt a requirement to collect a ground water source sample. Among their reasons were that a single total coliform-positive sample in the distribution system is not necessarily linked to any source water problem or even a public health risk. Some argued that other triggers were more suitable, such as an acute MCL violation or a non-acute MCL violation under the TCR. A number of commenters were opposed to triggered source water monitoring altogether.

As discussed in Section IV.B.2, EPA believes that triggered source water monitoring is an important requirement to protect public health. In response to commenters' concerns that a single total coliform-positive sample in the distribution system is not necessarily linked to any source water problem, EPA has added language in the final GWR that allows States to determine that the cause of a total coliform-positive collected under § 141.21(a) is directly related to the distribution system and will thus not be a trigger for fecal indicator source water monitoring. Because the time available to make the determination is short, the State may develop criteria for systems to use to make the determination, which would be followed by a report to the State.

Unless clearly indicated otherwise, EPA believes that a total coliform-positive sample in the distribution system is an indication of potential microbial contamination of the GWS that may have originated from the ground water source. This is a potentially serious public health risk that warrants follow-up action.

EPA believes that basing triggered source water monitoring on TCR MCL violations would not be sensitive enough to identify the majority of fecal contamination events at the source. EPA estimated that the percentage of fecally contaminated wells that would be identified under such a provision would be an order of magnitude less than under the requirements of the final rule. Consequently, EPA believes that such a requirement would not be adequately protective.

ii. Consecutive system and wholesale system requirements. EPA requested comment on which GWR requirements should apply to consecutive systems and specifically who should be responsible for triggered source water monitoring after a total coliform-positive sample is found in the consecutive system's distribution system. Many commenters recommended that the seller (or wholesale) system be responsible for

ground water source monitoring, not the consecutive system. Others suggested the State should decide which system should take the ground water source sample. In addition, some commenters maintained that the buyer (or consecutive) system should not be responsible for meeting the treatment technique requirements (*e.g.*, 4-log treatment) for sources.

EPA infers that some commenters based their comments on an understanding that consecutive systems were only systems that received all their finished water from a wholesale system, although that is not always correct. Since the GWR proposal, EPA defined ''consecutive system'' and ''wholesale system'' in § 141.2 in the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) (71 FR 388, January 4, 2006) (USEPA, 2006g). In those definitions, which apply to all requirements in 40 CFR Part 141 (including the GWR), EPA specified and clarified that consecutive systems include both systems that receive all of their finished water from one or more wholesale systems and systems that receive some of their finished water from one or more wholesale systems (with the balance coming from a source or sources operated and treated, as necessary, by the consecutive system).

The Agency has added requirements to clarify the responsibilities of consecutive and wholesale systems in response to comments received, and to facilitate implementation and compliance. EPA believes that public health and risk concerns underlying the requirement for triggered ground water source monitoring after a total coliform-positive sample are equally applicable to consecutive systems and wholesale systems. EPA also believes that the system that operates the ground water source should be responsible for any required triggered or assessment source water monitoring and any required corrective actions, including 4-log treatment installation, operation, and compliance monitoring.

Without treatment, water quality problems in the wholesale system will remain in the water delivered to the consecutive system and thus water quality problems in the consecutive system may be related to problems in the wholesale system (even if the wholesale system has not identified the problems). Therefore, in the GWR, specific triggered source water monitoring requirements apply to consecutive systems and wholesale systems (as explained in the following paragraphs) unless the cause of the total coliform-positive collected under § 141.21(a) directly relates to the distribution system as determined by the system according to State criteria, or as determined by the State.

Consecutive systems that have a total coliform-positive sample must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample so that the wholesale system(s) can conduct triggered source water monitoring, since the wholesale system's source water may be the cause. Also, a consecutive system with its own ground water source(s) that has a total coliform-positive sample under the TCR must conduct triggered source water monitoring of its own sources, just like any other GWS that must conduct triggered source water monitoring. A consecutive system that has no source of its own (*i.e.*, it receives all of its finished water from one or more wholesale systems) is not required to conduct triggered source water monitoring, since it has no source water. Only systems that produce finished ground water (*i.e.*, have their own sources) are required to conduct triggered source water monitoring.

Consecutive systems are required to comply with the GWR treatment technique requirements only in cases of contamination in the consecutive system's own ground water source. Consecutive systems are not required to comply with GWR treatment technique requirements if a fecal indicator-positive is detected only in the wholesale system's ground water source; only the system with the source contamination must comply with the GWR treatment technique requirements (in this case, the wholesale system). Similarly, wholesale systems are not required to comply with GWR treatment technique requirements if a fecal indicator-positive is detected only in the consecutive system's ground water source and not in the wholesale system's source; again, only the system with the source contamination must comply with the GWR treatment technique requirements (in this case, the consecutive system).

iii. Repeat samples to confirm initial fecal indicator-positive. Several commenters raised concerns that a single positive fecal indicator source water sample should not result in a corrective action because the indicator sample result may be a false positive. The same commenters recommended that repeat samples be taken to confirm the initial result before requiring corrective action. In response to commenters and based on the discussion in Section IV.B.2, unless the State determines that corrective action should be taken following an initial fecal indicator-positive source water sample, the final GWR requires that the GWS take five additional samples, and that only if one of those samples is fecal indicator-positive is corrective action required. This prevents systems from incurring costs from the application of unnecessary corrective actions. The State may require the system to take corrective action after the first fecal indicator-positive source water sample.

EPA believes that five additional samples following a positive triggered source water monitoring sample provides a reasonable balance between ensuring that corrective actions are warranted, avoiding excessive re-sampling costs, and avoiding an incorrect conclusion that the initial positive was false (*i.e.*, avoiding a situation in which corrective action is needed but not taken because of false re-sample results). EPA believes that multiple samples, rather than one, are needed to ensure that corrective action is taken when necessary. EPA proposed using five repeat samples under the routine monitoring provisions (65 FR 30230) (USEPA, 2000a). Commenters wanted EPA to use repeat samples for the triggered monitoring provisions also because they were concerned about false positives and systems taking unnecessary corrective actions. They recommended four or five repeat samples for triggered monitoring. In response to comments, the final GWR requires five repeat samples under the triggered source water monitoring provisions.

iv. Source water monitoring burden. In the final GWR, EPA has reduced the sampling burden for small systems serving 1,000 people or fewer. Under the TCR, a system that collects one or fewer routine samples per month (systems that serve 1,000 people or fewer) with a total coliform-positive sample (that has not been invalidated) is already required to collect a set of four repeat samples in the distribution system within 24 hours of the total coliform-positive sample. Under this rule, one of the four repeat samples required under the TCR may be used to satisfy the GWR source water monitoring requirements if the sample is taken at a ground water source and only if the State approves the use of *E. coli* as a fecal indicator.

In addition, the final rule reduces sampling burden for systems with more than one well (*e.g.*, many large systems). Based on comments received, the GWR provides flexibility for systems with more than one well. The triggered source water monitoring provision allows systems with more than one ground water source, upon State approval, to sample a representative ground water source (or sources)

following any total coliform-positive sample. The State may require systems with more than one ground water source to submit for approval a triggered source water monitoring plan that the system will use for representative sampling. EPA believes that this alternative can be as protective of public health as monitoring all wellheads, provided that the chosen wells are truly representative of all wellheads. In addition, for situations where a particular sample site is inaccessible, the State may identify an alternate sampling site that is representative of the water quality of the ground water at the inaccessible sample site.

b. *Routine Monitoring.* Many comments regarding routine source water monitoring were related to HSAs. Many commenters suggested State discretion on which systems should be considered sensitive and thus be required to do routine monitoring.

EPA has taken public comments on routine monitoring and HSAs into consideration, as discussed in Section II.C. The final GWR provides State the option to require assessment source water monitoring at GWSs that the State determines to be most susceptible to fecal contamination. EPA believes that this optional provision is an important tool that should be used by States to protect public health.

EPA recommends HSAs as one way to identify higher risk systems for which assessment source water monitoring would be beneficial and appropriate. Based on comments received, the final GWR does not require HSAs or assessment source water monitoring, except as provided by the State (see Section II.C).

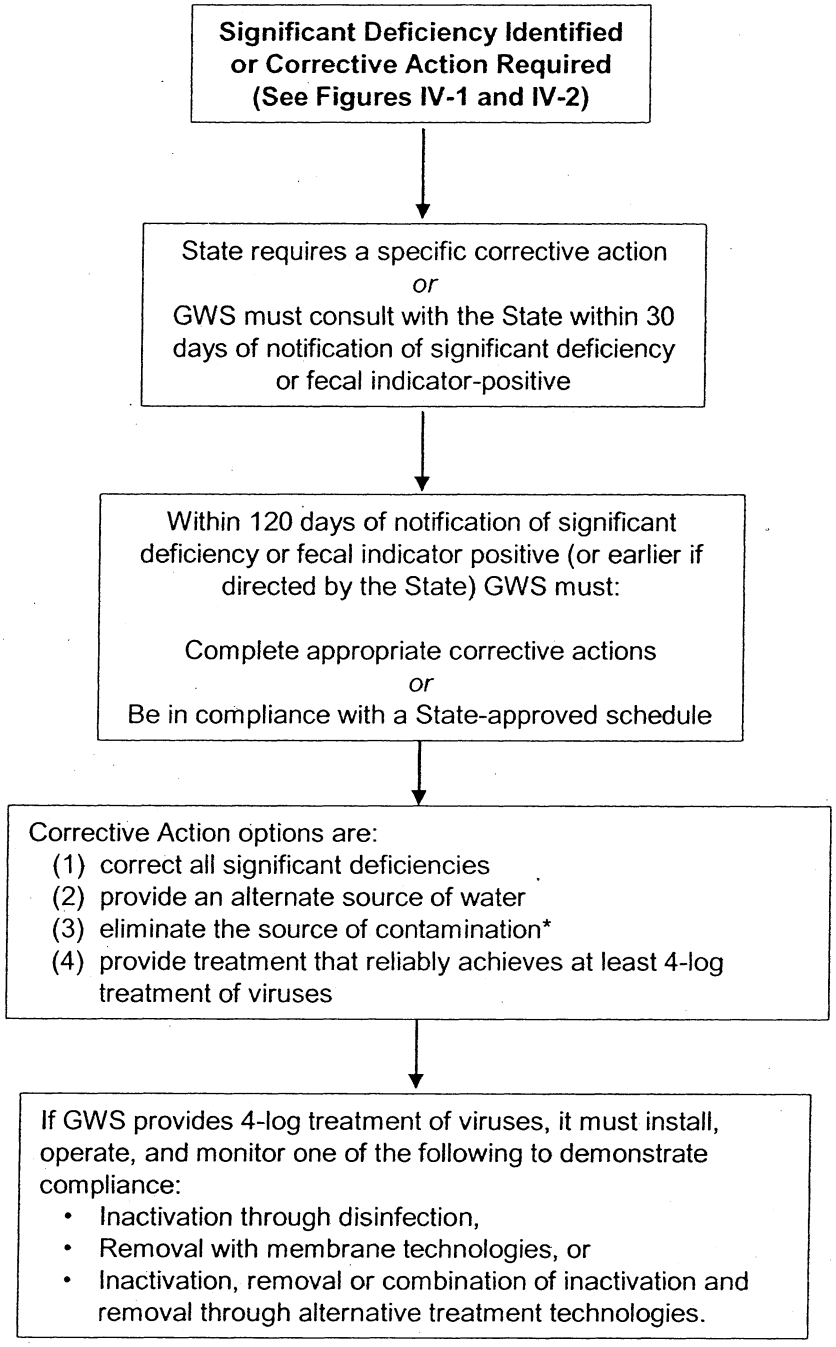
c. *Source water microbial indicators and analytical methods.* This rule allows a State to direct a system to use *E. coli*, enterococci, or coliphage for ground water source monitoring. Regarding coliphage testing, one major issue raised by commenters pertained to the performance of the two proposed coliphage methods. Many commenters questioned method reliability, specificity, sensitivity, false-positive rates, and lack of comprehensive field testing. They were also concerned about analytical costs and the availability of laboratory capacity. As explained earlier, the Agency believes that the results of performance studies indicate that both methods have been validated for reliable use in drinking water contexts. As discussed in Section IV.B.2, EPA recognizes that the analytical costs for coliphage testing are more than double the cost for bacterial (*E. coli* and enterococci) analyses. Therefore, EPA believes that many States will specify a bacterial fecal indicator for GWR source water monitoring based on cost. However, the Agency allows coliphage testing in this rule due to awareness that some laboratories are proficient in coliphage analysis and that this indicator may be preferred over others, depending on site-specific knowledge. While EPA recognizes that limited laboratory capacity for coliphage testing may be an issue, this rule provides States with discretion in determining which fecal indicators (*E. coli*, enterococci, or coliphage) will be used. EPA expects that one of the factors that States may use to decide which fecal indicator to specify is laboratory capacity.

C. Corrective Action Treatment Techniques for Systems With Significant Deficiencies or Source Water Fecal Contamination

The final GWR provides for regular, comprehensive sanitary surveys of all GWSs and triggered source water and optional assessment source water monitoring to determine at-risk GWSs. This rule requires the subset of systems with sanitary survey significant deficiencies or source water fecal contamination to complete corrective actions in a timely manner to ensure public health protection. Failure to complete corrective actions within 120 days, including meeting deadlines for interim actions and measures, or comply with a State-approved corrective action plan and schedule, constitutes a treatment technique violation under this rule.

BILLING CODE 6560–50–P

Figure IV-3: Corrective Action Treatment Technique Requirements



* If the State and GWS cannot determine the cause of the source water contamination, and the State determines based on follow-up monitoring or other evidence that the contamination is unlikely to occur again, the State may determine that the source of contamination has been eliminated.

BILLING CODE 6560–50–C

1. What Are the Requirements of This Rule?

When a system has a significant deficiency, it must consult with the State regarding appropriate corrective action within 30 days of receiving a written notice of the significant deficiency. When a system receives a written notice from a laboratory indicating a fecal indicator positive result in one of the five additional triggered source water monitoring samples, the system must consult with the State regarding appropriate corrective action. When a system receives a written notice from a laboratory indicating a fecal indicator

positive result and the State has determined that corrective action is necessary, the system must consult with the State regarding appropriate corrective action. Consultation must take place within 30 days. In any event, the State may specify corrective action without consultation. In the consultation process, the State may approve and/or modify corrective actions and completion schedules proposed by the system, or the State may specify alternatives. The State may also specify interim corrective action measures.

The GWR rule requires that within 120 days (or earlier if directed by the State) of receiving the notification from the State or laboratory described in the preceding paragraph, the GWS must either (i) Complete appropriate corrective actions in accordance with applicable State plan review processes or other State guidance or direction, or (ii) be in compliance with a State-approved corrective action plan and schedule. If a system is unable to complete corrective action within 120 days or on the schedule specified by the State, then the system is in violation of the treatment technique requirement.

Systems must notify the State within 30 days of completing any State approved or specified corrective action. As a condition of primacy, States must verify that the corrective action has been completed within the next 30 days. States may verify that the corrective action has been completed and has successfully addressed the significant deficiency and/or fecal contamination in the ground water source either by a site visit or by written documentation from the system, which could consist of the system's notification to the State.

a. *What corrective action alternatives are provided for in this rule?* When a system has a significant deficiency or a fecal indicator-positive ground water source sample (either by the initial triggered sample, or positive additional sample, as determined by the State), the GWS must implement one or more of the following corrective action options: (1) Correct all significant deficiencies (*e.g.*, repairs to well pads and sanitary seals, repairs to piping tanks and treatment equipment, control of cross-connections); (2) provide an alternate source of water (*e.g.*, new well, connection to another PWS); (3) eliminate the source of contamination (*e.g.*, remove point sources, relocate pipelines and waste disposal, redirect drainage or run-off, provide or fix existing fencing or housing of the wellhead); or (4) provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source requiring corrective action.

b. *Compliance monitoring for systems providing at least 4-log treatment of viruses.* This rule also establishes compliance monitoring requirements for GWSs that provide at least 4-log treatment of viruses as a corrective action. This rule also establishes compliance monitoring requirements for those systems that have notified the State that they provide at least 4-log treatment of viruses for their ground water sources before the first customer and are therefore not required to meet the triggered source water monitoring requirement of this rule.

Treatment technologies capable of providing at least a 4-log treatment of viruses include the following:

- Inactivation, with a sufficient disinfection concentration and contact time, through disinfection with chlorine, chlorine dioxide, ozone, or through anodic oxidation. Disinfectant concentration and contact time (CT) can be based on existing CT tables (USEPA, 1991) or State-approved alternatives.
- Removal with membrane technologies with an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least a 4-log removal of viruses.
- Inactivation, removal or combination of inactivation and removal through alternative treatment technologies (*e.g.*, ultraviolet radiation (UV)) approved by the State, if the alternative treatment technology, alone or in combination (*e.g.*, UV with filtration, chlorination with filtration), can reliably provide at least 4-log treatment of viruses.

Under this rule, systems providing 4-log treatment of viruses using chemical disinfection must monitor for and must meet and maintain a State-determined residual disinfectant concentration (*e.g.*, 4-log inactivation of viruses based on CT tables) or State-approved alternatives every day the GWS serves from the ground water source to the public.

Systems serving greater than 3,300 people and using chemical disinfection (*e.g.*, chlorine) to provide 4-log inactivation must continuously monitor the residual disinfectant concentration using analytical methods specified in § 141.74(a)(2) (Analytical and monitoring requirements) at a location approved by the State, and record the lowest residual disinfectant level each day that the GWS serves water from the ground water source to the public. The system must maintain the State-determined residual disinfectant concentration every day the GWS serves from the ground water source.

Systems serving 3,300 people or fewer that use chemical disinfection must monitor the residual disinfectant concentration using analytical methods specified in § 141.74(a)(2) (Analytical and monitoring requirements) at a location approved by the State either by taking at least one grab sample every day the GWS serves water to the public or by continuously monitoring the disinfectant residual. Systems collecting grab samples must record the disinfectant residual level each day that the GWS serves water from the ground water source to the public. The system must take a grab sample during the hour of peak flow or at another time specified by the State. Systems serving 3,300 people or fewer that use continuous residual monitoring equipment must record the lowest residual disinfectant level each day that the GWS serves water from the ground water source to the public.

If a GWS taking grab samples has a sample measurement that falls below the State-specified residual disinfectant concentration, then the system must take follow-up samples at least every four hours until the State-specified residual disinfectant level is restored. If a system using continuous monitoring equipment fails to maintain the State-specified disinfectant residual level necessary to achieve 4-log inactivation of viruses, the system must restore the disinfectant residual level to the State-specified level within four hours. If continuous disinfectant monitoring equipment fails, the GWS must take a grab sample at least every four hours until the equipment is back on-line. The system has 14 days to resume continuous monitoring. Failure to restore the residual disinfectant level to that required for 4-log inactivation of viruses within four hours, using either continuous monitoring or grab sampling, is a treatment technique violation.

Ground water systems that use a membrane filtration treatment technology must maintain the integrity of the membrane and monitor and operate the membrane filtration system in accordance with State-specified monitoring and compliance requirements (*e.g.*, membrane performance parameters and integrity testing). If a system fails to meet these requirements or maintain the integrity of the membrane, it must correct the problem within four hours or be in violation of the treatment technique requirement.

Systems that use a State-approved alternative treatment technology must monitor and operate the alternative treatment in accordance with all compliance requirements that the State determines to be necessary to demonstrate that at least 4-log treatment of viruses is achieved. If the system does not comply with these requirements, fails to maintain at least 4-log treatment of viruses, and does not restore proper operation within four hours, the system is in violation of the treatment technique requirement.

GWSs providing at least 4-log treatment of viruses may discontinue treatment if the State determines (*e.g.*, based on source water monitoring or replacement of the source) and documents in writing that the need for 4-log treatment of viruses no longer exists for that ground water source. GWSs that discontinue treatment with State approval must comply with the triggered source water requirements of this rule. GWSs that provide 4-log treatment of viruses and notify the State that they are not subject to the source water monitoring requirements of this rule but subsequently discontinue 4-log treatment of viruses must have State approval and must comply with the triggered source water requirements of this rule.

2. What Is EPA's Rationale for the GWR Treatment Technique Requirements?

EPA believes that fecal contamination in ground water sources of undisinfected or minimally disinfected GWSs and significant deficiencies demonstrate public health risks that require prompt corrective action. Application of corrective actions in cases of source water fecal contamination or significant deficiencies provides benefits of eliminating existing problems and can also preempt future public health risks, such as an outbreak. EPA believes that requiring treatment technique provisions to respond to fecally contaminated ground water sources and/or significant deficiencies identified by sanitary surveys will provide enforcement authority to EPA and States to ensure that appropriate corrective actions will be implemented.

The GAO reported that failure to correct deficiencies identified in sanitary surveys is a significant concern (USGAO, 1993). An analysis of Best Management Practices (BMPs) (ASDWA, 1998) showed that correction of deficiencies was correlated with lower levels of total coliform, fecal coliform, and *E. coli*. Therefore, EPA believes that the treatment technique requirements in this rule will result in reduced exposures to fecal contamination and associated health risks.

Findings from a review of the Environmental Law Reporter contained in the *Baseline Profile Document for the Ground Water Rule* (USEPA, 2000g) indicate that (1) Not all States specifically require systems to correct deficiencies, and (2) a number of States may not have the legal authority to require systems to correct deficiencies. The treatment technique requirements of this rule provide for timely correction, as well as public notification, of fecal contamination and significant deficiencies. Treatment corrective actions provide for inactivation or removal of microbes of public health concern in some ground waters and results in reduced exposures and associated health risks. The rule also allows non-treatment alternatives such as removing the source of contamination or providing an alternate source water, both of which also result in reduced exposures and associated health risks.

To avoid unwarranted action, EPA has added a provision under the final rule that allows additional sampling of the source water with the initial fecal indicator-positive sample before requiring corrective action. If the State determines that corrective action is appropriate from the initial fecal indicator-positive finding, then no additional sampling would be required. This provision is discussed in Section IV.B.2.a.

a. *Corrective Actions and Treatment Technique Requirements.* To develop the treatment technique requirements, EPA evaluated existing State requirements and the measures available to systems to address fecal contamination. EPA believes that effective corrective actions include correcting significant deficiencies, eliminating the source of contamination, providing an alternate source of safe drinking water, or providing 4-log treatment of viruses. States and systems have the flexibility to take site-specific factors into consideration when implementing these corrective actions.

i. Corrective action technologies. Chemical disinfection technologies are commonly used by both ground water and surface water systems to provide disinfection prior to distribution of drinking water. EPA believes that 4-log inactivation is protective in disinfecting GWSs (see Figure III–1). Under the SWTR, EPA requires at least 4-log removal and/or inactivation of viruses. Since the frequency of viral occurrence and virus concentrations are generally lower in ground water supplies than in surface water supplies, EPA believes the 4-log requirement for GWSs is as protective as the current treatment requirements for surface water supplies. Figure III–1 indicates the range of protection anticipated from the 4-log requirement for GWSs having viral contamination in their source water.

Numerous studies have investigated the efficacy of chemical disinfectants to inactivate viruses. Free chlorine was shown to be able to achieve 4-log inactivation of hepatitis A virus (HAV) at a temperature of 15 degrees Celsius, a pH of 6–9, and a CT of four mg-min/L (USEPA, 1991). Chlorine dioxide achieves 4-log inactivation of HAV at a temperature of 15 degrees Celsius, a pH of 6–9, and a CT of 16.7 mg-min/L (USEPA, 1991). Ozone achieves a 4-log inactivation of poliovirus at a temperature of 15 degrees Celsius, a pH of 6–9, and a CT of 0.6 mg-min/L (USEPA, 1991). Chemical disinfection is a demonstrated technology that can achieve 4-log inactivation of viruses. The CT value needed to provide 4-log inactivation of viruses is dependent on site-specific conditions, including the disinfectant demand, water temperature and pH. States and systems may use existing inactivation (CT) tables (USEPA, 1991) or State-approved alternatives to determine the chemical disinfectant doses required to achieve a 4-log inactivation of viruses.

Membrane filtration technologies can achieve 4-log or greater removal of viruses, as long as the absolute MWCO of the membrane, or alternate parameter that describes the exclusion characteristics of the membrane, is smaller than the diameter of viruses. For instance, reverse osmosis (RO) can achieve greater than 4-log removal of particles (including viruses) larger than 0.5 nm in diameter when the absolute MWCO of the RO membrane is less than 0.5 nm (Jacangelo *et al.*, 1995). In addition, nanofiltration (NF) can achieve greater than 4-log removal of particles with a diameter of 0.5 nm or larger when the absolute MWCO of the NF membrane is 200–400 Daltons. Viruses range in diameter from 20–900 nm. The absolute MWCOs of specific membranes must be determined for the specific membranes to meet these conditions. This rule also allows for other filtration treatment technologies to be used to meet the 4-log treatment requirement.

The GWR proposal explicitly included UV light in the regulatory text as a stand-alone treatment technology that could provide a 4-log virus inactivation. However, data published subsequent to the GWR proposal indicated that some viruses, particularly adenoviruses, are very resistant to UV

light. The GWR proposal was based on information available at the time of the proposal regarding UV doses required to provide a 4-log inactivation of HAV and the design doses achieved by available UV reactors, which are lower than the UV doses needed to achieve 4-log inactivation of adenovirus.

Further, EPA believes that UV reactors must undergo challenge testing to validate the dose level delivered so that effective public health protection is provided in systems using UV disinfection. At present, EPA is unaware of available challenge testing procedures that can be used to validate the performance of UV reactors at dose levels needed for a 4-log inactivation of adenovirus.

The final GWR modifies the proposal by removing the explicit reference to UV as a stand-alone technology to achieve 4-log virus inactivation. EPA is concerned that fecally-contaminated ground water may contain adenoviruses, or other viruses, that are more resistant to UV inactivation than HAV, and currently available testing procedures cannot validate UV reactor performance at the UV dose levels needed for inactivation.

EPA believes that UV technology can be used in a series configuration or in combination with other inactivation or removal technologies to provide a total 4-log treatment of viruses to meet this rule's requirements. EPA also believes that a UV reactor dose verification procedure for 4-log inactivation of a range of viruses may be developed in the future. With the future development of UV validation procedures, it may become feasible for systems to demonstrate that they can achieve 4-log inactivation of viruses with a single UV light reactor. Therefore, this rule allows States to approve and set compliance monitoring and performance parameters for any alternative treatment, including UV light or UV light in combination with another treatment technology, that will ensure that systems continuously meet the 4-log virus treatment requirements. This requirement is both protective of public health and provides systems and States with needed flexibility for site-specific decisions. It ensures protection against known heath risks associated with waterborne viruses; allows systems to make use of technologies that are already in place or are more appropriate for the system's size, location, or configuration; and provides the opportunity for systems to take advantage of future technology developments.

ii. Corrective action time frame. EPA believes that timely correction of source water fecal contamination and significant deficiencies in GWSs is an essential component of the public health measures presented in this rule.

EPA has extended the proposed 90-day deadline for completing corrective actions to 120 days, which includes additional time for a 30-day GWS/State consultation period. In the case of source water fecal contamination, an investigation into the cause of contamination should be conducted during this 30 day period. This consultation allows the State, in discussion with the system, to determine the most appropriate corrective action for the problem identified to ensure public health protection. To reduce burden, the State may specify the corrective action in its significant deficiency notice to the system.

EPA believes that in many situations, a system can complete corrective actions within 120 days because many corrective actions are easy to implement, such as repairing a well seal. Where this is not the case, for example if a system needs to make capital improvements, the GWR allows States to determine an alternate schedule. The State is in the best position to make these case-by-case determinations of the most appropriate schedule to protect public health. The GWR also allows the State to require immediate interim corrective action to protect consumers while longer-term actions are implemented.

There may be cases in which systems and States have thoroughly investigated and cannot determine the cause of fecal contamination of the source water and believe that the source is no longer vulnerable to such contamination. If the State determines based on follow-up monitoring or other evidence that the contamination is unlikely to occur again, the State may consider the source of contamination to be eliminated. EPA considers such a system to be high risk and recommends that States follow up such a determination with assessment source water monitoring as described in Section IV.B.2.b. Commenters supported State discretion in making system-specific decisions. EPA is providing this interpretation in support of this goal.

iii. Discontinuing treatment. If the State determines that the need for 4-log treatment no longer exists, the State may allow a system to discontinue treatment. EPA believes that in certain situations (*i.e.*, consolidation, replacement or rehabilitation of ground water sources, mitigation of source of contamination), where both corrective action has addressed the public health risks and the system has demonstrated to the State that corrective action has been successful (*e.g.*, through source water monitoring or sanitary surveys), it may be appropriate to allow systems to discontinue 4-log treatment of ground water sources. If the State allows a system to discontinue 4-log treatment, the system is then subject to the source water monitoring requirements of this rule.

b. *Monitoring for the Effectiveness and Reliability of Treatment.* All GWSs that provide treatment must routinely monitor the treatment effectiveness to ensure that public health is protected. Because of considerations regarding resources and the technical capacities of small water systems, this rule includes different monitoring requirements for systems of different sizes while still effectively ensuring public health protection. The 1996 Amendments to the SDWA recognized the importance of considering both the special needs of small systems that serve 3,300 people or fewer and the need to ensure equal public health protection to consumers served by small and large PWSs.

EPA believes that it is appropriate for disinfecting systems serving greater than 3,300 people to install and operate continuous disinfection monitoring equipment. These systems will generally have the expertise to operate and maintain the necessary equipment, and continuous monitoring and recording will alleviate some of the monitoring burden for larger systems. Systems serving 3,300 people or fewer are provided the flexibility to use either grab sampling or continuous monitoring. This option is important because some small systems may not have the capacity to purchase, operate, and maintain continuous disinfection monitoring equipment. For all systems, the monitoring must take place at or prior to the first customer to ensure that the required level of treatment has been achieved prior to serving water to the public.

For GWSs that use membrane filtration systems to achieve at least 4-log removal of viruses, the system must monitor the membrane filtration process in accordance with all State-specified monitoring requirements. In addition, the system must operate the membrane filtration in accordance with all State-specified compliance requirements. A GWS that uses membrane filtration is in compliance with the 4-log removal requirement for viruses when:

- The membrane has an absolute MWCO, or alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve 4-log removal of viruses;

• The membrane process is operated in accordance with State-specified compliance requirements; and

• The integrity of the membrane is intact.

To ensure compliance with the virus removal requirements of the GWR in systems that practice membrane filtration, systems must monitor to verify that the membrane filtration is operating as specified and that the membrane is intact. Without these compliance monitoring requirements, failure of membrane filtration may not be detected by the system and consumers may be exposed to potentially fecally contaminated water. This could result in a failure to maintain at least 4-log treatment of viruses.

In cases where 4-log treatment of viruses is interrupted, the requirement that systems must restore 4-log treatment of viruses is consistent with requirements for surface water systems under the SWTR (USEPA, 1989b) and protects public health while providing flexibility for GWSs to address operational issues.

If the State has not approved compliance criteria for the system to use to demonstrate 4-log treatment by the time that the system is required to conduct compliance monitoring, the system should comply with ground water source monitoring in § 141.402 until the State approves compliance criteria for the system to use to demonstrate 4-log treatment. EPA is concerned that systems may inadvertently provide inadequately treated water (*i.e.*, < 4-log treatment) if they are not using State approved compliance criteria.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Treatment Technique Requirements?

a. *State Consultation Versus Approval.* EPA received many comments related to the State's ability to require the system to implement a specific treatment technique in response to significant deficiencies or source water fecal contamination. The proposed GWR required the system only to consult with the State on the appropriate corrective action option for the system. Several commenters expressed concern that with only a consultation requirement, a system could implement a treatment technique that the State would consider inappropriate or unreliable, such as disinfection by a system that is incapable of reliably operating a disinfection treatment system. To address these concerns, the final GWR requires systems to implement corrective actions in accordance with applicable State plan review processes, or other State guidance or direction, including interim measures, or be in compliance with a State-approved corrective action plan and schedule. EPA believes that existing State plan review and permitting activities, such as those established in accordance with the primacy requirements at § 142.10(b)(5), will ensure that systems implement the most appropriate corrective action.

b. *UV Disinfection.* EPA received comments on the use of UV technology to meet the treatment technique requirements of the GWR. The GWR proposal included UV as a stand-alone treatment to meet the GWR treatment requirements and provided monitoring requirements for systems using UV technology, as well as State-determined performance requirements for UV technology.

Commenters requested more information on the use of UV for virus inactivation, including UV dose tables and criteria to assist States in evaluating UV reactors. Commenters also noted that data published subsequent to the GWR proposal indicated that some viruses, in particular adenoviruses, are very resistant to UV light. Data show that a dose of 186 mJ/cm^2 is required to achieve 4-log inactivation of adenovirus (68 FR 47713, August 11, 2003) (USEPA, 2003c). This information suggests that HAV, the virus considered in the GWR proposal discussion of UV, may not be an appropriate indicator of the virus inactivation performance of UV reactors. EPA agrees that UV reactors may need to provide higher doses than those contemplated in the GWR proposal to achieve 4-log inactivation of viruses. Moreover, there is currently limited information available for States to make determinations regarding performance requirements for UV reactors to ensure that adequate virus inactivation is being achieved.

Further, EPA believes that testing of full-scale UV reactors is necessary to ensure disinfection performance and a consistent level of public health protection. Full-scale testing avoids the significant difficulties encountered in predicting UV reactor disinfection performance based solely on modeled results or the results of testing at a reduced scale. All flow-through UV reactors deliver a distribution of doses due to variations in light intensity within the UV reactor and the different flow paths of particles passing through the reactor. The reactor-delivered dose also varies temporally due to processes such as UV lamp aging and fouling, changes in UV absorbance of the water being treated, and fluctuations in reactor flow rates.

A full-scale test typically involves using a surrogate microorganism. However, EPA is not aware of an available challenge microorganism that allows for full-scale testing of UV reactors to demonstrate a 4-log inactivation of adenovirus. EPA believes that methodologies for challenge testing at doses necessary to inactivate UV-resistant viruses may be developed in the future.

The final GWR does not include specific performance, monitoring, or design requirements related to the use of UV technology. This is based on the comments received regarding the use of UV technology to meet the GWR requirements, new data regarding UV dosages necessary for virus inactivation, and the difficulties in performing full-scale demonstrations of 4-log virus inactivation at those doses.

However, EPA does believe that UV technology may be used in a series configuration or in combination with other inactivation or removal technologies to provide a total 4-log treatment of viruses to meet this rule's requirements. The State has the flexibility to approve treatment alternatives not specified in the rule, which could include UV disinfection. When using an alternative treatment technology, the State must specify monitoring and compliance requirements necessary to ensure that the virus treatment requirements of this rule are being met. The alternative treatment option in this rule could be applied to stand-alone UV disinfection if challenge testing protocols for 4-log virus inactivation are developed in the future.

c. *Corrective Action Time Frame.* EPA requested comment on the appropriateness of the time frame for providing corrective actions. Several commenters suggested that the proposed 90-day corrective action time frame was too short and that systems would not be able to meet this deadline. Some commenters also stated that 90 days would not be sufficient for systems seeking an extension of the 90-day deadline for completing the corrective action to obtain State approval of a plan and schedule within 90 days due to factors outside of the system's control, such as the need to obtain competitive bids or to gain the approval of the local government. On the other hand, several commenters stated that a 90-day corrective action time frame for systems with fecally contaminated source water was too long and would place consumers at an increased risk.

EPA received additional comments opposing the requirement on the State to approve corrective action plans

within the same 90 days required for the system to submit the plans (for systems seeking an extension of the 90-day deadline for completing the corrective action). The commenters pointed out that under the proposed rule, systems could potentially submit plans on the 90th day, leaving insufficient time for the State to review the plans.

The final GWR extends the proposed 90-day deadline for completing corrective actions from 90 to 120 days, which includes additional time for an initial 30-day GWS/State consultation period. This 30-day consultation serves a number of purposes. First, GWSs and States can investigate the cause of contamination. Second, the GWS and State may consult on the most appropriate corrective action. Third, the GWS and State may develop a corrective action plan and schedule that could extend beyond the 120-day period if necessary. This addresses the concerns that GWSs would not be able to complete their corrective action or receive an extension. This consultation period provides the GWS and State the assurance requested by commenters that they not be subject to factors outside of their control. Concerns about corrective action taking too long have been addressed by the provision to require GWSs to do interim corrective action measures at the State's request. In addition, this rule requires States to identify in their primacy application their rules or other authorities to demonstrate that they can ensure that GWSs take the appropriate corrective action, including interim measures, if necessary, pending completion of corrective actions.

EPA believes that the revised process for corrective actions under this rule will (1) Allow the State to ensure that the system is held accountable in a reasonable time frame for implementing corrective actions, and (2) utilize the strengths of existing State plan review processes or other State guidance, requirements, or direction. Systems and States continue to have the flexibility to complete corrective action on a more rapid schedule than 120 days.

D. Providing Notification and Information to the Public

Section 1414(c)(1) of the 1996 SDWA amendments requires that PWSs notify persons served when violations of drinking water standards occur. EPA published a revised Public Notification Rule (PNR) in 2000 (65 FR 25981, May 4, 2000) (USEPA, 2000j). Subsequent EPA drinking water regulations that affect public notification requirements typically include amendments to the PNR as a part of the individual rulemaking. This rule amends the PNR at § 141.202(a) and § 141.203(a) and requires Tier 1 notice for detection of a fecal indicator in a ground water source sample (see § 141.403) and Tier 2 notice for treatment technique violations (see § 141.404). Also, this rule requires Tier 3 notice for monitoring violations (see § 141.403 or § 141.404(b)). In addition, this rule amends the Consumer Confidence Report (CCR) (§ 141.153(b) Appendix A to subpart O) requirements and includes language to be used when informing the public of significant deficiencies and fecal indicator-positive results in ground water source samples. Since the CCR only applies to CWSs, a special notice requirement for uncorrected significant deficiencies is included in the treatment technique section of this rule for NCWSs. The language included in this section parallels language included in the CCR. Table IV–4 summarizes the GWR notification requirements.

The purpose of public notification is to alert customers of potential risks from violations of drinking water standards and to inform them of any steps they should take to avoid or minimize such risks. A PWS is required to give public notice when it fails to comply with existing drinking water regulations, has been granted a variance or exemption from the regulations, or is facing other situations posing a potential risk to public health. Public water systems are required to provide such notices to all persons served by the water system. The PNR divides the public notice requirements into three tiers, based on the seriousness of the violation or situation.

Tier 1 is for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. Notice is required within 24 hours of the violation. Drinking water regulation Tier 1 notice violation categories and other situations include, but are not limited to, the following:

- An acute violation of the MCL for total coliforms when fecal coliform or *E. coli* are present in the water distribution system, or when the water system fails to analyze the sample for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (as specified in § 141.21(e));
- Occurrence of waterborne disease outbreaks, or other waterborne emergencies; and
- Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the State either in its regulations or on a case-by-case basis. The State is explicitly authorized to add other violations and situations to the Tier 1 list when necessary to protect public health where short-termexposure is a concern.

Tier 2 is for other violations and situations with the potential to have serious adverse effects on human health. Notice is required within 30 days, with an extension of up to three months permitted at the discretion of the State. Violations requiring a Tier 2 notice include all MCL and treatment technique violations, except where Tier 1 notice is required, and specific monitoring violations when determined by the State.

Tier 3 is for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2. Notice is required within 12 months of the violation and may be included in the Consumer Confidence Report at the option of the water system. Violations requiring a Tier 3 notice are principally monitoring and reporting violations.

1. What Are the Requirements of This Rule?

a. *GWR violations requiring a Tier 1 notice.* A Tier 1 notice is required if a GWS has a ground water source sample collected under § 141.402(a) or § 141.402(b) that is positive for one of the three fecal indicators that are discussed in Section IV.B and is not invalidated by the State.

b. *GWR violations requiring a Tier 2 notice.* A Tier 2 notice is required if:

- A GWS with a significant deficiency or with fecal contamination in the ground water source fails to take corrective action in accordance with the treatment technique requirements in § 141.403(a);
- A GWS fails to comply with a State-approved schedule and plan, including State-specified interim measures, to correct a significant deficiency and/or eliminate fecal contamination in a ground water source at any time after State approval or State direction pursuant to § 141.403(a)(2); or
- A GWS provides 4-log treatment of viruses but fails to maintain 4-log treatment, and the GWS does not restore 4-log treatment within four hours.

c. *GWR violations requiring a Tier 3 notice.* A Tier 3 public notice is required for failure to conduct required ground water source monitoring, including source water monitoring when a system has a total coliform-positive sample in the distribution system (§ 141.402(a)(2)), source water monitoring following a fecal indicator source water positive (§ 141.402(a)(3)), and, if required by the State, assessment source water monitoring (§ 141.402(b)). Additionally,

failure to conduct required compliance monitoring (§ 141.403(b)) requires a Tier 3 public notice.

d. *Special notice informing the public of significant deficiencies and fecal indicator-positives in ground water source samples.* In addition to the public notice requirements of § 141.202, § 141.203, and § 141.204, this rule requires PWSs that use ground water sources to inform customers of an uncorrected significant deficiency and CWSs to inform customers of a fecal indicator-positive ground water source sample that is not invalidated by the State. Under this rule, the GWS must continue to inform the public annually until the significant deficiency is corrected and, in the case of CWSs, the fecal contamination in the ground water source is addressed under § 141.403(a). The State may also direct GWSs to inform the public of corrected significant deficiencies.

The information provided to the public must include the following (as applicable to CWSs and NCWSs as described above): (1) The nature of the uncorrected significant deficiency or fecal contamination (for CWSs), if the source is known, and the date the significant deficiency was identified by the State or the date of the fecal indicator-positive ground water source sample (for CWSs); (2) for CWSs, if the fecal contamination in the ground water source has been addressed under § 141.403(a) and the date of elimination; (3) the State-approved plan and schedule for correction including interim measures, progress to date, and any interim measures completed, for any significant deficiency and for CWSs, fecal contamination in the ground water source that has not been addressed under § 141.403(a); (4) for CWSs, a description of the potential health effects using the health effects language of § 141.153, Appendix A to subpart O, if the system receives notice of a fecal indicator-positive ground water source sample that is not invalidated by the State; and (5) if directed by the State, notification of corrected deficiencies and how and when they were corrected.

To satisfy these special notification requirements, the GWR requires a CWS to inform the public served by the water system in the CCR. A NCWS must inform the public served by the water system in a manner approved by the State (*e.g.*, posting in conspicuous places in the area served by the water system for a period of time or distributing information directly to the public served by the water system) within 12 months of being notified of a significant deficiency. Systems must continue to inform the public annually until the significant deficiency is corrected and, in the case of CWSs, fecal contamination in the ground water source is addressed in accordance with § 141.403(a). If a significant deficiency is corrected before the next CCR is issued (for CWSs) or within 12 months (for non-CWSs), public notification is not required unless directed by the State.

TABLE IV–4.—SUMMARY OF GWR PUBLIC NOTIFICATION REQUIREMENTS

Systems must comply with the following notification requirements when . . .	Reference
Tier 1 Public Notification	
Triggered source water monitoring sample or assessment source water monitoring sample is positive for *E. coli*, enterococci, or coliphage (and is not invalidated).	§ 141.402(g).
Tier 2 Public Notification	
A system fails to take corrective action following: ■ State direction to take corrective action for a fecal indicator-positive sample, ■ Receipt of laboratory notice of fecal indicator-positive ground water source sample as a result of triggered source water monitoring under § 141.402(a)(3), or ■ Receipt of State written notice of significant deficiency.	§ 141.404(d).
A system fails to comply with a State-approved schedule and plan (including interim measures) related to correcting a significant deficiency and/or eliminating fecal contamination in a ground water source.	§ 141.404(d).
A system that elects to provide such treatment in lieu of triggered source water monitoring fails to maintain 4-log treatment of viruses [NOTE: There is no violation and public notification required if the system restores 4-log treatment within four hours.].	§ 141.404(d).
Tier 3 Public Notification	
A system fails to conduct triggered source water monitoring or assessment source water monitoring.	§ 141.403(d).
A system fails to conduct monitoring to demonstrate compliance with 4-log treatment requirement.	§ 141.403(d).

TABLE IV–4.—SUMMARY OF GWR PUBLIC NOTIFICATION REQUIREMENTS—Continued

Systems must comply with the following notification requirements when . . .	Reference
Special Notification Requirements	
CWSs: System has an uncorrected significant deficiency (or corrected significant deficiency if directed by the State) or a source water fecal indicator-positive sample. System must repeat notice annually until significant deficiency corrected or fecal contamination addressed in accordance with § 141.403(1). ■ Provide notice as part of CCR. ■ If significant deficiency is corrected before the next CCR, notification is not required unless directed by the State. NCWSs: System has an uncorrected significant deficiency (or corrected significant deficiency if directed by the State). System must repeat notice annually until significant deficiency corrected. ■ Provide notice in manner approved by the State for significant deficiencies (*e.g.*, posting in conspicuous places in service area or direct distribution of information to public served). ■ If significant deficiency is corrected within 12 months, notification is not required unless directed by the State.	Notice must include: —nature of significant deficiency or ground water fecal contamination, and date. —if the fecal contamination has been addressed under § 141.403(a), and date. —State-approved plan and schedule, including interim measures completed (if process ongoing). —required fecal indicator-positive language at: —§ 141.403(a)(7)(i). Notice must include: —nature of significant deficiency and date. —State-approved plan and schedule, including interim measures completed (if process ongoing). —§ 141.403(a)(7)(ii).

2. What Is EPA's Rationale for the Public Notice Requirements?

EPA believes that to provide adequate public health protection from fecally contaminated ground water, the public must be informed of both existing and potential significant problems. EPA recognizes that immediate public notification is key to providing effective communication when there is an imminent public health risk. In the proposed rule, EPA considered requiring Tier 1 notice for all violations. The final GWR, however, requires Tier 1 notice only when a ground water source sample tests positive for one of the three fecal indicators that are discussed in Section IV.B. The presence of a fecal indicator in a ground water source sample means that fecal contamination is likely to reach consumers and may have significant potential for serious adverse health effects from a short-term exposure. Other violations of this rule require Tier 2 or Tier 3 notice, depending on the nature of the violation and potential for adverse health effects.

The Agency believes that it is important for the public to be informed when systems are unable to comply with the GWR requirements that are established to protect public health. EPA's intent is for the public to be informed within an appropriate time frame without unnecessary alarm. Under the final GWR, the following treatment technique violations have been changed from Tier 1 to Tier 2 notice:

- Failure to correct a significant deficiency and/or eliminate fecal contamination in a ground water source;
- Failure to be in compliance with a corrective action schedule and plan within 120 days or to comply with the plan and schedule after State approval; and
- Failure to restore 4-log treatment of viruses within four hours.

EPA believes that these violations require Tier 2 notice because of the potential for serious adverse health effects from fecal contamination if treatment technique requirements are not met. Failure to conduct ground water source monitoring or compliance monitoring under this rule requires a Tier 3 notice public notice. EPA believes that the public notification requirements of this rule are protective of public health by providing timely and appropriate public notification of violations and situations that may affect public health.

Public right-to-know was a key tenet of the 1996 Amendments to the SDWA. The final GWR requirements allow the public to become involved in any decision-making process for corrective actions taken by the GWS and provide information for individual health decisions.

Consistent with the requirements for the Consumer Confidence Report (CCR) to include all detected regulated contaminants, the special public information requirements of the GWR require CWSs to include information on any fecal contamination of its ground water sources. In addition to addressing the requirements for CCRs, EPA believes this notice is important in informing individual health decisions. Use of the existing CCR public information process for CWSs minimizes the burden on CWSs. EPA believes that the Tier 1 notice requirements for NCWSs are adequate and appropriate for informing the public of fecal contamination of ground water sources and providing information for individual health decisions so no additional notice is required for fecal contamination at NCWSs.

EPA also believes that the public must be fully informed of uncorrected significant deficiencies because such deficiencies may affect their water supply and pose a health risk. In addition, EPA believes that this notification of uncorrected significant deficiencies will provide an additional incentive to water systems for rapid correction of significant deficiencies. To minimize the burden on CWS the final GWR requires them to use the CCR to report uncorrected significant deficiencies. Because the public served by NCWSs do not receive CCRs, this rule requires States to determine the appropriate method(s) (*e.g.*, posting in conspicuous places, hand delivery) for NCWSs to inform the public of uncorrected significant deficiencies. In order to provide the public with complete information on their water system, GWSs are required to continue informing the public of uncorrected significant deficiencies until corrective actions are completed.

Under the Tier 1 public notice requirements, NCWSs must provide public notice of a fecal indicator-positive source water in a form and

manner designed to reach transient and non-transient users of the PWS. This could include conspicuous posting, hand delivery or other methods approved by the State. This notice would continue until fecal contamination is corrected.

EPA believes that there may be circumstances when the public should be informed of significant deficiencies that have been corrected and that States are in the best position to make a decision to require notification of the public. These circumstances include significant deficiencies that, although corrected, presented a public health risk prior to correction; significant deficiencies that were uncorrected for long periods of time; and significant deficiencies at systems with persistent significant deficiency issues. Notification in these circumstances allows the public served by a PWS to become involved in any decision-making processes for management, operation, and maintenance of the water system and it also provides information for individual health decisions. Notification of corrected significant deficiencies that had been uncorrected for long periods provides closure for the public that has been notified previously of the uncorrected significant deficiency. In addition, notification of corrected significant deficiencies allows a community to better evaluate the management of their system because they will have complete information on significant deficiencies at their system.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Public Notification Requirements?

a. *Treatment technique violations.* In the proposed GWR, EPA considered Tier 1 notice for the following: (1) Detection of a fecal indicator-positive in a ground water source sample that is not invalidated by the State; (2) failure to correct a State-identified significant deficiency or source water fecal contamination within 90 days or failure to obtain, within the same 90 days, State approval of a plan and schedule for meeting the treatment technique requirement; and (3) failure to perform source water monitoring. In general, commenters responded that Tier 1 notice for failure to correct a significant deficiency within 90 days or in accordance with the State-approved time frame is not warranted. Other commenters stated that only a confirmed fecal indicator-positive sample in the source water of a system that does not provide 4-log treatment of viruses should require Tier 1 notice. A few commenters supported EPA's proposed treatment technique violation Tier 1 notice. However, most commenters suggested that Tier 2 notice, rather than Tier 1 notice, is appropriate for treatment technique violations.

EPA agrees that the public health risk associated with documented fecal contamination warrants a Tier 1 notice. EPA agrees that not all failures to correct a significant deficiency warrant a Tier 1 notice, since not all significant deficiencies will result in an imminent danger to public health. For the specific case of a failure to correct source water fecal contamination, the existing Tier 1 notification requirements allow States to continue to require public notification for as long as fecal contamination is present. The final GWR also requires that CWSs and NCWSs include notice of uncorrected significant deficiencies and that CWSs provide notice of source water fecal contamination for as long as significant deficiencies or fecal contamination remain uncorrected. CWSs must include this in the CCR, and NCWSs will use a form of notification approved by the State.

b. *Monitoring violations.* Some commenters responded that failure to perform any source water monitoring should not require Tier 1 notice but rather Tier 2 notice. Other commenters stated that failure to conduct triggered source water monitoring should require a Tier 1 notice, while failure to conduct assessment source water monitoring should require a Tier 2 notice. In general, commenters believed that requiring a Tier 1 notice for failure to collect a source water sample would unnecessarily alarm the public. Other commenters supported a Tier 3 notice for failure to conduct source water monitoring so that the GWR would be consistent with other monitoring violation notification requirements of § 141.204.

EPA agrees that failure to collect source water samples or conduct compliance monitoring may not warrant a Tier 1 notification since lack of monitoring data does not indicate there is an imminent danger to public health and such notification could unnecessarily alarm the public. Consistent with § 141.204, the final GWR requires a Tier 3 notice for violations of the monitoring requirements, failure to collect ground water source samples, or failure to conduct compliance monitoring. EPA notes that States continue to have the authority to require a Tier 2 notice for monitoring violations if the State determines that this level of notification is warranted.

Some commenters stated that since the TCR governs the quality of water provided to a system's customers, it is inappropriate to require public notice for failure to conduct source water sampling under the GWR. EPA disagrees with the comment and believes that it is appropriate to establish public notification requirements for GWSs that fail to monitor for fecal contamination in their source water because fecal contamination can be a significant health risk. EPA recognizes that the TCR protects against distribution system contamination; however, as part of the GWR risk-targeting strategy, the Agency believes that source water monitoring is an integral component in both assessing potential fecal contamination in the source water and eliminating this contamination before it reaches the distribution systems.

c. *Special notice informing the public of significant deficiencies or a fecal indicator-positive ground water sample.* EPA requested comment on practicable approaches to involve the public in working with their systems to address the results of sanitary surveys or detection of source water fecal contamination. Some commenters suggested publishing the results in a system's CCR, reviewing the results at a public meeting, or posting the results of surveys in a public place for NCWSs. Others supported notifying the public that the results were available and how those results could be obtained. Some commenters noted that significant deficiencies or source water fecal contamination would be corrected rapidly and that involving or informing the public after the correction might not be useful.

EPA believes that adequate opportunities exist for customers to obtain general information on the sanitary survey of their water supplier since the complete sanitary survey report is available from both the State and the PWS upon request. EPA believes that the public served by a GWS should be made aware of uncorrected significant deficiencies and source water fecal contamination. The final GWR uses an existing public information process, the CCR, to inform consumers of water from CWSs of uncorrected significant deficiencies found during sanitary surveys or of source water fecal contamination. NCWSs will use a State approved process such as continuous posting in conspicuous places and hand-delivered notices to inform consumers of uncorrected significant deficiencies. NCWSs will use the State-approved Tier 1 notification process to notify the public of fecal source water contamination. No additional notice of fecal contamination is required for

NCWSs. If directed by the State, GWSs must also provide notification of corrected significant deficiencies.

E. What Are the Reporting and Recordkeeping Requirements for Systems?

The GWR establishes new reporting and recordkeeping requirements for GWSs that are necessary to ensure that systems continue to meet the requirements of the rule and that States have the information needed to perform their oversight responsibilities.

Specifically, the GWR reporting requirements ensure that States are aware of any failure to provide an adequate level of treatment, completed corrective actions, and system decisions that triggered source water monitoring is not necessary based on State criteria.

The recordkeeping requirements of this rule ensure that information is available to States during sanitary surveys or other instances to verify that systems are complying with the requirements of this rule for corrective actions, notice to the public, decisions not to conduct triggered source water monitoring, and invalidation of fecal indicator-positive ground water source samples.

This section discusses the new requirements and the key issues raised by commenters.

1. Reporting Requirements

In addition to the reporting requirements of § 141.31, a GWS must provide the following information to the State (see § 141.405(a)): (1) A GWS conducting compliance monitoring must notify the State as soon as possible, but in no case later than the end of the next business day, any time the system fails to meet any State-specified compliance requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours; (2) a GWS must notify the State within 30 days after completing any corrective action for GWSs with significant deficiencies or source water fecal contamination; and (3) if a GWS is subject to source water monitoring requirements but is not required to monitor its source because it determines using State criteria that a total coliform-positive samples is related to distribution systems conditions pursuant to § 141.402(a)(5)(ii), then the GWS must provide documentation that it met the State criteria to the State within 30 days of the total coliform-positive sample.

2. Recordkeeping Requirements

In addition to the reporting requirements of § 141.31, a GWS must maintain the following information in its records (see § 141.405(b)): (1) Documentation of corrective actions; (2) documentation of notice to the public of (a) An uncorrected significant deficiency, or (b) a fecal indicator-positive ground water source sample that is not invalidated; (3) records of decisions where either (a) The State determines, and documents in writing, that the cause of a total coliform-positive sample collected under routine coliform sampling is directly related to the distribution system, or (b) the GWS determines, according to State criteria, that the cause of a total coliform-positive sample collected under routine coliform sampling directly relates to the distribution system; (4) for consecutive systems, documentation of notification to the wholesale system(s) of total coliform-positive samples that are not invalidated; and (5) for systems required to perform compliance monitoring (a) Records of the lowest daily residual disinfectant value and records of the date and duration of any failure to maintain the State-prescribed minimum residual for a period of more than four hours, and (b) records of State-specified compliance requirements for membrane filtration and of parameters specified by the State for State-approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours.

3. What Were the Key Issues Raised by Commenters on the Proposed GWR Reporting and Recordkeeping Requirements for Systems?

Most commenters agreed with the system recordkeeping and reporting requirements in the proposed rule and that recordkeeping and submittals are appropriate for systems that disinfect. Commenters mentioned that these requirements should be consistent with those required under other regulations, such as the TCR or the Stage 1 DBPR.

EPA agrees that the recordkeeping and reporting for systems under this rule are appropriate and ensure that information is available to the State in performing their oversight responsibilities. The records must be available for review during sanitary surveys and investigations of treatment technique failures. EPA believes that the recordkeeping and reporting requirements for systems under this rule are consistent with those required under other regulations.

Commenters also mentioned that systems should keep documentation of how the system operators determined the proper disinfectant concentration. EPA notes that this is a recordkeeping requirement for the State and is required under this rule.

Others commenters stated that recordkeeping requirements in the proposed rule were unrealistic and excessive for extremely small systems (such as many NCWSs). EPA notes that many of the recordkeeping requirements for systems under this rule are associated with corrective actions and compliance monitoring, and that only systems with significant deficiencies, source water contamination, or source water treatment would be required to keep these records. The records must be available for review during sanitary surveys and investigations of treatment technique failures.

F. What Are the Special Primacy, Reporting, and Recordkeeping Requirements for States?

The GWR establishes new special primacy, reporting, and recordkeeping requirements for States.

With regards to special primacy requirements, 40 CFR part 142, National Primary Drinking Water Regulations Implementation, sets out the specific program implementation requirements for States to obtain primacy for the Public Water Supply Supervision program as authorized under SDWA section 1413. In addition to adopting basic primacy requirements, States may be required to adopt special primacy provisions pertaining to specific regulations where implementation of the rule involves activities beyond general primacy provisions. States must include these regulation-specific provisions in an application for approval of their program revision.

The special primacy conditions of this rule (§ 142.16(o)) ensure (1) That States have the legal authority to require correction of significant deficiencies and/or source water fecal contamination, as well as the authority to require source water monitoring, (2) that States adopt and implement adequate procedures for sanitary surveys, and that (3) States develop criteria for source water monitoring and treatment technique requirements.

With regards to reporting and recordkeeping, the SDWA establishes requirements that a State or eligible Indian Tribe must meet to assume and maintain primacy for its PWSs. Among others, these requirements include

keeping records and making reports available on activities that EPA requires by regulation.

The reporting requirements of this rule ensure that EPA is notified when the most recent sanitary survey was completed, the date a system completed corrective action, and of systems providing at least 4-log treatment of viruses.

The recordkeeping requirements of this rule ensure that States maintain various records to determine compliance with this rule.

This section discusses these new requirements and the key issues raised by commenters on these requirements.

1. Primacy Requirements

The SDWA established requirements that a State or eligible Indian Tribe must meet to assume and maintain primary enforcement responsibility (*i.e.*, primacy). These requirements include the following:

- Adopting drinking water regulations that are no less stringent than Federal drinking water regulations;
- Adopting and implementing adequate procedures for enforcement;
- Keeping records on EPA-regulated activities and making records available;
- Issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed under the SDWA; and
- Adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

To implement this rule, the State is required to adopt the following revisions to 40 CFR part 141:

- § 141.21—Coliform sampling.
- § 141.28—Certified laboratories.
- § 141.153—Content of the reports.
- § 141.202—Tier 1 Public Notice—Form, manner, and frequency of notice.
- § 141.203—Tier 2 Public Notice—Form, manner, and frequency of notice.
- § 141.204—Tier 3 Public Notice—Form, manner, and frequency of notice.
- Subpart O—Regulated contaminants.
- Subpart Q—Public Notification of Drinking Water Violations, Appendix A, NPDWR Violations and Other Situations Requiring Public Notice.
- Subpart Q—Public Notification of Drinking Water Violations, Appendix B, Standard Health Effects Language for Public Notification.
- Subpart Q—Public Notification of Drinking Water Violations, Appendix C, List of Acronyms Used in Public Notification Regulation.
- Subpart S—Ground Water Rule.

In addition to adopting the basic primacy requirements specified in 40 CFR part 142, States are required to address special primacy conditions pertaining to specific requirements where implementation of the rule involves activities beyond general primacy provisions. The State must include these regulation-specific provisions in an application for approval of their program revision. Under this rule, the special primacy conditions are in the following four categories: Legal Authority, Sanitary Surveys, Source Water Microbial Monitoring, and Treatment Technique Requirements.

The application for approval of a State program revision that will adopt 40 CFR part 141, subpart S, must contain a description of how the State will accomplish these four program requirements.

a. *Legal authority.* The application for primacy must demonstrate that the State has: (i) The authority contained in statute or regulation to ensure that GWSs take the appropriate corrective actions, including interim measures, if necessary, needed to address significant deficiencies; (ii) the authority contained in statute or regulation to ensure that GWSs conduct source water monitoring; (iii) the authority contained in statute or regulation to ensure that GWSs take the appropriate corrective actions, including interim measures, if necessary, to address any source water fecal contamination identified during source water monitoring; and (iv) the authority contained in statute or regulation to ensure that GWSs consult with the State regarding corrective action(s).

b. *State practices or procedures for sanitary surveys.* In addition to the general requirements for sanitary surveys, a primacy application must describe how the State will implement a sanitary survey program and include an evaluation of the following eight sanitary survey components: source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring, reporting, and data verification; system management and operation; and operator compliance with State requirements.

The State must conduct sanitary surveys that address the eight sanitary survey components no less frequently than every three years for CWSs and every five years for NCWS.

The State may conduct sanitary surveys once every five years for CWSs if the system meets performance criteria (see Section IV.A.1). In its primacy application, the State must describe how it will determine whether a CWS has an outstanding performance record.

The State must define and describe in its primacy application at least one specific significant deficiency in each of the eight sanitary survey elements.

As a condition of primacy, the State must provide GWSs with written notice describing any significant deficiencies no later than 30 days after the State identifies the significant deficiency. The notice may specify corrective actions and deadlines for completion of corrective actions.

c. *State practices or procedures for source water microbial monitoring.* The State's primacy application must include a description of the following: (i) The criteria the State will use for extending the 24-hour time limit for a system to collect a ground water source sample to comply with the source water monitoring requirements; (ii) the criteria the State or GWS will use to determine that the cause of a total coliform-positive sample is directly related to the distribution system; (iii) the criteria the State will use for determining whether to invalidate a fecal indicator-positive ground water source sample; and (iv) the criteria the State will use to allow systems to conduct source water microbial monitoring at a location after treatment.

d. *State practices or procedures for treatment technique requirements.* As a condition of primacy, the State must verify within 30 days after the GWS has reported to the State that it has completed corrective action that significant deficiencies or source water fecal contamination have been addressed either through written confirmation from GWSs or a site visit by the State. A GWS's written notice may serve as this verification. The State's primacy application must include the following: (i) Notification methods that the States will require NCWSs to use to inform the public of uncorrected significant deficiencies; (ii) the process the State will use to confirm that a GWS achieves at least a 4-log treatment of viruses; (iii) the process the State will use to determine the minimum residual disinfectant concentration; (iv) the State-approved alternative technologies to achieve at least 4-log treatment of viruses; (v) the monitoring and compliance requirements the State will require for GWSs treating to at least 4-log treatment of viruses; (vi) the monitoring, compliance and membrane integrity testing requirements the State will require to demonstrate virus removal for GWSs using membrane filtration technologies; and (vii) the criteria, including public health-based considerations and incorporating on-site investigations and source water

monitoring results, the State will use to determine if a GWS may discontinue 4-log treatment of viruses.

2. Reporting Requirements

States are required to report violations, variance and exemption status, and enforcement actions to EPA according to the provisions of § 142.15. The final GWR adds the following three reporting requirements to these provisions (§ 142.15(c)(7)): (i) The month and year in which the most recent sanitary survey was completed, or for a State that uses a phased review process, the date that the last element of the applicable eight elements was evaluated for each GWS, (ii) the date the GWS completed corrective action, and (iii) all GWSs providing at least 4-log treatment of viruses for a ground water source.

3. Recordkeeping Requirements

The regulation at § 142.14 requires States with primacy to keep various records. This rule requires States to keep the following additional records: (i) Records of written notices of significant deficiencies; (ii) Records of corrective action plans, schedule approvals, and State-specified interim measures; (iii) Records of confirmations that a significant deficiency has been corrected and/or the fecal contamination in the ground water source has been addressed; (iv) Records of State determinations and records of ground water system's documentation for not conducting triggered source water monitoring; (v) Records of invalidations of fecal indicator-positive ground water source samples; (vi) Records of State approvals of source water monitoring plans; (vii) Records of notices of the minimum residual disinfection concentrations (when using chemical disinfection) needed to achieve at least 4-log virus inactivation before or at the first customer; (viii) Records of notices of the State-specified monitoring and compliance requirements (when using membrane filtration or alternative treatment) needed to achieve at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer; (ix) Records of written notices from the GWS that it provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and (x) Records of written determinations that the GWS may discontinue 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal).

4. What Were the Key Issues Raised by Commenters on the Proposed GWR Special Primacy, Reporting, and Recordkeeping Requirements for States?

Many commenters responded to this request for comment and generally indicated that the requirements should be simplified and that a greater level of flexibility be afforded to the States.

Commenters questioned why the States need to identify their approach and rationale for determining the fecal indicators to be used and commented that States, at their discretion, should be able to use any EPA-approved method. Commenters also felt that States should have the latitude to allow different indicators if changes in technologies or laboratory resources prompt an amendment. EPA agrees with these comments, and this rule does not include a requirement regarding selection of a fecal indicator.

Some commenters believe that the GWR should provide specific information on how GWSs can achieve 4-log removal of viruses and how States should evaluate treatment techniques to assure compliance with the rule. In particular, the commenters wanted more information and guidance on how States and GWSs would determine what disinfectant residual level or operational parameters (in the case of membrane filtration or alternative treatment technologies, such as UV) GWSs would have to maintain to ensure that the GWS is achieving 4-log treatment of viruses. The commenters indicated that describing in their primacy package the approach they will use in determining which specific treatment option is appropriate in a given circumstance will be an arduous task.

EPA recognizes that selection and approval of a treatment technique option is system-specific. This rule does not require States to describe in their primacy package the approach they will use in determining which specific treatment option is appropriate in a given circumstance. This rule does require the States to describe any State-approved alternative technologies that GWSs may use to meet the treatment technique requirements. With regard to specific treatment techniques, EPA has recently issued the *Membrane Filtration Guidance Manual* (USEPA, 2005a) and is developing an ultraviolet disinfection guidance manual. EPA intends to develop a GWR Corrective Action guidance for further information regarding corrective actions and treatment techniques for GWSs.

Commenters indicated that a State should not have to describe ''how it will consult'' with water suppliers regarding treatment requirements. EPA believes that the process requiring PWS consultation with the State prior to implementing corrective action is important in ensuring that appropriate corrections occur. EPA recognizes that States have a long history of consulting with water systems, so the Agency removed this provision from the special primacy requirements in this rule. Instead, the GWR requires that States identify the authority that they have to ensure consultation, which ensures that corrective actions occur, as necessary.

G. Variances and Exemptions

Section 1415 of the SDWA allows States to grant variances from NPDWRs under certain conditions; section 1416 establishes the conditions under which States may grant exemptions to MCL or treatment technique requirements. These conditions and EPA's view on their applicability to the GWR are summarized as follows:

1. Variances

Section 1415 of the SDWA specifies two provisions under which general variances to treatment technique requirements may be granted:

(1) A State that has primacy may grant a variance to a PWS from any requirement to use a specified treatment technique for a contaminant if the PWS demonstrates to the satisfaction of the State that the treatment technique is not necessary to protect public health because of the nature of the PWS's raw water source. EPA may prescribe monitoring and other requirements as conditions of the variance (section 1415(a)(1)(B)).

(2) EPA may grant a variance from any treatment technique requirement upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant (section 1415(a)(3)).

EPA does not believe that the variance provision under the SDWA at 1415(a)(1)(B) is applicable to GWSs under this rule. As discussed above, the regulation employs a targeted approach whereby corrective action is required only for those systems that have the most risk '' those systems that have found fecal contamination in their source water as indicated by source water monitoring, or have been found to be susceptible to contamination as indicated by a significant deficiency from a sanitary survey. Thus, the treatment technique requirements account for the nature of the PWS raw

water source. The GWR does not require the use of disinfection, nor does it compel the system to address the raw water source if, for example, an alternate source of drinking water is available.

With respect to the variances authorized under 1415(a)(3), EPA notes that this provision is unlikely to be used because the four treatment techniques provided in the GWR cover a broad range of options and States can approve any alternative treatment technologies. Given this broad range of treatment technique options, it is unlikely that a system could demonstrate to EPA that an alternative treatment technique not included in the regulation is at least as efficient in lowering the level of the contaminant of concern.

Section 1415(e) of the SDWA describes small PWS variances, but these cannot be granted for a treatment technique for a microbial contaminant. Hence, small PWS variances are not allowed for the GWR.

2. Exemptions

Under SDWA section 1416(a), a State may exempt any PWS from a treatment technique requirement upon a finding that (1) due to compelling factors (which may include economic factors such as qualification of the PWS as serving a disadvantaged community), the PWS is unable to comply with the requirement or implement measures to develop an alternative source of water supply; (2) the PWS was in operation on the effective date of the treatment technique requirement, or for a PWS that was not in operation by that date, no reasonable alternative source of drinking water is available to the new PWS; (3) the exemption will not result in an unreasonable risk to health; and (4) management or restructuring changes (or both) cannot reasonably result in compliance with the Act or improve the quality of drinking water.

EPA believes that granting an exemption to the treatment requirements of the GWR would result in an unreasonable risk to health. As described in section III.C, microbial contamination causes acute health effects, which may be severe in sensitive subpopulations. Moreover, the additional treatment requirements of the GWR are targeted to PWSs with the highest degree of risk. Due to these factors, EPA does not support the granting exemptions from the GWR.

V. Explanation of Extent of GWR

A. Mixed Systems

This rule applies to PWSs (CWSs and NCWSs) that use ground water in whole or in part (except GWUDI systems), unless all ground water is commingled with surface water before treatment at the surface water treatment plant is applied, in which case surface water treatment regulations apply. This means that the treatment technique requirements of the GWR for significant deficiencies apply to any system using both ground water and surface water that has a significant deficiency identified past the point of surface water treatment, unless the State determines that the significant deficiency is in a portion of the system served solely by surface water. EPA believes that the same level of public health protection provided by this rule to persons served solely by ground water must be provided to persons served by ground water supplies in mixed systems.

EPA received comments regarding the applicability of the proposed GWR to systems that serve both ground water and surface water. Commenters noted that the requirements for these ''mixed systems'' were not explicit for the individual rule components such as sanitary surveys and triggered source water monitoring. For example, commenters specifically noted that the proposed GWR did not address how to conduct the triggered source water monitoring requirement after a total coliform-positive under the TCR was detected in systems where ground water and surface water are blended in the distribution system.

EPA has included more explicit regulatory language that describes how ''mixed systems'' must comply with individual components of this rule to assist PWSs in understanding and implementing the GWR provisions. There are approximately 3,700 mixed systems in the U.S. This rule explicitly addresses general applicability and the applicability of specific GWR components to mixed systems. The complexity and variety of configurations and operations in these mixed systems do not allow for all the possible scenarios to be addressed within a regulatory framework, so States will have the discretion to make a site-specific determination whether a significant deficiency is in a portion of the system served solely by surface water.

EPA will provide further information through implementation guidance and other non-regulatory approaches to assist States and water systems in meeting the intent of this rule, to target GWSs that are at risk of fecal contamination and to require these systems to take corrective action to protect public health. In some cases, it may be possible to identify customers or portions of the distribution system in mixed systems served solely by surface water or ground water. In other cases, it may not be possible or may be transitory due to complex and/or variable system hydraulic conditions.

B. Cross-Connection Control

EPA is concerned about fecal contamination entering distribution systems; however, cross-connection control requirements are not a part of this rule, though the proposal contained cross-connection consideration. The *Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee's Agreement in Principle* (65 FR 83015, December 2000) (USEPA, 2000b) states that cross-connections and backflow in distribution systems represent a significant public health risk and that EPA should initiate a process to address cross-connection control and backflow prevention requirements as part of the six-year review of the TCR. EPA has published its intent to consider such requirements as part of the revisions to the TCR (67 FR 19030, April 17, 2002) (USEPA, 2002b).

VI. Implementation

This section describes the regulations and other procedures and policies that States must adopt, as well as the requirements that public GWSs would have to meet to implement this rule. Also discussed are the compliance deadlines for these requirements.

States must continue to meet all other conditions of primacy at 40 CFR part 142. Section 1413(a)(1) of the 1996 SDWA Amendments provides two years (plus more time if the Region approves) after promulgation of the final GWR for the State to adopt drinking water regulations that are no less stringent than the final GWR in order to obtain primacy for the GWR.

GWSs must continue to meet all other applicable requirements of 40 CFR part 141. The SDWA as amended in 1996 (see section 1412(b)(10)) provides three years after promulgation for compliance with new regulatory requirements. Accordingly, the GWR requirements that apply to the PWS directly, specifically the requirements found under subpart S of 40 CFR part 141 (source water monitoring, corrective actions and treatment technique requirements, compliance monitoring, recordkeeping and reporting, and public notice and public information), take effect three years after promulgation. The State may, in the case of an individual system, provide additional time of up to two years for capital improvements, if necessary, in accordance with the statute.

This rule includes conditions of primacy at 40 CFR part 142 under which States will have until December 31, 2012 to complete the initial sanitary survey cycle for CWSs, except those meet performance criteria, and until December 31, 2014 to complete the initial sanitary survey cycle for all NCWSs and CWSs that meet performance criteria (refer to Section IV.A.1 for criteria). These sanitary survey implementation deadlines provide time for States to adopt the rule and obtain primacy (two to four years allowed by the SDWA at 1413(a)(1)). In addition, systems are given three years to comply with drinking water regulations by the SDWA at (1412(b)(10)). Finally, States need three to five years to complete the first cycle of sanitary surveys because there are many GWSs and States have limited resources.

The GWR places the same sanitary survey frequency requirements on GWSs as is currently required of surface water systems under 40 CFR part 141 subpart H.

GWSs must comply with all applicable requirements beginning December 1, 2009 unless otherwise noted.

VII. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the Health Risk Reduction and Cost Analysis (HRRCA) in support of the final GWR. This analysis has been revised and updated from the HRRCA prepared for the proposal as required by section 1412(b)(3)(C) of the SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of this rule in an Economic Analysis (EA). EPA has prepared an EA (USEPA, 2006d) to comply with the requirements of this order and to update the SDWA HRRCA. The EA document for the GWR is available in the docket and is also published on the government's Web site *http://www.regulations.gov*.

The HRRCA consists of seven elements as follows: (1) Quantifiable and nonquantifiable health risk reduction benefits; (2) quantifiable and nonquantifiable health risk reduction benefits from reductions in co-occurring contaminants; (3) quantifiable and nonquantifiable costs that are likely to occur solely as a result of compliance; (4) incremental costs and benefits of rule alternatives; (5) effects of the contaminant on the general population and sensitive subpopulations including infants, children, pregnant women, elderly, and immunocompromised; (6) increased health risks that may occur as a result of compliance; and (7) other relevant factors such as uncertainties in the analysis. A summary of these elements is provided in this section of the preamble, and a complete discussion can be found in the GWR EA (USEPA, 2006d).

Both the benefits and the costs discussed in this section are presented as annualized present values in 2003 dollars. This process allows comparison of cost and benefit streams that are variable over a given time period and differs from the GWR proposal (USEPA, 2000a), which only used an annual estimate. The time frame used for both benefit and cost comparisons in this rule is 25 years. This time interval accounts for early rule implementation activities (*e.g.*, States adopting the criteria of the regulation) and the time for different types of compliance actions to be realized up through year 25 following rule promulgation (*e.g.*, identification and correction of sanitary survey deficiencies, identification of wells that are fecally contaminated and subsequent corrective action). The Agency uses social discount rates of both three percent and seven percent to calculate present values from the stream of benefits and costs and also to annualize the present value estimates. The GWR EA (USEPA, 2006d) also shows the undiscounted stream of both benefits and costs over the 25 year time frame.

The quantified benefits are calculated based only on endemic, acute disease illness, and death from some viral, but not bacterial, contamination of PWS wells. EPA was able to monetize only this subset of total benefits which were compared to the total costs of this rule. The total benefits, both quantified and nonquantified, are estimated using illness and death data as well as non-health benefits such as avoided costs (*e.g.*, restaurant closures) due to outbreaks. Furthermore, the total health benefits are estimated based on a full range of health effects, including acute and chronic illness and endemic and epidemic disease from both bacteria and virus contamination. EPA believes that the quantified benefits for this rule underestimate reduction in risk because the Agency was only able to calculate a subset of the total benefits; peer reviewers of the GWR benefit analysis agree that the quantified benefits are biased low. The costs of the rule stem mostly from the sanitary survey and the correction of significant deficiencies as well as the triggered source water monitoring and corrective action provisions described earlier in this preamble.

This section of the preamble includes 12 elements as follows: (A) Rationale for choosing a different alternative from the proposed alternative, (B) occurrence and risk analyses that support this rule, (C) both quantified and nonquantified benefits, (D) both quantified and nonquantified costs, (E) potential impact on households, (F) incremental costs and benefits, (G) benefits from simultaneous reduction of co-occurring contaminants, (H) increases in risk due to other contaminants, (I) effects on the general population and special subgroups, (J) uncertainties in risk, benefit, and cost estimates, (K) benefit/cost determination, and (L) major comments and responses. Section VII.F presents the benefits and costs for the four regulatory alternatives that were considered in this rule. Table VII–1 provides a summary of monetized benefits and costs for each GWR regulatory alternative.

TABLE VII–1.—MONETIZED BENEFITS AND COSTS FOR GWR REGULATORY ALTERNATIVES

[Millions, 2003$]

Rule alternative	3% Discount rate		7% Discount rate	
	Mean	5th–95th Percentiles	Mean	5th–95th Percentiles
National GWR Benefits				
Enhanced COI:				
Risk-Targeted Approach	$19.7	$6.5–$45.4	$16.8	$5.5–$38.6
Sanitary Survey	3.6	0.9–9.3	2.9	0.7–7.5
Multi-barrier Approach	21.3	7.1–48.7	18.2	6.0–41.6

TABLE VII–1.—MONETIZED BENEFITS AND COSTS FOR GWR REGULATORY ALTERNATIVES—Continued

[Millions, 2003$]

Rule alternative	3% Discount rate		7% Discount rate	
	Mean	5th–95th Percentiles	Mean	5th–95th Percentiles
Across the Board Disinfection	70.2	18.3–177.0	61.9	16.1–156.3
Traditional COI:				
Risk-Targeted Approach	10.0	2.2–27.0	8.6	1.9–22.9
Sanitary Survey	1.9	0.3–5.5	1.5	0.2–4.5
Multi-barrier Approach	10.8	2.5–28.9	9.3	2.1–24.8
Across the Board Disinfection	35.5	6.5–102.4	31.5	5.7–90.8
National GWR Costs				
Risk-Targeted Approach	61.8	45.2–81.4	62.3	46.1–81.6
Sanitary Survey	15.3	11.8–19.2	15.3	11.9–19.0
Multi-barrier Approach	67.9	49.4–89.5	69.4	51.0–90.6
Across the Board Disinfection	686.4	636.8–735.4	665.3	612.3–717.0

A. How Has the Final Rule Alternative Changed From the Proposed Rule Alternative?

The primary elements of the GWR alternative that EPA proposed were sanitary surveys, triggered source water monitoring, hydrogeologic sensitivity analyses (HSAs), routine monitoring, corrective action, and compliance monitoring. This alternative was termed ''multi-barrier approach.'' After the proposal, EPA considered comments received as discussed in section II.C of this preamble. This review resulted in the Agency choosing a different final rule alternative, Alternative 2, or the ''risk-targeted approach.'' EPA believes that the final rule is a logical outgrowth of the proposed rule, that it is supported by comments, and that it provides public health benefits while apportioning costs in a more flexible targeted manner.

EPA continues to believe that the elements of the multi-barrier approach are important. At first, EPA attempted to redesign the multi-barrier approach to resolve the issues raised by commenters. In this redesigned structure, HSAs were optional and routine monitoring (renamed assessment source water monitoring) was a required up-front monitoring program limited to 1 year of monthly samples. EPA has estimated the costs and benefits for this variation of the multi-barrier approach in the final EA (Alternative 3). However, EPA ultimately determined that the structure of this variation of the multi-barrier approach was too restrictive to achieve the full potential benefits of an assessment source water monitoring program. In addition, it did not provide sufficient flexibility to States, which was a major theme of the comments EPA received. Therefore, EPA decided to redesign the source water monitoring provision by making assessment source water monitoring an option that States can require as they see fit. The purpose of this optional requirement is to target source water monitoring to systems that the States believe are at a higher risk for microbial contamination. EPA believes that States are in the best position to assess which systems would most benefit from a comprehensive source water monitoring program. EPA recommends that States use HSAs as one tool to identify high risk systems for assessment source water monitoring. The risk-targeted approach of the final rule contains sanitary surveys, triggered source water monitoring, optional assessment source water monitoring, corrective action, and compliance monitoring.

For the Economic Analysis of the final rule alternative, EPA did not include potential costs and benefits of assessment source water monitoring. This is because assessment source water monitoring is an optional requirement under the final GWR. Thus, the EA considers quantified costs and benefits only of sanitary surveys, triggered source water monitoring, corrective action, and compliance monitoring. Throughout the EA, the final rule alternative is listed as Alternative 2—the risk-targeted approach. A discussion of the costs and benefits for the regulatory alternatives considered may be found in Chapter 8 of the EA (USEPA, 2006d).

B. Analyses That Support This Rule

EPA estimates national viral and fecal indicator occurrence based on data from several studies. The following discussion summarizes EPA's occurrence and risk analyses that support this rule.

1. Occurrence Analysis

a. *Study selection.* As discussed in Section III.C.3 of this preamble and in the NODA, EPA examined data from 24 studies of pathogen and fecal indicator occurrence in ground water wells that supply PWSs (USEPA, 2006e). EPA selected 15 of these studies to use in the risk assessment analysis to estimate national viral and fecal indicator occurrence in ground water. The *Occurrence and Monitoring Document for the Final Ground Water Rule* (USEPA, 2006b) provides a detailed discussion of each occurrence study evaluated.

To assist study selection and occurrence modeling, EPA convened a two-day statistical workshop in May 2005. The core workgroup included expert participants from several government agencies and private consulting firms working as U.S. government advisors. A summary of the workgroup proceedings, including a list of all participants, is included in the final docket for this rulemaking. The charge to the workgroup was to consider how to improve modeling of viral and indicator occurrence. The statisticians strongly recommended that EPA make use of all the available data unless there were known quality assurance problems with a data set or the well contamination scenario was outside the normal operating range of U.S. PWS wells.

After the workshop, EPA followed through on the workgroup's recommendations and used all available data sets having enterovirus and fecal indicator occurrence in ground water source(s) from PWS wells in the United States with some exceptions. Of the 16 studies described in the proposed GWR, EPA did not use data from five studies to inform the national occurrence

estimates for this rule. EPA did not use the data set of alluvial wells from Missouri that were substantially affected by severe Mississippi River flooding (Vaughn, 1996). Data from a California study (Yates *et al.*, 1999) were deleted from further consideration because data were available only by well and not by sample, so the probability of viruses detected by individual assays could not be assessed. Data from the Whittier, California study (Yanko *et al.*, 1999) were not used because the study author, in comment on the proposal, suggested that the observed somatic coliphage occurrence was not due to fecal contamination. EPA did not use data from Honolulu, Hawaii (Fujioka and Yoneyama, 2001) because the wells were not sampled for pathogenic viruses and because *E. coli* are endemic in tropical ecosystems and not simply indicators of fecal origin. EPA did not use data from the U.S.-Mexico Border study because the human virus data were never reported in written form.

Of the seven studies that became available since proposal and described in the NODA, EPA did not use four studies to inform national occurrence estimates. EPA did not use the data from the set of wells developed by Karim *et al.* (2003; 2004), because these 20 wells are also included in Abbaszadegan *et al.* (2003). EPA did not have sufficient information to distinguish which of the 20 wells from Karim (2003; 2004) were the same wells from Abbaszadegan *et al.* (2003) and, therefore, only used the larger data set. EPA did not use the National Field Study data (USEPA, 2006f) because the data set includes both PWS and domestic wells, and insufficient information is available to identify which wells are PWS wells. Also, the National Field Study data set (USEPA, 2006f) included virus cell culture measurements using smaller sample volumes than all of the other data sets. EPA did not use data from La Crosse, Wisconsin (Borchardt *et al.*, 2004) because this was a small study of four wells (and two other wells sampled once only) in one locality which, although not regulated as GWUDI, were under investigation to determine if that regulatory determination was correct. EPA did not use data from another small study of two wells in Missoula, Montana because of the size of the data set. In addition, EPA added one study of 38 wells from Helena, Montana that was submitted to EPA in response to the NODA.

b. *Description of occurrence data used to characterize national viral and indicator occurrence.* Table VII–2 shows the 15 studies used to inform national occurrence estimates for viruses and indicators. One data set (Lieberman *et al.*, 2002), targeted wells based on presence of total coliforms and other indicators of vulnerability to fecal contamination. Another data set (Abbaszadegan *et al.*, 2003), targeted a representation of wells throughout the United States based on hydrogeological conditions, but excluded any wells that were poorly constructed, ground water under the direct influence of surface water (GWUDI), or without well logs. Other studies sampled a subset of wells in a particular State, region, or hydrogeological setting. Most of the studies were designed to capture subsets of the total PWS well population. EPA excluded data from wells that States had identified as being GWUDI. Only a couple of the studies included such wells in their sample set (Lieberman *et al.*, 2002, Atherholt *et al.*, 2003). PWS using wells with GWUDI are required to meet the same treatment technique requirements for pathogens that pertain surface water supplies and are not subject to the requirements of this rule. EPA's analysis to develop national estimates for virus and indicator frequency of occurrence in wells made no attempt to weight any of the studies to compensate for any perceived over- or under-representation of the subset as compared with the total population.

TABLE VII–2.—LIST OF STUDIES USED IN NATIONAL OCCURRENCE ANALYSIS

Lieberman *et al.*, 2002 (multiple States).
Abbaszadegan, *et al.*, 2003 (multiple States).
Lindsey *et al.*, 2002 (Pennsylvania Non-community Wells).
Francy *et al.*, 2004 (Southeast Michigan).
Atherholt *et al.*, 2003 (New Jersey).
Davis and Witt, 2000 (Missouri Ozark Plateau #1).
Femmer, 2000 (Missouri Ozark Plateau #2).
USEPA *et al.*, 1998d (Wisconsin Migrant Worker Camp).
Doherty, 1998 (New England).
Battigelli, 1999 (Three-State Study: Wisconsin).
Banks *et al.*, 2001 (Three-State Study: Maryland).
Banks and Battigelli, 2002 (Three-State Study: Maryland).
Minnesota DOH, 2000 (Three-State Study: Minnesota).
USEPA, 1998a (EPA Vulnerability Study).
Miller and Meek, 2006 (Montana).

Using enterovirus cell culture and *E. coli* data from the 15 studies, EPA modeled virus and fecal indicator (*E. coli*) occurrence in ground water. EPA believes that enterovirus cell culture measurements provide the best available basis for estimating pathogenic viral occurrence since it captures viruses that are alive and infectious. However, because the cell culture procedure only captures a portion of the types of pathogenic viruses that may actually occur in well water, use of this metric underestimates total viral occurrence. EPA did not use PWS samples assayed using PCR methods to estimate national viral occurrence for this rule because PCR methods cannot discriminate between infectious and non-infectious viruses. Three of the 15 studies included viral concentration data (Lieberman *et al.*, 2002, Abbaszadegan, *et al.*, 2003 and Lindsey *et al.*, 2002). EPA used data from these studies to inform national estimates for viral concentrations among wells modeled to have viral occurrence. However, since the sampling sites from Lieberman *et al.*, 2002 were selected because they had a history of total coliform contamination or other evidence of vulnerability (whereas the sample sites from the other two studies had no such site selection bias), EPA only used viral concentration data from Lieberman *et al.*, 2002 for a small portion of wells in the U.S.

EPA used data on the indicator *E. coli* to inform estimates of fecal contamination occurrence. Indicator data is important because illness can result from consuming ground water with fecal contamination in the absence of identified viruses. EPA chose to use *E. coli* as the indicator organism to inform national fecal contamination occurrence for several reasons. First, analysis using two or more indicator organisms becomes increasingly complex. Second, substantial variability among studies in choice of indicators, indicator assay method, sample volumes and, in the case of coliphage, bacterial host and host range, adds uncertainty when data sets are combined. Third, for any one indicator other than *E. coli,* the number of assays with consistency of measurement is small. Fourth and most important, EPA believes that *E. coli* will be the most likely fecal indicator used when PWS implement the GWR and therefore national estimates of *E. coli* occurrence can be used to inform potential cost implications for implementing the GWR.

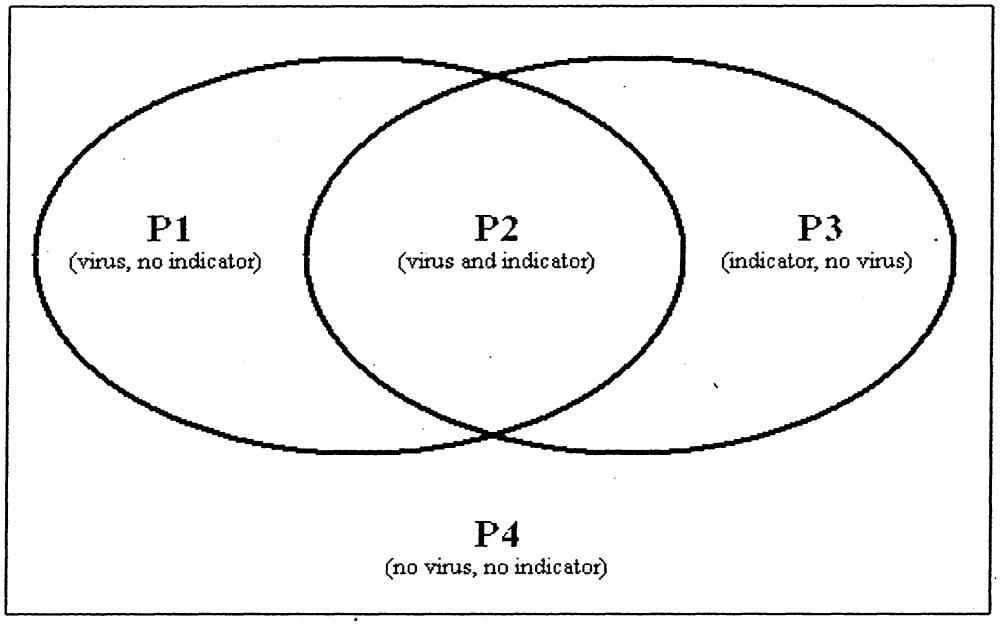
c. *How data were used to estimate national occurrence of viral and fecal contamination.* Data from each of 15 studies were combined into one single data set used to determine the probabilities of wells having anytime viral (indicated by enterovirus cell culture) or fecal indicator (indicated by *E. coli*) contamination. The results of this effort led naturally to a combined analysis, which also modeled co-occurrence of viruses and *E. coli.* This combined model serves as the basis of EPA's national quantitative occurrence estimates.

EPA's occurrence model includes four categories of wells:

- Wells with no *E. coli* occurrence, but some virus occurrence,
- Wells with both *E. coli* and virus occurrence,
- Wells with no virus, but some *E. coli* occurrence, and
- Wells with neither *E. coli* nor virus occurrence.

The fractions of wells falling into these four categories are named P1, P2, P3, and P4, respectively. The categories and parameters P1 through P4 are illustrated in the Venn diagram of Figure VII–1.

Figure VII-1: Categories of Indicator and Viral Classification Among PWS Wells in U.S.



Because fecal contamination is intermittent, viruses and *E. coli* will only be present some fraction of time in a contaminated well. These fractions will vary from well to well and EPA has modeled these different fractions as distributions. One parameter pair describes the distribution for viruses and another parameter pair describes the distribution for *E. coli*. These four parameters, together with the fractions of wells falling into the four categories, are the parameters estimated in the national occurrence model.

The *Economic Analysis for the Final Ground Water Rule* describes the statistical methods used to estimate model parameters (USEPA, 2006d). That document details the statistical model, estimation methods, and summary results. The GWR EA also includes a number of Exhibits that describe the central estimates (means) and their uncertainties.

Central estimates for key parameters are as follows:

- P1 = percentage of wells having virus, but no *E. coli* = 10 percent
- P2 = percentage of wells having both virus and *E. coli* = 16 percent
- P3 = percentage of wells having *E. coli*, but no virus = 10 percent
- P4 = percentage of wells having no virus and no *E. coli* = 64 percent
- On average, wells with some virus occurrence have detectable concentrations 11 percent of the time.
- On average, wells with some *E. coli* occurrence have detectable concentrations 14 percent of the time.

EPA attempted to evaluate occurrence based on the hydrogeologic characteristics of the aquifer. However, because very few data sets allowed for differentiation of viral or indicator presence among sensitive versus non-sensitive wells, no significant difference in viral or indicator presence could be discerned from the limited data. Therefore, the same P1, P2, P3, and P4 estimates were assumed for all wells, without regard to aquifer sensitivity.

Although EPA could not stratify the available viral occurrence data between wells drawn from sensitive or non-sensitive aquifers, EPA was able to discern two classifications of well type according to overall vulnerability characteristics (more and less vulnerable wells). The data from Lieberman *et al.*, 2002 were used to represent virus concentrations in more vulnerable wells and the combined data from Abbaszadegan *et al.*, 2003 and Lindsey *et al.*, 2002 were used to represent concentrations in less vulnerable wells.

EPA used acute and non-acute TCR maximum contaminant level (MCL) violation data to estimate the percent of wells considered more vulnerable. Based on this data, EPA estimated that about 2.5 percent of wells in the U.S., which have modeled viral presence, would have viral concentrations like the non-GWUDI wells in Lieberman *et al.*, 2002 (more vulnerable). Similarly, EPA estimated that about 97.5 percent of the wells in the U.S. (100—2.5 percent) which have modeled viral presence would have concentrations like those of Abbaszadegan *et al.* (2003) and Lindsey *et al.* (2002) (less vulnerable).

2. Risk Analyses

a. *Baseline risk estimates.* The framework for developing the estimates of baseline risk from consumption of contaminated ground water is in accordance with the standard framework detailed in the *EPA Policy for Risk Characterization* (USEPA, 1995a), EPA's *Guidance for Risk Characterization* (USEPA, 1995b), and EPA's *Policy for Use of Probabilistic Analysis in Risk Assessment* (USEPA,

1997c). A complete discussion of EPA's risk analyses in support of this rule can be found in the GWR EA (USEPA, 2006d). The discussion below is an overview of the analyses, focusing on how information on occurrence, exposure, and dose-response is combined to produce estimates of health risk.

EPA's occurrence model predicts the fraction of wells that have some degree of viral contamination. The model also predicts degree of contamination, in terms of the varying fractions of time that viruses can be detected. In the probabilistic risk analysis, Monte Carlo techniques are used to simulate large numbers of wells with differing fractions of time that virus is present.

In addition to assigning different fractions of time, the risk model also assigns different concentration levels to the simulated contaminated wells. Each well is assigned one concentration value and this is treated as the well's concentration whenever the well has virus present. EPA does this by sampling from the actual virus concentrations that were observed in the occurrence studies. Viral concentrations among more vulnerable wells are sampled from the measured values of non-GWUDI wells in the Lieberman *et al.*, 2002, study. Concentrations in less vulnerable wells are sampled from those measured in the Abbaszadegan, *et al.*, 2003 and Lindsey *et al.*, 2002 studies.

EPA's risk model then estimates exposure levels, or doses, for consumers of the contaminated well water. A consumer's dose on a day when virus is present depends on the virus concentration, the level of disinfection employed by the water system, and the volume of tap water that the consumer ingests. For systems that do not disinfect, the tap water is assumed to have the same virus concentration as the source water. In contrast, properly operating systems that disinfect are assumed to inactivate 99 percent (2-log) to more than 99.99 percent (4-log) of viral pathogens, depending on the disinfection practices employed. A consumer's daily dose is computed as the product of the tap water concentration, the fraction of viral pathogens NOT inactivated and the volume of water ingested.

Next, the consumer's daily dose is translated to risk of infection via EPA's dose-response modeling. EPA's risk model applies the calculated dose, based on viral cell culture measurement, for both Type A and Type B viruses. Daily probabilities of infection are then derived on the basis of the daily dose, according to dose-response models. Annual probabilities of infection are then derived from the daily estimates, based on the number of days per year in which a virus is expected to be present.

Next, morbidity factors (risk of illness given infection), secondary spread of illness to other individuals, and mortality factors (risk of premature death given an illness), derived from the literature, are used to estimate the annual probability for illness and premature death. EPA's risk assessment model includes variability and uncertainty ranges for morbidity and mortality to account for different effects in different subpopulations.

b. *Risk reduction estimates.* The methodology for estimating the reduction in risk for the regulatory alternatives builds upon the approach and assumptions used to establish the baseline risk. The primary difference between the modeling for estimating the baseline risk model and the modeling for estimating the risk reduction from a given regulatory alternative is that the latter incorporates a change in the concentration of viral pathogens reaching the finished drinking water of the exposed population. These changes reflect either a reduction in pathogen concentration between source water and finished water due to disinfection or the elimination of the pathogen from other non-treatment corrective actions addressing the source water contamination. In addition to accounting for the magnitude of pathogen exposure reduction, an important component of the risk reduction modeling is to account for the timing of when those reductions occur over a 25 year analysis timeframe following promulgation of the rule.

For the baseline risk analysis, each well in the simulation process is designated as either having a virus present at some time or never having a virus present. For those wells having some viral occurrence, values are assigned for the virus concentration and the fraction of time that virus occurs. The risk reduction part of the model uses the exact same simulated wells as those generated in the baseline risk part of the model.

For the sake of efficiency in implementing the simulation modeling process, those wells designated as never having a virus present are recognized as having zero risk reduction potential and are counted as such in the model outputs, but are not run through the detailed steps of the risk reduction model.

For those wells that do have a virus present, the risk reduction model answers the following three questions:

(1) Is a corrective action performed on this well as a result of the regulatory alternative being considered?

(2) What is the finished water virus concentration following corrective action?

(3) In what year following rule implementation is the corrective action performed?

The risk reduction model then processes the reduced virus concentrations through the dose-response functions for infectivity and the morbidity and mortality factors as in the baseline risk assessment.

Estimates of cases avoided, calculated for all of the individual wells, are then aggregated across all wells to arrive at the total national estimates of risk reduction. In addition, some of the assumptions and data used in the risk reduction model are uncertain and are therefore input as uncertainty distributions. As a result of the uncertainty reflected in those inputs, together with the uncertainty reflected in other inputs to the baseline risk model that are also carried into the risk reduction model, the output of the model is a range of values of cases avoided. The range is used by EPA to determine the expected value and the 90 percent confidence bounds on that expected value.

The GWR EA (USEPA, 2006d) describes in more detail the specific assumptions and inputs—including considerations of uncertainty—that are used to model risk reduction for each of the four rule options at the individual well level and the aggregation of those well level estimates to obtain the overall national estimates of risk reduction.

C. What Are the Benefits of the GWR?

The quantified benefits of this rule result from reductions in endemic acute viral illness and death from two groups of viruses (called Type A and Type B). Type A virus is represented by rotavirus and is highly infectious but has essentially only mild health effects. Type B virus is represented by enterovirus or echovirus (a member of the enterovirus group) and is moderately infectious, but can have severe health consequences though the majority of illnesses from Type B viruses are also mild. Additionally, the quantified benefits are based only on endemic, acute illness that occurs as a result of virus in PWS wells under normal operating conditions. Illnesses due to treatment interruptions or failures or to distribution system deficiencies are not quantified. Bacterial illnesses and deaths avoided are also not quantified.

As shown in Table VII–3 below, the annualized present value of the quantified benefits of this rule are $19.7 million (using a three percent discount rate and an enhanced cost-of-illness value that includes lost unpaid labor (*e.g.*, household production) and leisure time for people within and outside the paid labor force), with a 90 percent confidence interval of $6.5 to $45.4 million. Using traditional cost-of-illness values at the same discount rate, the annualized present value of the quantified benefits of the rule are $10.0 million, with a 90 percent confidence interval of $2.2 to $27.0 million. At a seven percent discount rate and the enhanced cost-of-illness value, the annualized present value of the quantified benefits are $16.8 million, with a 90 percent confidence interval of $5.5 to $38.6 million. Using the traditional cost-of-illness values, the annualized present value of the quantified benefits are $8.6 million, with a 90 percent confidence interval of $1.9 to $22.9 million at a seven percent discount rate.

TABLE VII–3.—SUMMARY OF ANNUALIZED PRESENT VALUE QUANTIFIED BENEFITS

[$Millions, 2003$]

System type	Annualized benefits at three percent discount rate			Annualized benefits at seven percent discount rate		
	Mean	90 Percent confidence bound		Mean	90 Percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
Enhanced COI:						
CWSs	$16.0	$5.4	$37.0	$13.7	$4.6	$31.6
NTNCWSs	0.9	0.3	2.2	0.8	0.2	1.8
TNCWSs	2.7	0.8	6.2	2.3	0.7	5.1
Total	19.7	6.5	45.4	16.8	5.5	38.6
Traditional COI:						
CWSs	8.2	1.9	22.3	7.1	1.6	19.1
NTNCWSs	0.5	0.1	1.3	0.4	0.1	1.0
TNCWSs	1.3	0.3	3.4	1.1	0.2	2.8
Total	10.0	2.2	27.0	8.6	1.9	22.9

Note: Estimates are derived from independent model runs and, therefore, detail may not add to total. Values are for endemic viral illnesses and deaths avoided over the 25-year period, expressed in annualized dollars. See VII.C.4 for additional rule benefits.

1. Calculation of Baseline Health Risk

As part of the quantitative analysis to determine the GWR benefits, EPA estimated the ''baseline risk'' (pre-GWR)—the number of people becoming ill and/or dying each year from Type A (represented by rotavirus) and Type B (represented by enterovirus or echovirus) viral infection due to consumption of ground water from public water supplies (see Table VII–4). The risk analysis uses these two viruses as surrogates for waterborne viruses. The annual estimated number of viral illnesses from exposure to Type A and Type B viruses ranges from about 33,000 to 476,000 cases, with a mean of approximately 185,000 cases. EPA estimates that about 0.3 to 11 deaths per year (mean of three deaths) prior to this rule as a result of exposure to viruses. These numbers are the ''baseline'' used to estimate the health risk reduction and their associated monetized value of risk reduction due to implementation of this rule. As discussed earlier, bacterial illnesses and deaths are not considered in the baseline, and only endemic, acute viral illnesses from the two surrogate viruses are considered.

TABLE VII–4.—ESTIMATES OF BASELINE VIRAL ILLNESSES AND DEATHS DUE TO CONTAMINATION OF GROUND WATER SYSTEMS

Virus type	Illnesses per year		Deaths per year	
	Mean	5th–95th Percentiles	Mean	5th–95th Percentiles
Type A (rotavirus)	175,168	32,652–435,381	1.2	0.2–2.9
Type B (enterovirus or echovirus)	10,018	501–40,718	2.0	0.0–8.1
Total	185,186	33,153–476,099	3.2	0.3–11.0

2. Calculation of Avoided Illnesses and Deaths

The GWR requirements are projected to result in a significant reduction in exposure to fecal contamination. EPA used a risk assessment model to estimate the avoided viral illnesses and deaths. The risk assessment model estimates reductions in baseline incidence considering the effects of the sanitary survey and triggered source water monitoring. Assessment source water monitoring is optional and is not included in this analysis (see Section VII J.10). Table VII–5a shows the calculated viral illnesses and deaths avoided due to the GWR. The rule is expected to avoid (mean value) approximately 42,000 viral illnesses and one viral death annually (averaged over 25 years). Details of the assumptions and methodology used in the model are described in the GWR EA (USEPA, 2006d). Table VII–5b shows the

calculated viral illnesses and deaths avoided due to the GWR by system type. More detailed information about the GWR benefits assessment and all data and analyses used in predicting those benefits can be found in the GWR EA (USEPA, 2006d).

TABLE VII–5A.—SUMMARY OF ANNUAL VIRAL ILLNESSES AND DEATHS AVOIDED FOR THE GWR

Virus type	Illnesses avoided per year		Deaths avoided per year	
	Mean	5th–95th Percentiles	Mean	5th–95th Percentiles
Type A (rotavirus)	39,442	10,093–79,925	0.3	0.1–0.5
Type B (enterovirus or echovirus)	2,426	181–8,114	0.5	0.0–1.6
Total	41,868	10,274–88,039	0.7	0.1–2.1

Note: Details may not add to totals due to independent rounding and independent statistical analyses.
Source: GWR Illness Model.

TABLE VII–5B.—SUMMARY OF ANNUAL AVOIDED VIRAL ILLNESSES AND DEATHS BY SYSTEM TYPE

System type	Illnesses avoided per year		Deaths avoided per year	
	Mean	5th–95th Percentiles	Mean	5th–95th Percentiles
CWSs	32,031	8,704–68,994	0.6	0.1–1.8
NTNCWSs	2,094	533–4,308	0.03	0.0–0.1
TNCWSs	7,743	1,037–14,738	0.1	0.01–0.2
Total	41,868	10,274–88,039	0.7	0.1–2.1

Note: Estimates are derived from independent model runs, and, therefore, detail may not add to total. Values are endemic, acute viral illnesses and deaths avoided following full implementation of the GWR and only accounts for rotavirus and echovirus.
Source: Derived from GWR model output.

3. Derivation of Quantified Benefits

EPA quantified the benefits for the GWR based on reductions in the risk of endemic, acute viral illness as explained in Section VII.B.2. Next, EPA monetized benefits for nonfatal viral illnesses and mortalities avoided by the GWR. Table VII–3 shows the estimated monetized value for viral illnesses and deaths avoided by the GWR.

Benefits for nonfatal cases of endemic, acute viral illness were calculated using a cost-of-illness (COI) approach. Traditional COI valuations focus on medical costs and lost work time and leave out significant categories of benefits, specifically, the reduced utility from being sick (*i.e.*, lost personal or nonwork time, including activities such as child care, homemaking, community service, time spent with family, and recreation), although some COI studies also include an estimate for unpaid labor (household production) valued at an estimated wage rate designed to reflect the market value of such labor (*e.g.*, median wage for household domestic labor).

Ideally, a comprehensive willingness to pay (WTP) estimate would be used that includes all categories of loss in a single number. However, a review of the literature indicated that the available studies were not suitable for valuing acute viral illness; hence, estimates from this literature are inappropriate for use in this analysis. Instead, EPA presents two COI estimates: a traditional approach that only includes valuation for medical costs and lost work time (including some portion of unpaid household production) and an enhanced approach that also factors in valuations for lost unpaid work time for employed people, reduced utility (or sense of well-being) associated with decreased enjoyment of time spent in non-work activities, and lost productivity at work on days when workers are ill but go to work anyway. The first two categories of loss are estimated by multiplying the average wage rate by the number of non-work waking hours. The third category is estimated by multiplying all waking hours (work and non-work) by 30 percent of the wage rate for days when subjects are ill but report for work anyway.

The computation of COI involves two broad categories of costs—direct and indirect medical costs. All costs are updated to a common year (2003) used as the starting point for projecting benefits into future time periods. For Type A viruses, each cost component has a separate estimate made based on age and the health state of the individual (healthy or immunocompromised). For Type B viruses, cost components have separate estimates based both on age and on the type of care required (*i.e.*, no medical care, outpatient care, or inpatient care). Chapter 5 of the GWR EA (USEPA, 2006d) has a detailed breakout of both Type A and Type B COI estimates.

For both the Enhanced COI and Traditional COI, the direct cost for a case of Type A or Type B viral illness is derived by summing the costs of outpatient and inpatient care (in 2003$). Outpatient care consists of an initial physician visit ($114.55) and the product of the cost of each follow-up visit ($66.18) and the number of follow-up visits. Multiplying this sum by the percentage of patients that utilize outpatient services yields the weighted unit cost of outpatient care. The cost of inpatient care consists of the costs of the initial doctor visit in the hospital ($152.87), any follow-up visits ($52.25), and the hospital charges (calculated on a per day basis, with costs ranging from $1,007 per day for Type A illnesses to $4,870 per day for a severe case of Type B illness). As with outpatient costs, multiplying the sum of doctor visits and hospital charges by the percentage of patients who require inpatient care yields the weighted unit cost of inpatient care.

The sum of the weighted unit costs of outpatient and inpatient care equals the weighted direct costs. The weighted direct medical costs per case of Type A viral illness ranges from an average cost of $0 (for healthy patients, five years old

and up requiring no medical care) to $4,486 (for immunocompromised patients younger than five years old). The weighted direct medical costs per case of Type B viral illness range from an average of $0 (for patients requiring no medical care) to $23,431 (for patients less than one month old requiring inpatient care).

Total indirect cost is the sum of the value of patient days lost, the value of productivity lost, and the value of care giver days lost. For the Enhanced COI, the total indirect cost associated with a case of Type A viral illness ranges from an average of $103 (for healthy patients 16 years old and older) to $2,136 (for immunocompromised patients under two years of age). Indirect costs associated with cases of Type B viral illness range from $336 (for patients 16 years old and older requiring no medical care) to $2,990 (for patients under 16 years of age requiring inpatient care).

For the Traditional COI, the total indirect cost associated with a case of Type A viral illness ranges from an average of $39 (for healthy patients 16 years old and older) to $426 (for immunocompromised patients two years of age and younger). Indirect costs associated with cases of Type B viral illness range from $126 (for patients 16 years old and older requiring no medical care) to $596 (for patients requiring inpatient care).

The valuation of children's time presents unique problems. The best approach when valuing children's health effects is the use of child-specific valuations of these effects. For direct costs, EPA has used such valuations. Indirect costs, however, prove more challenging. As noted in the *Children's Health Valuation Handbook* (USEPA, 2003c), ''[children's] time lost to sickness also has value, although no direct measure exists for this loss.'' In this instance, the Handbook states that, ''as a second-best option, * * * transfer benefit values estimated for adults to children.'' The Enhanced COI uses this guideline, in conjuncture with Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks''), and assumes a day lost due to illness (lost patient day) for the duration of illness for patients younger than 16 years to be valued at $199.36 (based on the median post-tax wage). In contrast, the Traditional COI assigns no lost patient day value for children under 16 years of age because this approach assigns a monetary value only to lost wages (or lost unpaid work time for adults not in the paid labor market). Both the Traditional and Enhanced COI approaches assume that a caregiver stays home with these children, introducing additional lost caregiver days for each lost patient day. The number of days lost entirely to illness, either by the adult patient or caregiver, is multiplied by $227.79 (for the Enhanced COI) or $85.12 (for the Traditional COI), the average value of a lost day.

In addition, for days when an individual is well enough to work but still experiencing symptoms, such as diarrhea, the Enhanced COI estimate also includes a 30 percent loss of work and leisure productivity (*i.e.* 30 percent of the wage rate times 16 hours) based on a study of giardiasis illness (Harrington *et al.*, 1985). In the Traditional COI analysis, productivity losses are not included for either work or nonwork time. No productivity losses are assigned to children under 16 years of age under either the Traditional or Enhanced COI approaches.

The Agency believes that losses in productivity and lost leisure time are unquestionably present and that these categories have positive value; consequently, the Traditional COI estimate understates the true value of these loss categories. However, using the wage rate to estimate the loss of utility during non-work hours may understate or overstate the value of this loss, depending on severity of illness and other factors. Similarly, using 30 percent of the wage rate to estimate the value of lost productivity in work and leisure when a person is still experiencing symptoms but is well enough to go to work may understate or overstate benefits. EPA notes that these estimates should not be regarded as upper and lower bounds. In particular, the Enhanced COI estimate may not be an upper bound, because it may not fully incorporate the value of pain and suffering.

As with the avoided mortality valuation, the real wages used in the COI estimates were increased by a real income growth factor that varies by year, but is the equivalent of about 1.8 percent per year over the 25-year period. This approach of adjusting for real income growth was recommended by the SAB (USEPA, 2000d) because the median real wage is expected to grow each year (by approximately 1.8 percent). Correspondingly, the real income growth factor of the COI estimates increases by the equivalent of 1.8 percent per year (except for medical costs, which are not directly tied to wages).

Reductions in mortalities were monetized using EPA's standard methodology for monetizing mortality risk reduction. This methodology is based on a distribution of value of statistical life (VSL) estimates from 26 labor market and stated preference studies. For this analysis, EPA incorporated the Weibell Distribution into the benefit model Monte-Carlo simulation and updated the VSLs to 2003 dollars. The updated mean VSL in 2003 dollars is $7.4 million. A real income growth factor was applied to these estimates of approximately 1.8 percent per year for the 25-year time span following implementation. Income elasticity for VSL was estimated as a triangular distribution that ranged from 0.08 to 1.00, with a mode of 0.40. VSL values for the 25-year time span are shown in the GWR EA in Exhibit B.6 (USEPA, 2006d). A more detailed discussion of these studies and the VSL estimate can be found in EPA's *Guidelines for Preparing Economic Analyses* (USEPA, 2000c).

4. Nonquantifiable Benefits

There are substantial benefits attributable to the GWR that are not quantified as part of this rulemaking because of data limitations. The GWR quantifies only the endemic, acute illnesses and deaths due to rotavirus and enterovirus. By reducing bacterial and other viral illnesses and deaths, this rule provides significant health benefits beyond the monetized benefit estimates. Chronic illnesses (such as diabetes, dilated cardiomyopathy, and reduced kidney function), kidney failure, and hypertension (*e.g.*, Garg *et al.*, 2005) resulting from waterborne viral and bacterial pathogens are also not quantified but provide additional benefits, although such cases are likely to be relatively rare. Additional health benefits will accrue from preventing outbreaks, reducing periods with insufficient disinfection, and minimizing contaminant infiltration into distribution systems.

This rule will also result in non-health benefits such as avoided outbreak response costs, increased information gained through source water monitoring that will in turn provide benefits to the systems and their customers, and reduced uncertainty regarding drinking water safety, which may lead to reduced costs for averting behaviors.

In addition, the optional assessment source water monitoring provision will provide additional benefits similar to those already described (*i.e.* reduction in viral and bacterial illness). However, EPA was not able to quantify either the benefits or costs of this program because EPA does not know the extent to which States will use the option or the manner in which they will implement it. Because this provision could potentially

increase both benefits and cost, a more complete discussion can be found in the Section VII.J.10 of this preamble.

EPA believes that, collectively, these benefits, both health and non-health, significantly exceed those which EPA was able to quantify and are a major basis for supporting the preferred regulatory alternative. A qualitative discussion of these nonquantified benefits is included in Section 5.4 of the GWR EA (USEPA, 2006d); a summary of this discussion appears below.

a. *Decreased incidence of illness from bacteria.* In addition to reducing the number of illnesses and deaths due to drinking water related to some viral illnesses, the ground water source monitoring and corrective actions taken under the GWR will also reduce the number of illness and deaths due to bacteria in drinking water. EPA was unable to quantify the benefits from preventing bacterial illness; however, EPA provides a rough estimate of illnesses and deaths prevented through:

- Estimating potential bacterial illnesses avoided;
- Estimating a mortality rate for waterborne bacterial illness; and
- Estimating potential annual deaths avoided by the GWR.

The first of the analytical steps applies the ratio of waterborne disease outbreak incidence rates between bacteria and viruses to the quantified viral cases avoided to estimate bacterial cases avoided. The second analytical step derives mortality rates for types of bacterial illness associated with waterborne disease outbreaks. The third analytical step combines the first two steps to devise a rough estimate of annual bacterial deaths avoided. EPA estimates that total quantified benefits could increase by a factor of five if EPA was able to account for additional deaths and hospitalizations caused by bacterial illness being avoided (*i.e.*, not even considering the value of reduced non-fatal non-hospitalization caused bacterial illnesses). More information on this calculation can be found in Chapter 5 of the GWR EA (USEPA, 2006d).

b. *Decreased illness from other viruses.* Quantified benefits accrue from endemic, acute illnesses associated with rotavirus (a Type A virus) and enterovirus or echovirus (a Type B virus) as discussed previously. Nonquantified health benefits attributable to viruses include decreased incidence of gastroenteritis caused by other Type A viruses such as norovirus, astrovirus, and adenovirus; decreased incidence of other acute disease endpoints (*e.g.*, hepatitis and conjunctivitis) caused by types of viruses not modeled in the quantified benefits analysis; and decreased incidence of chronic illness associated with Type B virus (*e.g.*, diabetes and dilated cardiomyopathy).

The health effects of norovirus (the most common Type A virus) illness include acute onset of nausea, vomiting, abdominal cramps, and diarrhea (USEPA, 2006d). EPA believes that nausea and vomiting associated with norovirus, typically absent in rotavirus illness, suggest that the norovirus disease burden (*e.g.*, number of productive days lost) associated with PWS wells is important, especially for adults with whom norovirus disease is quite prevalent. EPA believes that if norovirus were included in the quantified benefits, there would be significantly greater monetized benefits for Type A viruses, because monetized rotavirus disease burden (the only Type A virus modeled) provides only a small benefit for adults since most adults are immune to rotavirus.

Other acute and chronic viral illnesses can be acquired from consuming ground water contaminated with other Type A or Type B viruses, but the Agency was unable to quantify or monetize them. These include severe, acute illnesses such as hepatitis A; milder, acute illnesses such as conjunctivitis; and severe chronic illnesses such as diabetes and dilated cardiomyopathy. Most chronic illnesses are costly to treat. Lifetime costs associated with a new case of diabetes, for example, assuming an average illness duration of 30 years, are estimated at $227,032 using a three percent discount rate and $143,733 using a seven percent discount rate (year 2003 dollars). For dilated cardiomyopathy, the lifetime (21 year average) cost is $61,117 (seven percent discount rate, year 2003 dollars). These illnesses are discussed in further detail in the GWR EA (USEPA, 2006d).

c. *Other nonquantifiable benefits.* Other nonquantified health benefits include decreased incidence of waterborne disease outbreaks and epidemic illness and decreased illness through minimizing treatment failures or fewer episodes with inadequate treatment. The nonquantified non-health benefits include improved perception of ground water quality and perception about reduced risk associated with PWS wells, potential reduced use of bottle water and point-of-use devices, reduced time spent on averting behavior such as obtaining alternative water supplies, and avoided costs associated with outbreak response.

Pathogenic protozoa can occur in PWS wells, typically when such systems are misclassified and are not recognized as GWUDI systems. In PWSs with elevated ground water temperatures, *Naegleria fowleri* can colonize the distribution system, well, well gravel-pack, or aquifer. *N. fowleri* is fatal when inhaled (and treatment is not timely) and two five-year old boys died in the same week from exposure via a GWS in Arizona (Marciano-Cabral *et al.*, 2003). *N. fowleri* is inactivated by disinfection, so corrective action implemented as the result of this rule that includes disinfection may prevent death from this organism. However, the benefits from avoiding these deaths are nonquantified. Cryptosporidiosis and giardiasis outbreaks in sensitive PWS wells have also occurred (see Section III.C.2). Sanitary surveys and additional monitoring under the GWR combined with existing source water assessments and Long Term 2 Surface Water Treatment Rule (LT2ESWTR) (71 FR 654, January 5, 2006) (USEPA, 2006i) implementation can, in combination, minimize the likelihood of misclassification of PWS wells (as non-GWUDI) and reduce the likelihood of outbreaks associated with such misclassification. This rule only qualitatively considers the benefits of identifying misclassified PWS wells.

Several nonhealth benefits from this rule were also recognized by EPA but were not monetized. The nonhealth benefits of this rule include avoided outbreak response costs (such as the costs of providing public health warnings, boiling drinking water and providing alternative supplies, remediation and repair, and testing and laboratory costs). Expenses associated with outbreaks can be significant. For example, an analysis of the economic impacts of a waterborne disease outbreak in Walkerton, Ontario (population 5,000) estimated the economic impact excluding medically related costs to be over $43 million in Canadian dollars (approximately $32 million in U.S. dollars) (Livernois, 2002). The author believed that this was a conservative estimate.

5. How Have the Benefits Changed Since the Proposal?

The estimated annual quantified benefits for the GWR have changed from $205 million (year 2000 dollars, both at 3 percent and 7 percent discount rates) to $19.7 million (year 2003 dollars, at 3 percent) using enhanced cost-of-illness estimates and $10.0 million (year 2003 dollars, at 3 percent) using traditional cost-of-illness estimates (these are $16.8 and $8.6 using a 7 percent discount rate). The proposal only included the enhanced cost-of-illness measure. The change in quantified benefits is due to

changes in both the economic analysis estimates (*e.g.*, interpretation of occurrence and other data) and GWR provisions. However, changes in the economic analysis estimates are the dominant factor in explaining the large change in benefits from the proposal.

Estimates in the GWR EA that were changed and that most influenced the change in the quantified benefit estimate include:

- Frequency and duration of viral occurrence in wells;
- Percentage of wells associated with high versus low viral concentrations;
- Efficiency by which virally contaminated wells are identified and prescribed corrective action;
- Severity of symptoms associated with predicted illnesses
- Monetized value of illnesses avoided; and
- Using net present values and then annualizing benefits.

EPA believes that the changes made in the GWR EA since proposal substantially improve upon the scientific basis for the quantified benefits, a major issue raised by public comments (see Section VII.J of this preamble for further discussion of public comments). Chapter 5 of the GWR EA describes the basis for the analysis (USEPA, 2006d).

Changes in the rule provisions also impacted the final benefit estimate but these changes are not as significant as the changes made in the economic analysis. In addition, the benefits (as well as costs) for the optional assessment source water monitoring and additional fecal indicator sampling following triggered source water monitoring are not included in the final rule analysis. These potential impacts are discussed in Section VII.J.10.

Another major change in the GWR EA since proposal is a more thorough analysis of the nonquantified benefits. EPA's analysis of the potential benefits from avoided bacterial illness suggests that the nonquantified benefits may exceed the quantified benefits by a factor of five (see Chapter 5.4 of the GWR EA for a full description of nonquantified benefits, USEPA, 2006d).

D. What Are the Costs of the GWR?

1. Summary of Quantified Costs

In estimating the costs of this rule, the Agency considered impacts on public water systems and on States. Table VII–6 summarizes these costs in terms of annualized present value: $61.8 million (using a three percent discount rate) and $62.3 million (using a seven percent discount rate). Most costs occur early in the implementation schedule, therefore the values do not differ much using different discount rates.

To calculate the national costs of compliance, the Agency used a Monte-Carlo simulation model specifically developed for the GWR. The main advantage of this modeling approach is that in addition to providing average compliance costs, it also estimates the range of costs within each PWS size and category. It also allows the Agency to capture the variability and uncertainty in areas such as PWS configuration, current treatment in-place, source water quality, existing State requirements, unit costs of treatment technologies, and compliance forecasts. The 90 percent confidence bounds shown in Table VII–6 reflect the quantified uncertainties.

Table VII-6: Total Annualized Present Value Costs ($Millions, 2003$)

Discount Rate	Systems			States			Total		
	Mean Value	90 Percent Confidence Bound		Mean Value	90 Percent Confidence Bound		Mean Value	90 Percent Confidence Bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
3 percent	$ 50.0	$ 34.3	$ 68.8	$ 11.8	$ 10.9	$ 12.6	$ 61.8	$ 45.2	$ 81.4
7 percent	$ 50.6	$ 35.2	$ 69.0	$ 11.7	$ 10.9	$ 12.6	$ 62.3	$ 46.1	$ 81.6

Notes: Detail may not add to totals due to independent rounding.

Table VII–6 shows the estimated annualized present value costs of this rule. Drinking water utilities will incur approximately 81 percent of the rule's costs. States will incur the remaining costs of the rule. In addition to the mean estimates of costs, the Agency calculated 90 percent confidence intervals by considering, for example, the uncertainty in the mean unit technology costs. Table VII–7 shows the undiscounted capital costs and all one-time costs for both water systems and States. The derivation of these cost numbers can be found in Chapter 6 of the GWR EA (USEPA, 2006d). The itemized costs of this rule are presented below for systems and States, respectively.

Table VII-7: Total Initial Capital and One-Time Costs ($Millions, 2003$)

	PWSs Serving ≤10,000			PWSs Serving > 10,000			Total		
		90 Percent Confidence Bound			90 Percent Confidence Bound			90 Percent Confidence Bound	
	Mean Value	Lower (5th %ile)	Upper (95th %ile)	Mean Value	Lower (5th %ile)	Upper (95th %ile)	Mean Value	Lower (5th %ile)	Upper (95th %ile)
CWS Total Initial Capital	$ 79	$ 29	$ 158	$ 62	$ 24	$ 117	$ 141	$ 53	$ 275
NTNCWS Total Initial Capital	$ 31	$ 12	$ 60	$ 0	$ 0	$ 1	$ 31	$ 12	$ 61
TNCWS Total Initial Capital	$ 173	$ 64	$ 339	$ 1	$ 0	$ 2	$ 174	$ 64	$ 341
Total Initial PWS Capital Costs	$ 283	$ 105	$ 556	$ 64	$ 24	$ 120	$ 346	$ 129	$ 676
CWS Implementation Costs	$ 5	$ 5	$ 5	$ 0	$ 0	$ 0	$ 5	$ 5	$ 5
NTNCWS Implementation Costs	$ 2	$ 2	$ 2	$ 0	$ 0	$ 0	$ 2	$ 2	$ 2
TNCWS Implementation Costs	$ 9	$ 9	$ 9	$ 0	$ 0	$ 0	$ 9	$ 9	$ 9
Total One-Time PWS Costs	$ 16	$ 16	$ 16	$ 0	$ 0	$ 0	$ 17	$ 17	$ 17
State Start-Up Cost							$ 13	$ 13	$ 13
Total State One-Time Costs							$ 13	$ 13	$ 13

Notes: Detail may not add to totals due to independent rounding.
The mean and confidence bounds are equal for both systems and state implementation costs because EPA derived these costs from point estimates.

2. Derivation of Quantified Costs

a. *Summary of Baseline Estimate.* To quantify the effects of the rule, it is necessary to have a baseline against which to compare the set of regulatory requirements. The baseline is a characterization of the industry and its operations under the conditions expected to exist before systems make changes to meet requirements of this rule. As discussed in Section IV of this preamble, the regulatory requirements can be system, entry point, or well level requirements. These requirements, to a large extent, depend upon the levels of existing protection from microbial risks, e.g., disinfection levels. Table VII–8a presents the major baseline information for this rule. The number of entry points or wells varies by system size, with larger systems generally having more entry points. Chapter 4 of the GWR EA for this rule provides a detailed description of the GWR baselines (USEPA, 2006d).

b. *Rule Implications.* To calculate the cost impact of each rule alternative on GWSs, the Agency estimated how many systems and their associated entry points to distribution systems and wells would be affected by the various rule requirements based on national fecal indicator occurrence information, as discussed in Section VII.B.1. The Agency developed compliance forecast estimates that predict the number of systems, entry points, or wells that incur costs to comply with each regulatory requirement. Table VII–8b shows these numbers broken down by system type and size category. Chapter 6 of the GWR EA for this rule provides further description of the estimates of rule implications (USEPA, 2006d).

c. *System Costs.* This rule is estimated to cost public GWSs $50.0 million annually using a three percent discount rate ($50.6 million annually using a seven percent discount rate). The cost impacts to systems complying with the GWR stem from implementing the rule, assisting with sanitary surveys, performing source water and compliance monitoring, and performing corrective actions. Not every system is expected to incur all of these costs because the compliance activities for systems depend on the results from sanitary surveys, analysis of total coliform samples under the TCR, and source water monitoring.

The estimated costs for each of the rule requirements are summarized in Table VII–8c with a mean, upper bound, and lower bound. The mean and confidence bounds are equal for some of the costs because EPA derived these costs from point estimates. The total annualized costs to systems are presented in Table VII–9 by system size and type. The detailed calculation of these cost numbers are presented in Chapter 6 of the GWR EA (USEPA, 2006d).

To analyze the different rule components, the Agency had to distinguish between correction of significant deficiencies identified during sanitary surveys and the corrective actions that result from fecal indicator-positive ground water source samples. It was not possible to estimate costs for all conceivable corrective actions that a system may potentially encounter on a national level due to system-to-system variability. As a result, the Agency estimated costs for representative corrective actions that may be implemented to address significant deficiencies identified by sanitary surveys and source water fecal contamination, respectively. Table VII–10 shows the representative corrective actions.

BILLING CODE 6560–50–P

Table VII-8a: GWR Baselines: Number of Systems, Entry Points, and Wells

System Size	Total Number of Systems	Number of Entry Points per System	Number of Wells per System	Number of Wells per Entry Point	Entry Points with at least 4 logs of Viral Disinfection	Entry Points with less than 4 logs of Viral Disinfection	Entry Points without Disinfection
	A	B	C	D = C/B	E	F	G
Community Water Systems (CWSs)							
<100	12,843	1.3	1.5	1.1	3,996	3,689	9,168
101-500	14,358	1.6	2.0	1.2	8,873	8,191	6,343
501-1,000	4,649	2.0	2.3	1.2	3,547	3,274	2,262
1,001-3,300	5,910	2.4	3.1	1.3	5,378	4,964	4,002
3,301-10K	2,884	3.2	4.6	1.4	3,547	3,274	2,459
10,001-50K	1,444	5.6	9.8	1.7	3,856	3,559	698
50,001-100K	167	11.3	16.1	1.4	583	538	770
100,001-1 Million	103	12.4	49.9	4.0	545	503	227
> 1 Million	3	11.4	49.9	4.4	34	-	-
Nontransient Noncommunity Water Systems (NTNCWSs)							
<100	9,456	1.0	1.5	1.5	850	1,892	6,714
101-500	6,758	1.0	2.0	2.0	608	1,352	4,798
501-1,000	1,894	1.0	2.3	2.3	170	379	1,345
1,001-3,300	715	1.0	3.1	3.1	64	143	508
3,301-10K	73	1.0	4.6	4.6	7	15	52
10,001-50K	10	1.0	9.8	9.8	1	2	7
50,001-100K	1	1.0	16.1	16.1	0	0	1
100,001-1 Million	1	1.0	49.9	49.9	0	0	1
> 1 Million	-	1.0	49.9	49.9	-	-	-
Transient Noncommunity Water Systems (TNCWSs)							
<100	64,448	1.0	1.5	1.5	1,160	10,441	52,847
101-500	18,993	1.0	2.0	2.0	342	3,077	15,574
501-1,000	1,940	1.0	2.3	2.3	35	314	1,591
1,001-3,300	585	1.0	3.1	3.1	11	95	480
3,301-10K	74	1.0	4.6	4.6	1	12	61
10,001-50K	19	1.0	9.8	9.8	0	3	16
50,001-100K	1	1.0	16.1	16.1	0	0	1
100,001-1 Million	1	1.0	49.9	49.9	0	0	1
> 1 Million	-	1.0	49.9	49.9	-	-	-

Table VII-8b: Summary of Rule Implications

System Size	Systems Receiving Sanitary Survey	Systems with Corrective Actions for Significant Deficiencies	Entry Points with Triggered Monitoring	Entry Points with Corrective Actions for Triggered Monitoring	Entry Points with Viral Disinfection Increased from less than 4 logs to 4 logs	Previously Non-disinfecting Entry Points Taking Corrective Action	Entry Points with Incremental Compliance Monitoring
	A	B	C	D	E	F	G*
Community Water Systems (CWSs)							
<100	12,843	2,181	12,797	1,249	358	891	248
101-500	14,358	2,444	14,819	1,625	917	709	292
501-1,000	4,649	789	5,578	608	360	248	105
1,001-3,300	5,910	1,001	8,910	712	396	317	130
3,301-10K	2,884	492	5,638	617	353	264	111
10,001-50K	1,444	245	4,357	655	548	107	54
50,001-100K	167	28	1,295	226	93	133	46
100,001-1 Million	103	18	749	136	94	42	20
> 1 Million	3	-	-	-	-	-	-
Nontransient Noncommunity Water Systems (NTNCWSs)							
<100	9,456	1,608	8,609	687	150	537	149
101-500	6,758	1,148	6,149	533	119	415	170
501-1,000	1,894	322	1,724	149	33	117	50
1,001-3,300	715	121	651	86	19	67	27
3,301-10K	73	12	66	10	2	8	3
10,001-50K	10	2	9	2	0	1	1
50,001-100K	1	0	1	0	0	0	0
100,001-1 Million	1	0	1	0	0	0	0
> 1 Million	-	-	-	-	-	-	-
Transient Noncommunity Water Systems (TNCWSs)							
<100	64,448	10,990	63,295	6,915	1,143	5,772	1,602
101-500	18,993	3,234	18,648	2,026	337	1,689	696
501-1,000	1,940	329	1,905	208	35	174	73
1,001-3,300	585	99	574	76	12	63	26
3,301-10K	74	13	73	12	2	10	4
10,001-50K	19	3	19	3	1	3	1
50,001-100K	1	0	1	0	0	0	0
100,001-1 Million	1	0	1	0	0	0	0
> 1 Million	-	-	-	-	-	-	-

*G indicates number of entry points with treatment corrective actions. F-G indicates non treatment corrective actions

Table VII-8c: Annualized Costs for Meeting Each of the GWR Provisions to Systems and States ($Millions, 2003$)

		Rule Implementation & Annual Administration	Sanitary Surveys	Corrective Actions for Significant Deficiencies	Triggered Monitoring	Corrective Actions for Triggered Monitoring	Compliance Monitoring	Total Costs
		A	B	C	D	E	F	G
				3%				
Systems	Mean	$0.93	$0.21	$8.46	$5.44	$25.64	$9.35	$50.02
	Lower Bound (5th %ile)	$0.93	$0.11	$5.74	$5.32	$14.90	$3.02	$34.28
	Upper Bound (95th %ile)	$0.93	$0.31	$11.60	$5.56	$38.39	$16.97	$68.76
States	Mean	$9.20	$1.45	$0.56	$0.09	$0.46	$0.00	$11.77
	Lower Bound (5th %ile)	$9.20	$0.66	$0.52	$0.06	$0.32	$0.00	$10.87
	Upper Bound (95th %ile)	$9.20	$2.23	$0.61	$0.12	$0.61	$0.01	$12.64
Total	Mean	$10.13	$1.66	$9.02	$5.52	$26.10	$9.36	$61.79
	Lower Bound (5th %ile)	$10.13	$0.77	$6.25	$5.38	$15.22	$3.02	$45.15
	Upper Bound (95th %ile)	$10.13	$2.54	$12.21	$5.67	$39.00	$16.98	$81.41
				7%				
Systems	Mean	$1.33	$0.20	$8.13	$5.39	$27.20	$8.32	$50.57
	Lower Bound (5th %ile)	$1.33	$0.10	$5.51	$5.27	$15.89	$2.65	$35.22
	Upper Bound (95th %ile)	$1.33	$0.30	$11.14	$5.51	$40.96	$15.17	$69.00
States	Mean	$9.18	$1.39	$0.54	$0.10	$0.52	$0.00	$11.74
	Lower Bound (5th %ile)	$9.18	$0.63	$0.50	$0.07	$0.36	$0.00	$10.87
	Upper Bound (95th %ile)	$9.18	$2.14	$0.59	$0.13	$0.69	$0.01	$12.61
Total	Mean	$10.51	$1.59	$8.67	$5.48	$27.72	$8.32	$62.31
	Lower Bound (5th %ile)	$10.51	$0.74	$6.01	$5.34	$16.26	$2.65	$46.09
	Upper Bound (95th %ile)	$10.51	$2.44	$11.73	$5.64	$41.65	$15.18	$81.61

Table VII-9: Total Annualized Costs to Systems by System Size and Type ($Millions, 2003$)

System Size (Population Served)	At 3%			At 7%		
	Mean Value	90 Percent Confidence Bound		Mean Value	90 Percent Confidence Bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
Community Water Systems (CWSs)						
<100	$ 2.91	$ 2.13	$ 3.69	$ 2.91	$ 2.16	$ 3.72
101-500	$ 3.61	$ 2.54	$ 4.94	$ 3.59	$ 2.60	$ 4.83
501-1,000	$ 1.45	$ 0.99	$ 1.98	$ 1.44	$ 1.00	$ 1.94
1,001-3,300	$ 1.96	$ 1.29	$ 2.76	$ 1.94	$ 1.30	$ 2.69
3,301-10K	$ 2.23	$ 1.40	$ 3.26	$ 2.26	$ 1.49	$ 3.25
10,001-50K	$ 2.85	$ 1.87	$ 4.06	$ 3.05	$ 2.05	$ 4.41
50,001-100K	$ 1.78	$ 1.01	$ 2.73	$ 1.88	$ 1.11	$ 2.84
100,001-1M	$ 1.89	$ 1.14	$ 2.89	$ 2.12	$ 1.31	$ 3.18
>1 Million	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
All Sizes	$ 18.67	$ 12.39	$ 26.31	$ 19.19	$ 13.03	$ 26.87
Nontransient Noncommunity Water Systems (NTNCWSs)						
<100	$ 1.77	$ 1.34	$ 2.27	$ 1.78	$ 1.34	$ 2.26
101-500	$ 1.86	$ 1.21	$ 2.60	$ 1.83	$ 1.23	$ 2.53
501-1,000	$ 0.67	$ 0.43	$ 0.97	$ 0.66	$ 0.42	$ 0.94
1,001-3,300	$ 0.46	$ 0.28	$ 0.68	$ 0.46	$ 0.28	$ 0.67
3,301-10K	$ 0.10	$ 0.05	$ 0.16	$ 0.10	$ 0.06	$ 0.17
10,001-50K	$ 0.04	$ 0.02	$ 0.07	$ 0.04	$ 0.02	$ 0.07
50,001-100K	$ 0.01	$ 0.00	$ 0.01	$ 0.01	$ 0.00	$ 0.01
100,001-1M	$ 0.01	$ 0.00	$ 0.01	$ 0.01	$ 0.00	$ 0.02
>1 Million	$ -	$ -	$ -	$ -	$ -	$ -
All Sizes	$ 4.91	$ 3.33	$ 6.77	$ 4.89	$ 3.36	$ 6.68
Transient Noncommunity Water Systems (TNCWSs)						
<100	$ 17.74	$ 12.87	$ 23.27	$ 17.86	$ 13.11	$ 23.44
101-500	$ 7.07	$ 4.75	$ 9.95	$ 7.00	$ 4.76	$ 9.61
501-1,000	$ 0.98	$ 0.58	$ 1.45	$ 0.96	$ 0.59	$ 1.38
1,001-3,300	$ 0.42	$ 0.25	$ 0.63	$ 0.42	$ 0.26	$ 0.63
3,301-10K	$ 0.13	$ 0.07	$ 0.21	$ 0.14	$ 0.07	$ 0.22
10,001-50K	$ 0.08	$ 0.04	$ 0.14	$ 0.09	$ 0.04	$ 0.15
50,001-100K	$ 0.01	$ 0.00	$ 0.01	$ 0.01	$ 0.00	$ 0.01
100,001-1M	$ 0.01	$ 0.01	$ 0.02	$ 0.01	$ 0.01	$ 0.02
>1 Million	$ -	$ -	$ -	$ -	$ -	$ -
All Sizes	$ 26.44	$ 18.56	$ 35.68	$ 26.49	$ 18.84	$ 35.46
TOTAL	$ 50.02	$ 34.28	$ 68.76	$ 50.57	$ 35.22	$ 69.00

Notes: Detail may not be consistent with summary presentations due to independent statistical analysis.

BILLING CODE 6560–50–C

Because the exact timing and distribution of problems among systems that may be identified by the sanitary surveys is not known, an average annual GWS cost of correcting significant defects is calculated by summing the cost of correcting all significant deficiencies over the 25-year period of analysis and apportioning them evenly over the period during which they are performed.

For entry points with fecal indicator-positive ground water source samples (from triggered source water monitoring), systems must perform corrective action to comply with the GWR. For cost estimation purposes, the model assumes that for every source water positive sample, at least one additional sample will also be positive (*i.e.*, corrective action ultimately follows every source water positive) (see Chapter 6 of GWR EA (USEPA, 2006d) for a complete discussion of this assumption). For non-disinfecting systems, the model assigns one representative nontreatment corrective action or one disinfection/treatment corrective action (Table VII–10). The cost model assigns nondisinfecting entry points that need to take corrective actions to the treatment category using the current proportion of all entry points providing treatment for different size categories. The current proportion is a range of the estimated existing percentages of treatment entry points among the entry points with less than 4-log disinfection and without disinfection.

For nontreatment corrective actions to comply with the GWR, the cost model assigns equal proportions of entry points to high and low cost scenarios and then assigns a representative corrective action according to the corresponding percentages in that scenario. For entry points predicted to use treatment corrective actions, the cost model assigns one of the possible treatment technologies based on the relative percentage of CWSs currently engaged in those treatment practices. Finally, for entry points that require corrective actions because of source water fecal contamination (from

triggered source water monitoring) and already disinfect, but the disinfection does not achieve at least a 4-log treatment of viruses before or at the first customer, the compliance forecast assigns a corrective action that either increases the dose for hypochlorination or chlorine gas or adds storage. More information regarding the compliance forecasts of corrective actions can be found in Chapter 6 of the GWR EA (USEPA, 2006d).

TABLE VII–10.—REPRESENTATIVE CORRECTIVE ACTIONS

	Representative corrective actions	Note
For Significant Deficiencies at Source Identified by Sanitary Survey.	Replace a Sanitary Well Seal	Low cost option.
	Rehabilitate an Existing Well	High cost option.
For Entry Points with a Fecal Indicator-Positive Ground Water Source Sample.	Non-Treatment Options Rehabilitate an Existing Well Drill a New Well Purchase Water Eliminate Source of Contamination	Interim disinfection is included for costing.
	Treatment Options Disinfection Alternatives or Nanofiltration	Chlorine gas and hypochlorite will be most likely choices for large and small systems, respectively.

In addition to the treatment technique costs, EPA estimated the cost for systems to conduct monitoring. It is important to remember that triggered source water monitoring applies only to systems that do not achieve 4-log treatment of viruses. Compliance monitoring applies to systems that currently provide 4-log treatment of viruses, or those that install treatment as a result of this rule. Assessment source water monitoring is optional and is not included in either the cost or benefit estimates (see Section VII.J.10).

The triggered source water monitoring costs are calculated based on the cost of the test and the operator's time to collect and transport the sample. GWSs have to collect a ground water source sample and analyze it for the selected indicator organism when the system experiences a total coliform-positive under the TCR. If the indicator sample is positive, the system either takes five additional samples or does corrective action immediately. If any of the additional samples is positive, the system must implement a corrective action. Specific issues regarding the monitoring cost estimate are described in Section VII.C.3 of this preamble. The GWR EA has a more detailed discussion of the monitoring cost analysis (USEPA, 2006d).

The cost of compliance monitoring varies with system size. Compliance monitoring is required for any system that currently provides 4-log treatment of viruses or installs treatment as a result of complying with this rule's treatment technique requirements. EPA assumes that systems with treatment technology in place prior to the GWR promulgation incur minimal additional capital or operation and maintenance (O&M) costs for compliance monitoring because GWSs should already have a monitoring program in place and has not included them in the cost analysis. However, the Agency does include costs for systems to notify the State that they achieve at least 4-log treatment of viruses or to notify the State in case of system failure.

For those systems adding a technology that provides 4-log treatment of viruses as a corrective action for source water fecal contamination, EPA assumes that monitoring equipment will also be installed to perform compliance monitoring. The cost varies by system size because the monitoring requirements vary by size category. A more detailed explanation of compliance monitoring schemes is discussed in Section IV.C.

d. *State costs.* As indicated in Table VII–6, EPA estimates that States will incur less than $11.8 million in annualized costs due to the additional sanitary survey requirements in this rule (including increased frequency of sanitary surveys), tracking monitoring information, reviewing action plans, data management, and other activities. Along with system costs, State costs are also summarized in Table VII–8c.

States will incur administrative costs while implementing the GWR. These implementation costs are not directly required by specific provisions of GWR alternatives, but are necessary for States to ensure the provisions of the GWR are properly carried out. States will also be required to spend time responding to PWSs whose ground water sources are found to be fecally contaminated, or have significant deficiencies. These costs include time to review plans and specifications, prepare violation letters, and enter data. States will need to allocate time for their staff to establish and then maintain the programs necessary to comply with the GWR, including developing and adopting State regulations, modifying data management systems to track newly required system reports to the States, and providing ongoing technical assistance to GWSs. For those GWR requirements that include monitoring with a laboratory method not currently required by the State, the State must devote a portion of its staff time to certifying laboratories for the new analytical method. Time requirements for a variety of State agency activities and responses are estimated in Chapter 6 of the GWR EA (USEPA, 2006d).

In addition to these one-time costs, States will use resources to continue activities for the implementation of the GWR unrelated to any specific provision. States with primacy enforcement responsibilities have recordkeeping (§ 142.14) and reporting (§ 142.15) requirements associated with primacy enforcement and must coordinate with EPA for review of the State primacy program. States must also continue to train their personnel and PWS staff, maintain laboratory certifications, and report system compliance information to the Safe Drinking Water Information System (SDWIS).

3. Nonquantifiable Costs

Although EPA has quantified the significant costs of the GWR, there are some costs that the Agency did not quantify. Overall, EPA believes that these nonquantified costs are much smaller than the nonquantified benefits. These nonquantified costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA estimated that some systems may need to acquire land if they need to build a treatment facility or drill a new well. This was not considered for most systems because EPA expects that the majority of the technologies that

systems will use to comply with this rule will fit within the existing plant footprint. In addition, if the cost of land is prohibitive, a system may choose another lower cost alternative such as connecting to another source. EPA has also not quantified costs for systems already using disinfection to conduct compliance monitoring because EPA believes that such systems are already incurring these costs.

In addition, the optional assessment source water monitoring provision was not included in the quantitative cost analysis. EPA was not able to quantify either the benefits or costs of this program. Because this provision could potentially increase both benefits and cost, a more complete discussion can be found in Section VII.J of this preamble. Due to lack of information, EPA was unable to quantify the costs (as well as benefits) from the correction of sanitary survey deficiencies in distribution systems and treatment plants. This is discussed in Section VII.J of this preamble.

Also, the Agency did not include the costs for taking five additional samples following a positive source water sample. However, EPA overestimated the cost of triggered source water monitoring because it assumed all systems would take an additional sample beyond the current TCR requirements. However, many small systems (and most GWSs are small) will be able to use one of their TCR repeat samples to also comply with the GWR. Overall, the impact of not including the five additional sample cost (approximately $200,000 per year) is much smaller compared to the overestimate of a few million dollars associated with the initial fecal indicator sampling cost already conducted for TCR monitoring.

4. How Have the Costs Changed Since the Proposal?

The estimated annual quantified costs for the GWR have changed from $183 million and $199 million (year 2000 dollars at proposal, using three and seven percent discount rates, respectively) to $61.8 million and $62.3 million (year 2003 dollars, using three and seven percent discount rates, respectively). The change in quantified costs is due to changes in both the economic analysis estimates (*e.g.*, interpretation of occurrence and other data) and GWR provisions. However, changes in the economic analysis estimates are the dominant factor in explaining the large change in costs from the proposal. The major changes in economic analysis estimates include the following:

- The number of significant deficiencies and corrective actions in wells from sanitary survey provisions;
- State costs for the incremental changes to existing sanitary survey programs;
- The total coliform-positive samples under the TCR and the number of triggered source water monitoring samples required under the GWR;
- The frequency and duration of fecal indicator occurrence in wells;
- The efficiency by which fecally contaminated wells are identified and therefore performing a corrective action;
- Compliance forecasts include a higher percentage of non-treatment corrective actions; and
- Using net present values and then annualizing costs.

EPA believes that the changes made in the GWR EA since proposal substantially improve the basis for quantifying the GWR costs with more available data, a major issue raised by public comments (see Section VII.L of this preamble for further discussion of major public comments).

Changes in the rule provisions also impacted the final cost estimate but these changes are not as significant as the changes made in the economic analysis. In addition, the costs (as well as benefits) for optional assessment source water monitoring and additional fecal indicator sampling following triggered source water monitoring are not included in the final rule analysis. These potential impacts are discussed in Section VII.J.

Another major change in the Economic Analysis since the proposed GWR is a more thorough analysis of the nonquantified costs. Chapter 6 of the GWR EA describes the basis for the analysis (USEPA, 2006d). Rule changes can be found in Section VII.A of this preamble.

E. What Is the Potential Impact of the GWR on Households?

This analysis considers the potential increase in a household's water bill if a CWS passed the entire cost increase resulting from this rule on to their customers. This analysis is a tool to gauge potential impacts and should not be construed as a precise estimate of potential changes to household water bills.

The household cost analysis only considers the impact on CWSs. State costs and costs to TNCWSs and NTNCWSs are not included in this analysis since their costs are not passed through directly to households. Table VII–11 presents the mean expected increases in annual household costs for all CWSs, including those systems that do not have to take corrective action for significant deficiencies or source water fecal contamination. Table VII–11 also presents the same information for CWSs that must take corrective action. Household costs tend to decrease as system size increases, due mainly to the economies of scale for the corrective actions.

As shown in Table VII–11, the mean annual household costs for systems (including those that do not add treatment) range from $0.21 to $16.54 (systems serving fewer households generally have higher average annual household costs). Household costs for the subset of systems that take corrective actions range from $0.45 to $52.38. EPA estimates that, as a whole, households subject to the GWR face minimal increases in their annual costs. The lowest increases in household costs are for those served by larger systems due to significant economies of scale and because many already disinfect. Approximately 66 percent of the households potentially affected by the GWR are customers of systems that serve at least 10,000 people. Households served by small systems that take corrective actions will face the greatest increases in annual costs.

Table VII-11: Summary of Annual Per-Household Costs for the GWR (2003$/Year)

Systems Size (Population Served)	Households	Mean	Median	90th Percentile
All Community Water Systems (CWSs)				
<100	289,222	$ 16.54	$ 2.81	$ 9.31
101-500	1,303,890	$ 3.51	$ 0.64	$ 6.11
501-1,000	1,278,081	$ 0.97	$ 0.16	$ 1.70
1,001-3,300	4,196,105	$ 0.37	$ 0.04	$ 0.61
3,301-10K	6,271,380	$ 0.27	$ 0.03	$ 0.43
10,001-50K	11,468,813	$ 0.21	$ 0.04	$ 0.49
50,001-100K	4,204,584	$ 0.34	$ 0.10	$ 1.02
>100,000	9,755,817	$ 0.21	$ 0.04	$ 0.62
Corrective Action Community Water Systems (CWSs)				
<100	70,563	$ 52.38	$ 18.99	$ 82.21
101-500	312,484	$ 12.00	$ 4.52	$ 25.76
501-1,000	302,557	$ 3.23	$ 1.33	$ 6.56
1,001-3,300	919,133	$ 1.33	$ 0.47	$ 2.59
3,301-10K	1,487,159	$ 0.80	$ 0.25	$ 2.18
10,001-50K	2,871,250	$ 0.45	$ 0.18	$ 1.18
50,001-100K	1,215,544	$ 0.53	$ 0.26	$ 1.36
>100,000	2,283,144	$ 0.68	$ 0.39	$ 1.65

Source: GWR model output.

F. What Are the Incremental Costs and Benefits of the GWR?

The GWR regulatory alternatives achieve increasing levels of benefits at increasing levels of costs. The regulatory alternatives for this rule, in rank order of increasing costs and benefits are as follows:

- Alternative 1: Sanitary Survey and Corrective Action.
- Alternative 2: Risk-Targeted Approach.
- Alternative 3: Multi-Barrier Approach.
- Alternative 4: Across-the-Board Disinfection.

More information about the alternatives is provided in the GWR EA (USEPA, 2006d).

Incremental costs and benefits are those that are incurred or realized in reducing viral illnesses and deaths from one alternative to the next more stringent alternative. Estimates of incremental costs and benefits are useful in considering the economic efficiency of different regulatory alternatives considered by the Agency. Generally, the goal of an incremental analysis is to identify the regulatory alternatives where net social benefits are maximized. However, the usefulness of this analysis is constrained when major benefits and/or costs are not quantified or not monetized as in the case with the GWR. Also, as pointed out by the Environmental Economics Advisory Committee of the Science Advisory Board, efficiency is not the only appropriate criterion for social decisionmaking (USEPA, 2000d).

For the GWR, presentation of incremental quantitative benefit and cost comparisons may be unrepresentative of the true net benefits of the rule because a significant portion of the rule's potential benefits are not quantified, particularly bacterial illness and deaths (see Section VII.C.4).

Table VII–12a and Table VII–12b present the four regulatory alternatives in order of increasing level of reduction in waterborne pathogens or increasing level of protection from illness. All values are annualized mean present values expressed in year 2003 dollars. The lower and upper bounds of a 90 percent confidence interval are shown below the mean numbers. As shown in Tables VII–12a and b, incremental net benefits for all alternatives are negative. The nonquantified bacterial illness benefits would add benefits to all alternatives without any increase in costs. EPA estimated that the total benefits could increase by more than a factor of five by accounting for additional deaths and hospitalizations caused by reduced bacterial illness alone. These nonquantified benefits have a significant positive impact on the incremental benefits and incremental net benefits. Both Alternative 3 and Alternative 2 could have positive incremental net benefits if the bacterial benefits are considered. The next highest alternative, Alternative 4, has such highly negative incremental net benefits, and the difference is so substantial, that nonquantified benefits would be unlikely to compensate. However, comparisons between Alternative 4 and the other alternatives may be between two separate sets of benefits, in the sense that they may be distributed to somewhat different populations.

TABLE VII–12a.—INCREMENTAL NET BENEFITS BY RULE ALTERNATIVE—ENHANCED COI

[Annualized Present Value Mean, $Millions, 2003$]

Rule alternatives	Annual quantified costs	Annual quantified benefits (enhanced COI)	Incremental costs	Incremental benefits*	Incremental net benefits*
	A	B	C	D	E = D – C
Three Percent Discount Rate (in dollars)					
Alternative 1: Sanitary Survey and Corrective Action	15.3 (11.8–19.2)	3.6 (0.9–9.3)	15.3	3.6	–11.7
Final Rule: Risk-targeted Approach**	61.8 (45.2–81.4)	19.7 (6.5–45.4)	46.5	16.1	–30.4
Alternative 3: Multi-Barrier Approach	67.9 (49.4–89.5)	21.3 (7.1–48.7)	6.1	1.6	–4.5
Alternative 4: Across-the-Board Disinfection	686.4 (636.8–735.4)	70.2 (18.3–177.0)	618.5	48.9	–569.6
Seven Percent Discount Rate (in dollars)					
Alternative 1: Sanitary Survey and Corrective Action	15.3 (11.9–19.0)	2.9 (0.7–7.5)	15.3	2.9	–12.4
Final Rule: Risk-targeted Approach**	62.3 (46.1–81.6)	16.8 (5.5–38.6)	47.0	13.9	–33.1
Alternative 3: Multi-Barrier Approach	69.4 (51.0–90.6)	18.2 (6.0–41.6)	7.1	1.4	–5.7
Alternative 4: Across-the-Board Disinfection	665.3 (612.3–717.0)	61.9 (16.1–156.3)	595.9	43.8	–552.2

*Does not include significant nonquantified benefits. See GWR EA Section 5.4 (USEPA, 2006d).
**Benefits and costs are also not included for optional assessment source water monitoring.

TABLE VII–12b.—INCREMENTAL NET BENEFITS BY RULE ALTERNATIVE—TRADITIONAL COI

[Annualized Present Value Mean, $Millions, 2003$]

Rule alternatives	Annual quantified costs	Annual quantified benefits (traditional COI)	Incremental costs	Incremental benefits*	Incremental net benefits*
	A	B	C	D	E = D – C
Three Percent Discount Rate (in dollars)					
Alternative 1: Sanitary Survey and Corrective Action	15.3 (11.8–19.2)	1.9 (0.3–5.5)	15.3	1.9	–13.5
Final Rule: Risk-targeted Approach**	61.8 (45.2–81.4)	10.0 (2.2–27.0)	46.5	8.2	–38.3
Alternative 3: Multi-Barrier Approach	67.9 (49.4–89.5)	10.8 (2.5–28.9)	6.1	0.8	–5.3
Alternative 4: Across-the-Board Disinfection	686.4 (636.8–735.4)	35.5 (6.5–102.4)	618.5	24.7	–593.8
Seven Percent Discount Rate (in dollars)					
Alternative 1: Sanitary Survey and Corrective Action	15.3 (11.9–19.0)	1.5 (0.2–4.5)	15.3	1.5	–13.8
Final Rule: Risk-targeted Approach**	62.3 (46.1–81.6)	8.6 (1.9–23.0)	47.0	7.1	–39.9
Alternative 3: Multi-Barrier Approch	69.4 (51.0–90.6)	9.3 (2.1–24.8)	7.1	0.7	–6.4
Alternative 4: Across-the-Board Disinfection	665.3 (612.3–717.0)	31.5 (5.7–90.8)	595.9	22.2	–573.7

*Does not include significant nonquantified benefits. See GWR EA Section 5.4 (USEPA, 2006d).
**Benefits and costs are also not included for optional assessment source water monitoring.

Notes: The Traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production and caregiver time for sick children). The Enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway.

Source: Chapter 8 of the GWR EA (USEPA, 2006d). Ranges in parentheses are the 90 percent confidence bounds.

G. Are There Any Benefits From Simultaneous Reduction of Co-Occurring Contaminants?

As discussed in Section VII.B.2, the GWR is expected to reduce not only viral illnesses and deaths (the monetized rule benefit) but also bacterial illnesses and deaths. This rule is also expected to decrease the risk of outbreaks that would reduce illnesses and deaths and other outbreak-related costs. Additional health benefits of this rule include the reduction in illnesses and deaths associated with reduced incidence of upsets or failures among disinfecting supplies and reduced incidence of distribution system contamination among disinfecting and non-disinfecting systems. EPA anticipates reductions in disease incidence in these areas to result from the sanitary survey provisions and the treatment and monitoring provisions pertaining to disinfected supplies.

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. If a system had an iron or manganese problem, for example, the addition of an oxidant and filtration could treat this problem as well as fecal contamination. Also, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants, including arsenic. EPA recognizes that some systems will choose these more expensive treatment technologies. EPA has included them in the decision tree in the cost analysis, but no estimate of the additional benefit from reducing co-occurring contaminants has been made.

H. Is There Any Increase in Risk From Other Contaminants?

It is unlikely that the GWR will result in a significant increase in risk from other contaminants, although adding disinfection to currently non-disinfecting systems could result in some increased risk. When disinfection is first introduced into a previously undisinfected system, the disinfectant can react with pipe scale, causing increased risk from some contaminants and other water quality problems. Contaminants that could be released include lead, copper, and arsenic. It could also possibly lead to a temporary discoloration of the water as the scale is loosened from the pipe. These risks can be addressed by gradually phasing in disinfection to the system, by targeted flushing of distribution system mains, and by maintaining a proper corrosion control program.

Using a chemical disinfectant could also result in an increased risk from disinfection byproducts (DBPs). Risk from DBPs has already been addressed in the *Stage 1 Disinfection Byproducts Rule* (DBPR) (USEPA, 1998c) and additional consideration of DBP risk has been addressed in the recently published final *Stage 2* DBPR (USEPA, 2006g). In general, GWSs are less likely to experience high levels of DBPs than surface water systems because they have lower levels of naturally occurring organic materials (generally represented by total organic carbon (TOC)) that contribute to DBP formation. For the most part, GWSs with high levels of TOC in their ground water source are located in States that already require GWSs to disinfect, therefore decreasing the chance that significant disinfection byproduct problems would result from this rule.

I. What Are the Effects of the Contaminant on the General Population and Groups Within the General Population That Are Identified as Likely To Be at Greater Risk of Adverse Health Effects?

EPA estimates that the average annual baseline illnesses and deaths associated with viruses in ground water are about 185,000 and 3, respectively (Table VII–4). The general population typically experiences GI illness when exposed to waterborne viral and bacterial pathogens, although other severe diseases such as kidney failure can also occur. Sensitive subpopulation exposure to these pathogens can result in more severe illness than in the general population, and sometimes death.

Examples of sensitive subpopulations include pregnant women, infants, elderly (over 65), cancer patients, and AIDS patients (Gerba *et al.*, 1996). Gerba estimates that these groups represent almost 20 percent of the U.S. population. The purpose of this section is to discuss the potential health effects associated with sensitive population groups, especially children, pregnant women, and the elderly.

1. Risk of Acute Viral Illness to Children and Pregnant Women

The risk of acute illness and death due to viral contamination of drinking water depends on several factors, including the age of the exposed individual. Infants and young children have higher rates of infection and disease from enteroviruses than other age groups (USEPA, 1999). Several enteroviruses that can be transmitted through water can have serious health consequences in children. Enteroviruses (which include poliovirus, coxsackievirus, and echovirus) have been implicated in cases of flaccid paralysis, myocarditis, encephalitis, hemorrhagic conjunctivitis, and diabetes mellitis (CDC, 1997; Modlin, 1997; Melnick, 1996; Cherry, 1995; Berlin *et al.*, 1993; Smith, 1970; Dalldorf and Melnick, 1965). Women may be at increased risk from enteric viruses during pregnancy (Gerba *et al.*, 1996). Enterovirus infections in pregnant women can also be transmitted to the unborn child late in pregnancy, sometimes resulting in severe illness in the newborn (USEPA, 2000e).

a. *Children's Environmental Health.* To comply with Executive Order 13045, EPA calculated the baseline risk and reduction of risk from waterborne viral illness and death for children as a result of this rule. To address the disproportionate risk of waterborne viral illness and death affecting children, EPA used age-specific morbidity data in the risk assessment. The risk assessment first estimated the proportion of the population that falls into several age categories for which data are available for two model viruses: Type A (represented by rotavirus data) and Type B (represented by enterovirus or echovirus data).

While bacterial illnesses are not addressed in the quantified benefits analysis, EPA believes that the nonquantified benefits associated with consumption of undisinfected bacterially contaminated PWS well water could be significant in sensitive subpopulations. In an alternative analysis to the quantified benefits calculation, EPA estimated that roughly 16,805 bacterial illnesses and 11 bacterial deaths annually could be avoided in the general population. See Section 5.4.3 of the GWR EA for details of the analysis (USEPA, 2006d). Children and the elderly are particularly vulnerable to kidney failure (hemolytic uremic syndrome) caused by the bacterium *E. coli* O157:H7. Waterborne outbreaks due to *E. coli* O157:H7 have caused kidney failure in children and the elderly as the result of disease outbreaks from consuming ground water in Cabool, Missouri (Swerdlow *et al.*, 1992); Alpine, Wyoming (Olsen *et al.*, 2002); Washington County, New York (NY State DOH, 2000); and Walkerton, Ontario, Canada (Health Canada, 2000).

Type A viruses of high infectivity (Type A, *e.g.*, rotavirus) disproportionately affect children less than three years of age. Thus, the age categories used in the hazard analysis were less than three years of age and greater than three years of age. Based on rotavirus data, it was assumed that 10 to

88 percent of children less than three years old would become ill once infected with high infectivity viruses and that 10 to 50 percent of the population over three years of age would become ill.

For viruses of low-to-medium infectivity (Type B, *e.g.*, echovirus), children are again disproportionately at risk of becoming ill once infected. For this virus type, the age categories used in the hazard analysis were less than five years of age, five to 19 years of age, and greater than 19 years of age. Based on echovirus data, EPA estimated that 50 to 78 percent of children less than five years old would become ill once infected with low-to-medium infectivity viruses, 12 to 57 percent of children five to 19 years of age and 12 to 33 percent of people over 19 years of age would become ill once infected.

In addition to illness, EPA also considered child mortality attributable to waterborne viral illness. For viruses of high infectivity (Type A), EPA estimates 0.00057 to 0.00073 percent of the ill population (including children) will die (Tucker *et al.*, 1998). This value, based on rotavirus data from children less than five years of age (20 deaths from 2,730,000 to 3,500,000 illnesses), was applied to individuals of all ages because data for older individuals are not available. For low-to-medium infectivity viruses (Type B), EPA estimates that 0.92 percent of children less than one month of age who become ill will die based on data from Jenista *et al.* (1984), Modlin (1986) and Kaplan *et al.* (1983). For those individuals greater than one month in age, 0.02 percent who become ill will die based on the EPA assumption that one percent of enterovirus illnesses are severe and two percent of severe illnesses result in death. The low-to-medium infectivity viruses result in a higher mortality rate than the high infectivity viruses because they can cause more serious health effects.

To estimate the benefits to children from this rule, the Agency calculated the number of endemic, acute viral illnesses and deaths avoided after rule implementation for children less than five years old and for children ages five through 15 years old. Table VII–13 shows the estimates for annual illnesses avoided in young children due to this rule. Overall, this rule will result in about 2,780 fewer endemic, acute viral illnesses per year caused by Type A (represented by rotavirus data) and Type B (represented by enterovirus or echovirus data) viruses and 0.06 deaths in children less than five years of age. For older children aged five to 15 years of age, this rule will result in 4,856 fewer acute illnesses per year (see Chapter 5 of the GWR EA (USEPA, 2006d)). In addition to endemic, acute viral illnesses avoided, EPA estimates that there will be fewer deaths (less than one death) in children of all ages.

Of the total annual avoided gastrointestinal illnesses predicted as the result of this rule, approximately 18 percent (7,636) of the mean annual illnesses avoided occur in children aged 15 years or younger. Children are disproportionately represented in the average annual number of illnesses avoided. Because children are often likely to be exposed via exposure pathways other than water in schools and day care centers (including fomites, respiratory, dermal, and person-to-person), the waterborne proportion probably does not dominate in total exposure but it may represent a significant fraction. More serious waterborne illnesses, such as hemolytic uremic syndrome (kidney failure), disproportionately affect children but this calculation only considers gastrointestinal illness.

TABLE VII–13.—ANNUAL VIRAL ILLNESSES AVOIDED BY THE GWR IN CHILDREN, THE ELDERLY, AND THE IMMUNOCOMPROMISED

Virus type	Health effect	Infants and young children <5 years old	Elderly adults >65 years old	Immunocompromised (all ages)	Total sensitive subgroups
Type A (Rotavirus)	Illness	2,588	Illness: 5,559	Illness: 126	Illness: 8,465.
	Death	0.02			
Type B (Enterovirus or Echovirus)	Illness	191	Deaths: 0.10	Deaths: 0.002	Deaths: 0.15.
	Death	0.04			

Note: Detail may not sum due to independent statistical analyses and rounding. The figures presented represent only the quantifiable benefits of the GWR. The nonquantified benefits are expected to comprise a significant portion of the overall benefits of the GWR and are presented in Section 5.4 of the GWR EA (USEPA, 2006d). The immunocompromised population includes bone marrow transplant recipients, AIDS patients, and organ transplant patients.

Source: Number of Illnesses Avoided, Deaths Avoided, and Annual Benefits from GWR Model Output.

2. Risk of Viral Illness to the Elderly and Immunocompromised

The elderly are particularly at risk from diarrheal diseases (Glass *et al.*, 2000), such as those associated with waterborne microbial pathogens. Fifty-three percent of diarrheal deaths occur among those older than 74 years of age, and 77 percent of diarrheal deaths occur among those older than 64 years of age. In Cabool, Missouri (Swerdlow *et al.*, 1992), a waterborne E. coli O157:H7 outbreak in a GWS resulted in four deaths, all among the elderly. One death occurred from hemolytic uremic syndrome (kidney failure); the others from gastrointestinal illness. Table VII–13 shows that this rule's estimates for avoided viral illnesses and deaths per year in the elderly population (> 65 years old) are approximately 5,559 and 0.1, respectively.

Most epidemiological studies focus on nursing homes because the cluster of individuals improves data collection. Nursing home populations are typically, but not exclusively, elderly. Gerba *et al.* (1996) compiled data to show that, for the various waterborne microbial pathogens, nursing home mortality rates are significantly higher than in the general population. In Gideon, Missouri, a waterborne *Salmonella typhimurium* outbreak (Angulo *et al.*, 1997) resulted in seven deaths from gastrointestinal illness, all among nursing home residents.

Hospitalizations due to diarrheal disease are higher in the elderly (Glass *et al.*, 2000). Average hospital stays for individuals older than 74 years of age due to diarrheal illness are 7.4 days compared to 4.1 days for individuals aged 20 to 49 (Glass *et al.*, 2000).

For another significant sensitive subpopulation, the immunocompromised, Gerba *et al.* (1996) summarized the literature and reported that enteric adenovirus and rotavirus are the two waterborne viruses most commonly isolated in the stools of AIDS patients. For patients undergoing bone-marrow transplants, several

studies cited by Gerba *et al.* (1996) reported mortality rates greater than 50 percent among patients infected with enteric viruses. Table VII–13 shows that this rule's estimates for avoided illnesses and deaths in the immunocompromised groups (all ages) are approximately 126 and 0.002, respectively.

Overall, this rule will provide protection from waterborne viral and bacterial illness to both the general population and sensitive subpopulations. To capture the impact of the rule on both populations, the Agency considered the different severities of illness when valuing reductions in illness that will result from this rule.

J. What Are the Uncertainties in the Risk, Benefit, and Cost Estimates for the GWR?

Many uncertain values are used to derive estimates of baseline risk, risk reductions, and costs of this rule. Most, but not all, of these are mathematically modeled so that a ''realization'' is selected for them in each ''uncertainty iteration'' of EPA's probabilistic economic analysis. These uncertainties then propagate through the derivation of final estimates so the total uncertainty of those final estimates can be understood. Each of those uncertainties, or the assumption that is made by not modeling it mathematically, is summarized in Sections 5.6 (for benefits) and 6.7 (for costs) in the GWR EA (USEPA, 2006d) for its importance and tendency to contribute systematically to an over-or understatement of the final estimate. The paragraphs that follow discuss the most important of these uncertain quantities.

1. The Baseline Numbers of Ground Water Systems, Populations Served, and Associated Disinfection Practice

The baseline number of systems is uncertain because of data limitations in the Safe Drinking Water Information System (SDWIS). For example, some systems use both ground and surface water, but because of other regulatory requirements, they are labeled in SDWIS as surface water systems. In addition, the SDWIS data on NCWSs do not reflect a consistent reporting convention for population served. Some States may report the population served by TNCWSs over the course of a year, while others may report the population served on an average day. For example, a State park may report the population served yearly instead of daily. Thus, SDWIS data may, in some cases, overestimate the daily population served. Also, SDWIS does not require States to provide information on current disinfection practices, resulting in uncertainty in the percentage of disinfecting systems providing 4-log or greater virus treatment. Although these different factors influencing the baseline estimates are uncertain, EPA believes that their relative degree of uncertainty in influencing the estimates within the GWR EA is small compared to other uncertain components of the Economic Analysis, so these are not treated probabilistically in the analysis.

2. The Numbers of Wells Designated as More Versus Less Vulnerable

For the purposes of the GWR EA, contaminated wells are classified as more or less vulnerable, which determines the assumptions used for the concentrations of virus as discussed in Section VII.B.1.c of this preamble. The numbers of systems falling into these two categories is uncertain and is also modeled as an uncertain variable.

3. The Baseline Occurrence of Viruses and *E. coli* in Ground Water Wells

EPA's occurrence analysis is based on monitoring data from over 1,200 public drinking water supply wells that were tested for culturable virus, *E. coli,* or both. Compiled from 15 ground water surveys that were designed for different purposes, these wells are believed to be representative of ground water wells. Although the number of wells is large, the number of assays per well is small, and most wells were sampled only once for either virus or *E. coli.* Because of the limited amount of data, these data do not provide precise occurrence estimates. EPA's analysis recognizes the limitations of the data, producing a large ''uncertainty sample'' of estimates that are consistent with the data. This uncertainty sample is an input to the probabilistic economic analysis, where these uncertainties are combined with the uncertainties of other inputs to portray total uncertainty in the GWR cost and benefit estimates. EPA's occurrence model includes concentration differences between more and less vulnerable wells, but applies the same hit rate model to both types of wells. Also, because of data limitations, EPA was unable to make an assessment of aquifer sensitivity as part of the final rule and, therefore, no difference in hit rates or concentration levels between sensitive and nonsensitive wells is assumed. The GWR EA addresses uncertainty about these assumptions in a qualitative discussion (USEPA, 2006d).

4. For the Sanitary Survey Provisions, the Percentage of Systems Identified as Having Significant Deficiencies, the Percentage of These Deficiencies That Are Corrected, and State Costs for Conducting Surveys

For the sanitary survey provisions, EPA estimated the impacts associated with well deficiencies. EPA used data from the 1998 ASDWA survey to estimate the percentage of wells with deficiencies (ASDWA, 1997). To estimate benefits, EPA assumed that if a correction of a well defect occurred at a virally contaminated well, some, but not all of these virally contaminated wells would no longer have viral contamination. EPA used an uncertainty distribution for this estimate.

To estimate costs for significant deficiencies detected at or near the source, EPA chose two representative corrective actions to use in the cost model: replacement of a sanitary well seal or rehabilitation of an existing well. Because the corrections of significant deficiencies are dependent upon the deficiencies defined as significant by States and the conditions of specific systems, both of which are highly variable, EPA used a high and low scenario to bound the cost estimates. The low-cost scenario assumes a greater percentage of the systems with significant deficiencies will have deficiencies that are less expensive to correct (*e.g.*, more systems will have to replace their sanitary well seal than will have to perform a complete rehabilitation of their well). This high/low bounding provides an estimate of the uncertainty with respect to the percentages of each type of defect to be corrected.

While the sanitary survey provisions will also result in identification and correction for deficiencies associated with treatment or distribution system deficiencies, due to insufficient data, EPA did not quantify either costs or benefits for these types of deficiencies. In the GWR EA, EPA qualitatively discusses these impacts (USEPA, 2006d).

Finally, EPA assumes that most States are already conducting sanitary surveys that include the eight required elements, and that many States are already conducting sanitary surveys for GWSs that meet the frequency requirements in the GWR, so EPA estimated incremental costs for these activities in only a relatively small subset of States.

5. The Predicted Rates at Which Virally Contaminated (and Non-Contaminated) Wells Will Be Required To Take Action After Finding *E. coli* Ground Water Sources

EPA's occurrence model estimates the percentage of wells that have only virus present, both *E. coli* and virus present, or only *E. coli* present. The occurrence model also includes parameters that describe how often contaminated wells actually have the contaminant present. For example, some contaminated wells have *E. coli* present less than one percent of the time, while others have *E. coli* present more than 10 percent of the time (some of which will also have sometime viral presence). When *E. coli*-contaminated wells are tested for the first time, those with frequent *E. coli* occurrence are the most likely to be identified as contaminated. As these problems are addressed and corrected, there should be fewer and fewer wells with frequent *E. coli* occurrence (as well as viral occurrence since a fraction of *E. coli* wells will also have sometime viral presence; see Section III.C.2 for further elaboration). This diminishing rate of fecal contamination identification is included in the GWR EA (USEPA, 2006d). Uncertainty about the diminishing rate is due to uncertainty about the EPA's estimates of how often *E. coli* occurs in contaminated wells. As with other key uncertain inputs, this uncertainty is represented by an uncertainty sample of the relevant parameters. Again, EPA assumes no difference based on vulnerability or sensitivity. The GWR EA qualitatively discusses uncertainty of this assumption (USEPA, 2006d).

Undisinfected wells are subjected to triggered source water monitoring. The rate at which triggered source water monitoring identifies a well as fecally-contaminated depends on both the fraction of time that *E. coli* is present in the well and the frequency at which the well is sampled. Data verification (DV) data on total coliform occurrence in distribution systems provide the basis for estimates of sampling frequency in different types and sizes of systems. Although the data are limited, EPA has not modeled these as uncertain estimates. Compared to other uncertain parameters, these have relatively little uncertainty and are expected to make only minor contributions to the total uncertainty in the GWR EA.

EPA also did not consider the cost impacts of additional fecal indicator sampling following triggered source water monitoring on corrective action costs. The analysis assumes that for every triggered source water monitoring positive, at least one additional fecal indicator sample will also be positive, resulting in corrective action. The rationale for this assumption is explained in Chapter 6 of the GWR EA. However, it is possible that some systems will not have a positive additional fecal indicator sample and will therefore not incur costs for corrective action. Accounting for this would reduce the costs of the rule associated with corrective actions and, to the extent that these systems actually do have viral or bacterial pathogens present, would reduce the benefits of the rule as well.

EPA assumes that the occurrence of fecal contamination will remain constant throughout the implementation of the rule. However, this might not be the case if increased development results in fecal contamination of a larger number of aquifers in areas served by GWSs or if other rules, such as Concentrated Animal Feeding Operations (CAFO) and Class V Underground Injections Control (UIC) Well regulations, result in decreased fecal contamination. This uncertainty is not mathematically modeled in the GWR Economic Analysis.

6. The Infectivity of Echovirus and Rotavirus Used To Represent Viruses That Occur in Ground Water

EPA does not have dose-response data for all viruses associated with previous ground water disease outbreaks. For viral illness, the Agency used echovirus and rotavirus as surrogates for all pathogenic viruses from fecal contamination that can be found in ground water. By using these two viruses, the Agency is capturing the effects of both high infectivity (Type A) viruses that cause mild illness and low-to-medium infectivity (Type B) viruses that may cause more severe illness but not the range of infectivity within each type. Further, there is additional uncertainty in the dose-response functions used, even for these two viruses. The dose-response relationship was modeled in two steps. First, infectivity, or the percentage of people in the different age groups who become infected after exposure to a given quantity of water with a given concentration of viruses, was estimated. Then morbidity, or the percentage of infected people who actually become ill, was estimated. EPA models uncertainty for morbidity within different age categories and differences in morbidity across different age categories (variability).

7. The Costs of Illnesses Due to Ingestion of Contaminated Ground Water

There is also uncertainty in the valuation of risk reduction benefits. For this analysis, EPA used a cost of illness (COI) approach based on the direct medical care costs as well as the indirect costs of becoming ill. However, there is uncertainty in these estimates and variability in the COI across populations and geographic regions.

8. The Costs of Taking Action After Finding *E. coli* in Ground Water Sources

EPA recognizes that there are both variability and uncertainty in unit cost estimates for treatment. Variability is expected in the actual costs that will be experienced by different water systems with similar flows installing the same treatment technology. Otherwise similar systems may experience different capital and/or O&M costs due to site-specific factors. Inputs to unit costs such as water quality conditions, labor rates, and land costs can be highly variable and increase the system-to-system variability in unit costs. In developing the unit cost estimates, there is insufficient information to fully characterize what the distribution of this variability will be on a national scale for all of the treatments and all possible conditions.

The unit costs for the GWR EA are developed as average or representative estimates of what these unit costs will be nationally. That is, in developing unit costs, design criteria for the technologies were selected to represent typical, or average, conditions for the universe of systems. As a result, there is uncertainty inherent in these unit cost estimates since they are based on independent assumptions with supporting data and vendor quotes, where available, rather than on a detailed aggregation of State, regional, or local estimates based on actual field conditions. EPA quantifies the uncertainty in these national average unit cost factors for specific technologies. The percentage uncertainty bounds used to characterize unit costs were developed based on input from engineering professionals and reflect recommendations from the National Drinking Water Advisory Council (NDWAC, 2001) in its review of the national cost estimation methodology for the Arsenic Rule. EPA believes that the uncertainties in capital and O&M costs for a given treatment technology are independent of one another and that uncertainties across all technologies are independent.

9. Nonquantifiable Benefits

A major uncertainty concerns the number of baseline bacterial illnesses caused by ground water contamination. The bacterial risk could not be modeled because of the lack of occurrence and dose-response data; therefore, the Agency was unable to include these benefits in the primary analysis. Many other nonquantifiable endpoints (as discussed in Section VII.C.4 of this preamble and in the GWR EA Chapter 5 (USEPA, 2006d) cause further uncertainty. In summary, the quantified benefits may be small as compared with the total benefits. EPA's analysis of benefits from avoided bacterial illnesses and deaths suggests that these benefits could exceed the monetized benefits by a factor of five.

10. Optional Assessment Source Water Monitoring

The Agency was not able to estimate the benefits or costs resulting from the optional assessment source water monitoring program. States can determine which systems they deem most vulnerable to fecal contamination and require these systems to conduct assessment source water monitoring. Systems would incur additional costs from monitoring and reporting results as well as any corrective action associated with fecal indicator-positives. States would incur additional costs for determining what systems would be required to monitor, assisting systems with corrective action decisions, and recordkeeping. The types of illnesses avoided would be similar to those already described in this preamble such as reduced viral and bacterial illness.

11. Corrective Actions and Significant Deficiencies

The Agency also did not develop costs for corrective actions for all conceivable significant deficiencies that a system may encounter. Instead, representative actions that span the range of low cost to expensive actions were used as shown in Table VII–10. The corrective actions that are a result of significant deficiencies identified during sanitary surveys do not include the ones performed within the treatment plant or in the distribution system due to lack of adequate data. Exclusion of these costs from the cost analysis results in an underestimate of potential rule costs, though the magnitude of the underestimate is unknown. Data limitations also exclude quantifying any benefits that may be realized from these corrective actions. More information regarding these costs and benefits can be found in the GWR EA (USEPA, 2006d) (see Chapter 6.6 for cost and Chapter 5.4.7 and 5.4.8 for benefits).

12. Uncertainty Summary

Overall, EPA recognizes that there is uncertainty in various parts of its estimates. The Agency has, however, been careful to use the best available data to account for uncertainty quantitatively when possible, and to avoid any consistent biases in assumptions and the use of data. The primary known bias is that some benefits and costs have not been quantified, and therefore are not included in the quantitative comparison of regulatory alternatives. However, as explained above and in the EA, EPA believes that the nonquantified benefits are significantly greater than the quantified benefits. In summary, EPA believes that the analyses presented represent a solid foundation for the decisions made for this rule.

K. What Is the Benefit/Cost Determination for the GWR?

As required by the SDWA, at the time of proposal, the Agency determined that the benefits of this rule justify the costs. In making this determination, EPA considered both quantified and nonquantified benefits and costs as well as the other components of the HRRCA outlined in section 1412 (b)(3)(C) of the SDWA.

For the final rule, as shown in Table VII–14, for the regulatory alternative being finalized in this rule, the annualized mean quantified benefits are approximately $20 million ($10 million using traditional cost-of-illness values) and the annualized mean quantified costs are approximately $62 million using a three percent discount rate ($17/$9 million and $62 million, respectively, using a seven percent discount rate). Overall, the GWR will reduce the risk of fecal contamination reaching the consumer. The monetized costs of these provisions were compared to the monetized benefits that result from the reduction in some viral illnesses and deaths. In addition, other non-monetized benefits further justify the costs of this rule. For example, including bacterial illness would significantly increase the benefits without any increases in costs.

Table VII–15 shows the net benefits for this rule as well as the three regulatory alternatives considered. The net benefits include only the monetized values (*i.e.*, nonquantified costs and benefits are not considered). The nonquantified benefits are likely to be significantly greater than the quantified benefits (and also much greater that the nonquantified costs). Thus, the net benefits of each of the options may be higher than shown in these estimates. Nonquantified costs are also not included.

TABLE VII–14.—ESTIMATED ANNUALIZED NATIONAL BENEFITS AND COSTS FOR THE GWR

[$Millions, 2003$]

	3% Discount rate			7% Discount rate		
	Mean	90 percent confidence bound		Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
Enhanced COI:						
Benefits	$19.7	$6.5	$45.4	$16.8	$5.5	$38.6
Costs	61.8	45.2	81.4	62.3	46.1	81.6
Net Benefits	−42.1	Note 1	Note 1	−45.5	Note 1	Note 1
Traditional COI:						
Benefits	10.0	2.2	27.0	8.6	1.9	22.9
Costs	61.8	45.2	81.4	62.3	46.1	81.6
Net Benefits	−51.8	Note 1	Note 1	−53.7	Note 1	Note 1
Nonquantified Benefits	Decreased incidence of other acute viral disease endpoints. Decreased incidence of bacterial illness and death. Decreased incidence of chronic bacterial or viral illness sequellae.					

TABLE VII–14.—ESTIMATED ANNUALIZED NATIONAL BENEFITS AND COSTS FOR THE GWR—Continued

[$Millions, 2003$]

	3% Discount rate			7% Discount rate		
	Mean	90 percent confidence bound		Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
	Decreased incidence of waterborne disease outbreaks and epidemic illness. Decreased illness through minimizing treatment failures or fewer episodes with inadequate treatment. Potential decreased use of bottled water and point-of-use devices (material costs). Decreased time spent on averting behavior. Avoided costs associated with outbreak response. Perceived improvement in drinking water quality and reduction in risk associated with ingestion. Benefits from optional Assessment Source Water Monitoring. Benefits from correction of sanitary survey deficiencies identified in the distribution systems and treatment plant.					
Nonquantified Costs	Costs for optional Assessment Source Water Monitoring. Costs from correction of sanitary survey deficiencies identified in the distribution systems and treatment plant. Some land costs depending on the treatment technology. Cost for five additional samples but this is small compared to the overestimate of cost for the initial fecal-indicator sample that systems would take. Costs for compliance monitoring at some systems that already disinfect.					

Note 1: Because benefits and costs are calculated using different model modules, bounds are not calculated on net benefits.

Note 2: The Traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production). The Enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway.

TABLE VII–15.—ANNUALIZED NET BENEFITS ($MILLIONS, 2003$) BY REGULATORY ALTERNATIVE

Rule alternative	Annualized value	
	3% discount rate (dollars)	7% discount rate (dollars)
Enhanced COI:		
Alternative 1	−11.7	−12.4
Final Rule	−42.1	−45.5
Alternative 3	−46.6	−51.2
Alternative 4	−616.2	−603.4
Traditional COI:		
Alternative 1	−13.5	−13.8
Final Rule	−51.8	−53.7
Alternative 3	−57.1	−60.1
Alternative 4	−650.9	−633.8
Nonquantified Benefits	Decreased incidence of other acute viral disease endpoints. Decreased incidence of bacterial illness and death. Decreased incidence of chronic bacterial or viral illness sequellae. Decreased incidence of waterborne disease outbreaks and epidemic illness. Decreased illness through minimizing treatment failures or fewer episodes with inadequate treatment. Potential decreased use of bottled water and point-of-use devices (material costs). Decreased time spent on averting behavior. Avoided costs associated with outbreak response. Perceived improvement in drinking water quality and reduction in risk associated with ingestion. Benefits from optional Assessment Source Water Monitoring. Benefits from correction of sanitary survey deficiencies identified in the distribution systems and treatment plant.	
Nonquantified Costs	Costs for optional Assessment Source Water Monitoring. Costs from correction of sanitary survey deficiencies identified in the distribution systems and treatment plant. Some land costs depending on the treatment technology. Cost for five additional samples but this is small compared to the overestimate of cost for the initial fecal-indicator sample that systems would take. Cost for compliance monitoring at some systems that already disinfect.	

In addition to examining the net benefits of this rule, the Agency used several other techniques to compare benefits and costs. For example, Table VII–16 shows the cost of the rule per viral illness avoided. This cost effectiveness measure is another way of examining the benefits and costs of the rule but should not be used to compare alternatives because an alternative with the lowest cost per illness avoided may not result in the greatest net benefits. The cost effectiveness analysis, as with the net benefits, is limited because the Agency was able to only partially quantify and monetize the benefits of the GWR. This rule achieves the lowest cost per viral illness avoided. Additional information about this analysis and other methods used to compare benefits and costs can be found in Chapter 8 of the GWR EA (USEPA, 2006d).

TABLE VII–16.—COST PER CASE OF VIRAL ILLNESS OR DEATH AVOIDED BY REGULATORY ALTERNATIVE

[2003$]

Rule alternative	Cost per viral illness avoided	
	3% (dollars)	7% (dollars)
Alternative 1	2,045	2,044
Final Rule	1,476	1,488
Alternative 3	1,495	1,527
Alternative 4	4,420	4,284

Note: Calculated using mean costs of illness avoided.

Overall, the measures described above are very close for the Final Rule and Alternative 3 and EPA believes that the nonquantified benefits of the rule would result in positive net benefits for either option. The Final Rule allows States to implement the assessment source water monitoring provision, which would have been mandatory if EPA had chosen Alternative 3, on a voluntary basis. The final GWR is more flexible, targeted, and protective than Alternative 3 (see Section VII.A of this preamble and Chapter 8 of the GWR EA (USEPA, 2006d) for more details). The level at which additional costs will be incurred and benefits realized under the voluntary provision is dependent on the rate at which States elect to adopt the provisions, and thus is not quantified as part of the Economic Analysis.

L. What Were Some of the Major Comments Received on the Economic Analysis and What Are EPA's Responses?

1. Costs

EPA requested comment on all aspects of cost analysis for the proposed GWR, particularly on the flow estimate for NTNCWSs and TNCWSs and handling mixed systems. In addition to these two issues, EPA also received numerous comments on the following analyses: sanitary survey costs, estimate of treatment baseline, costs of corrective actions, and compliance costs for small systems or NCWSs.

a. *Flow estimate for NTNCWSs and TNCWSs.* EPA received a few comments on NTNCWS and TNCWS flow estimates. Some commenters indicated that the alternative approach described in the preamble of the proposed rule would lead to greater disparities from the true values. The other commenters supported using the alternative approach. For this rule, EPA continues to apply the CWS regression equations to NCWSs, recognizing that this may overestimate flow and, therefore, costs. This overestimate is addressed as part of the uncertainties, which is discussed in Chapter 4 of the GWR EA (USEPA, 2006d). Further discussion of the alternative approach is also presented there.

b. *Mixed systems.* EPA received comments that regulatory impacts on mixed systems were not adequately characterized because either their costs were underestimated or the methodology for deriving the costs was unclear. Since the available data was insufficient to directly account for ground water entry points in mixed systems, EPA based the cost estimate for mixed systems on the primarily ground water mixed system inventory report. Primarily ground water mixed systems are systems using ground water for more than 50 percent of their source water; the remainder of their source water is surface water. The primarily ground water-mixed CWSs identified by this calculation were added to the solely GWS inventory to produce the total baseline number of GWSs used in the economic analysis. Because NTNCWSs and TNCWSs are typically a single building or located in a small area, a simplifying assumption was made for this analysis that all NCWSs draw from a single source water type.

The total baseline number of GWSs is treated as ground water-only systems throughout subsequent analyses. This methodology, treating mixed systems as ground water-only systems, may overestimate costs and benefits (*i.e.*, some surface water entry points are now counted as ground water entry points). However, the ground water entry points in the excluded mixed surface water inventory (those mixed systems using less than 50 percent ground water) are not included in the analysis, potentially underestimating costs and benefits. The contrasting over- and under-accounting for ground water entry points are expected to offset one another to some extent in the cost and benefit analyses. Data are not available to quantify the direction or magnitude of the final effect on overall national cost estimates, but the effect is expected to be small. Chapter 4 of the GWR EA (USEPA, 2006d) contains a detailed description of the methodology for impact analysis of mixed systems.

c. *Sanitary survey costs.* EPA received comments that the sanitary survey costs were inadequately estimated because of lack of considerations of the surveys currently performed by States and travel times needed for conducting surveys. The sanitary survey cost estimates used in this rule analysis have been updated based on data that became available after the proposed GWR. For the proposed GWR, EPA used the same unit costs as the ones used in a previous economic analysis (IESWTR) for estimating costs of full sanitary surveys. Fifty percent of full survey costs was applied to all systems as the incremental costs resulting from the GWR sanitary survey provision. This percentage was used to account for the more comprehensive survey coverage (*i.e.*, evaluation of eight elements) under the GWR than under existing requirements of the TCR.

For the final rule, EPA revised its cost analysis for conducting sanitary surveys

based on new information from States. First, EPA revised its estimates for conducting full sanitary surveys specifically for GWSs with and without treatment. Second, EPA estimated the number of additional full sanitary costs (including travel time costs) that would result from the higher frequency of sanitary surveys required under the GWR, over the number that is currently being implemented. This number of additional sanitary surveys was multiplied by the sanitary survey unit costs to estimate national costs for this effect.

Third, for those sanitary surveys already being conducted, EPA estimated the percentage of systems for which sanitary surveys would need to be increased in scope to ensure that all 8 elements were being implemented. Because all States currently have sanitary surveys in place under the IESWTR, TCR, or other State programs, most States are now conducting sanitary surveys at the frequencies and scope required by the GWR. The revised sanitary survey costs thus assume no incremental unit costs in most States and are substantially lower than the estimates costed for the proposed GWR. Chapter 6 of the GWR EA (USEPA, 2006d) contains a detailed discussion of sanitary survey costing assumptions.

d. *Treatment baseline.* EPA received comments that the percentage of disinfecting systems currently achieving 4-log virus inactivation was overestimated. For the proposed rule, EPA based the estimate of systems achieving 4-log inactivation (77 percent) on the data from the AWWA disinfection survey for community GWSs. EPA recognizes the limited data resources; AWWA data was the only source available on a national level and the disinfection rate estimate used in the proposed rule is likely to bias high due to relatively small sample size and question complexity for the survey.

In the final GWR EA, EPA re-evaluated the AWWA data and made a conservative assumption that those community GWSs providing insufficient information for the CT calculation in the AWWA survey are not currently achieving 4-log virus inactivation. As a result, the 4-log disinfection rate was revised downward to 52 percent. A similar change was made for NCWSs. Chapter 4 of the GWR EA (USEPA, 2006d) provides the detailed discussion of current disinfection rates.

e. *Corrective action costs.* EPA received comments that corrective action costs were underestimated, especially the costs for installing disinfection units. The commenters questioned the cost estimates of the additional land required and the addition of storage tanks for achieving sufficient CT values for 4-log virus inactivation. EPA believes that the unit costs of technologies provided in the *Technology and Cost Document for the Final Ground Water Rule* (USEPA, 2006h) (T&C document) are adequate to derive the costs for complying with the GWR corrective action provisions because the costs were derived using the best available published data, vendor estimates and best professional judgment.

EPA understands that some technologies used to comply with this rule will not fit within the existing plant footprints for some systems. When land costs become expensive, systems have the flexibility to consider other non-treatment options such as well rehabilitation or purchasing water. EPA further recognizes the land costs as part of nonquantified costs in the GWR EA (USEPA, 2006d).

The T&C document presents the unit costs of disinfection apart from the unit costs for storage tanks because consultation with the field experts indicates that some systems have existing storage tanks or certain lengths of pipes before the first costumers. Systems that do not have existing storage tanks will need to consider the costs for them in cases when they would need to meet the CT values for 4-log inactivation of viruses. The detention times in existing facilities could be sufficient for achieving the 4-log CT values with disinfectant doses within a typical range. For these cases, EPA assumes that no additional storage will be required for installing disinfection or that an increase of disinfectant doses will be feasible for increasing viral disinfection levels to 4-logs.

EPA also recognizes that disinfection and conducting compliance monitoring may not be preferred by some systems (particularly for small systems) because of distribution system size and configuration or operational complexity (including compliance monitoring) and costs. After further consultation with State representatives, EPA revised the compliance forecasts for this rule by lowering the percentages of systems taking treatment actions (and raising percentages of systems taking non-treatment actions) and adding a range of estimates to quantify the uncertainty around the compliance forecasts. The consultation also resulted in the addition of interim disinfection for systems taking corrective actions due to a fecal indicator-positive ground water source sample. This is because some immediate protection measures may have to be in place prior to completing corrective actions. Chapter 6 of the GWR EA (USEPA, 2006d) contains a detailed discussion of the corrective action costs.

f. *Compliance costs for small systems or NCWSs.* Some commenters questioned whether EPA appropriately considered the costs to small systems. As part of the GWR regulatory development process, EPA participated in extensive consultations with small system representatives to develop risk-based rule requirements that would minimize the time and financial burden on small systems. To address concerns over the potential cost of additional monitoring for small systems, the GWR leverages the existing TCR monitoring framework to the extent possible (*e.g.*, by using the results of the TCR monitoring to determine if triggered source water monitoring is required and by allowing small systems to use TCR repeat samples to satisfy GWR requirements). In addition, the implementation schedule for the sanitary survey requirement is staggered (*e.g.*, every three to five years for CWSs and every five years for NCWSs), providing some relief for small systems since there are many more small NCWSs than CWSs. In addition to the targeted requirements for minimizing small systems burden, financial assistance to small systems may be available from programs administered by EPA or other Federal agencies (*http://www.epa.gov/safewater/dwsrf/index.html*).

Some commenters noted that systems may break into smaller units to fall below SDWA regulatory thresholds. Specifically, they noted that if a system is no longer classified as a PWS, it would be able to opt out of the GWR requirements. However, EPA believes that systems would most likely consolidate with other systems to defray costs rather than split up and lose economies of scale and put the public health at risk. Systems would also have to consider the transaction costs associated with dissolving into smaller units such as drilling new wells and separating distribution systems.

EPA also received a number of comments questioning if the Agency considered the costs to NCWSs (*i.e.*, NTNCWSs and TNCWSs). EPA did consider the costs to NTNCWSs and TNCWSs. The baseline number of systems subject to GWR requirements was derived from all CWSs, NTNCWSs, and TNCWSs listed in the SDWIS inventory. The new occurrence database also includes NCWSs. Costs were estimated by system size and type corresponding to applicable GWR requirements and schedules and typical operating characteristics (*e.g.*, population served, treatment in place,

flows, etc.). Detailed descriptions of all costing procedures are presented in the GWR EA (USEPA, 2006d). More specifically, NTNCWS and TNCWS cost estimates are presented by system size in Exhibit 6.40 of the GWR EA.

2. Benefits

a. *Use of occurrence data in risk assessment.* Some commenters questioned the basis for EPA using the data from the Lieberman *et al.* (2002) and Abbaszadegan (Abbaszadegan, 2002 and Abbaszadegan *et al.*, 1999a–c and 2003) studies to represent national microbial occurrence in the risk assessment. Issues raised included use of the studies to represent all CWSs and NCWSs on a national level, use of the Abbaszadegan *et al.* data set to represent ''properly constructed wells,'' and use of the Lieberman data set to represent ''poorly constructed wells.''

Upon re-examination of all available occurrence data, EPA has made several changes to the occurrence analysis used to support the risk assessment. The Agency has made changes to achieve better representation of viral and fecal indicator occurrence among all PWS wells in the U.S. as described in Section VII.B.

Data from all the studies used in the occurrence analysis of the GWR EA were cited in the NODA (USEPA, 2006e) and made publicly available. EPA believes that use of occurrence data from the cited studies in Section VII.A rather than using only the two studies used in the GWR EA under the proposal (Lieberman *et al.*, 2002; Abbaszadegan, 2002 and Abbaszadegan *et al.*, 1999a–c and 2003) provides a better national estimate of intermittent enterovirus occurrence in support of the GWR risk assessment.

Under the proposed rule, EPA used the Lieberman *et al.* (2002) data set to estimate enteric virus occurrence for poorly constructed wells and the Abbaszadegan (Abbaszadegan, 2002; Abbaszadegan *et al.*, 1999a–c and 2003) data set to estimate enteric virus occurrence in properly constructed wells. In this rule, due to data limitations, EPA assumes the same enterovirus occurrence and percent time of viral presence (as described in Section VII.B of this preamble) for all wells.

In this rule, EPA uses the terminology ''more vulnerable'' and ''less vulnerable'' wells as categories for differing enteric virus concentration assumptions in differing groups of wells. Since the wells sampled from the Lieberman *et al.* (2002) data were selected because of likely vulnerability to fecal contamination, the enteric virus concentration data from Lieberman *et al.* (2002) is assumed to be characteristic of ''more vulnerable'' wells. Since the wells from the Abbaszadegan *et al.* (2002) and Lindsey *et al.* (2002) studies were not selected with a bias toward greater likelihood of fecal contamination, enteric viral concentrations from these two studies were assumed to be characteristic of ''less vulnerable'' wells. A more complete description of this analysis is available in Chapters 4 and 5 of the GWR EA (USEPA, 2006d).

b. *Variability and uncertainty.* Some commenters suggested that EPA could do more to address uncertainty and variability when calculating the benefits of this rule. As a result of these comments, EPA re-evaluated the data used to support the proposed GWR and the newer data published since the proposal. EPA determined that the values and/or analysis used in the proposed rule should be revised to better capture variability and uncertainty. The following discussion describes the significant changes that were made in the analysis supporting this rule as a result of the public comments and EPA's re-analysis.

EPA has significantly revised its modeling of virus and indicator (*E. coli*) occurrence in ground water sources of drinking water in response to public comments. Section VII.B describes additional surveys and their use to produce a national assessment of occurrence. The modeling framework features probabilistic treatments of both variability and uncertainty.

In this rule, EPA modified the mathematical expression that describes the human challenge studies with infectious rotavirus (infectivity of the virus). The purpose of the challenge study was to determine the rotavirus dose required to cause infection in humans. Previously, EPA used an approximation to the exact Beta-Poisson distribution in describing the dose-response data to simplify the Monte-Carlo simulation computational requirements. EPA's primary analysis now recognizes that the approximation is poor for some combinations of dose and parameter values and when used to predict low dose risk. As a result, EPA is using the exact expression for this rule. In an alternative analysis, EPA utilizes only data from the lowest dose used in the study. That dose (0.9 infectious units) is nearest the most relevant environmental number ingested: exactly one infectious unit. An exponential dose-response model is applied in the alternative analysis and the small number of subjects (seven exposed at this dose) results in considerable uncertainty about the model parameter.

In this rule, EPA maintains as its primary analysis a Beta-Poisson dose-response model (Pareto approximation) utilizing the full echovirus data set but now includes an alternative analysis in which an exponential model is utilized with data from all but the two highest dose levels. Subjects who were not infected at the high dose levels demonstrate that different individuals have different levels of susceptibility (a feature of the Beta-Poisson model), but without the high dose data, the remaining subjects appear equally susceptible (a feature of the exponential model). The alternative analysis predicts significantly lower risk at environmental exposure levels. EPA's two analyses demonstrate considerable uncertainty with respect to model and data selection.

In this rule, EPA revised the morbidity value for rotavirus illness in adults. The Agency now recognizes that the variability in this value is considerable and has included a range of uncertainty in the morbidity estimate. Because of limited data on common source rotavirus outbreaks involving adults, under the proposal, EPA had assumed that most adults remain immune due to multiple repeat infections, or if infected, do not often become ill. Under the proposal, EPA used a low value for the adult rotavirus morbidity rate (0.10). However, EPA re-examined the Ward *et al.* (1986) data and concluded that one-half of the subjects in the dose-response study became ill after infection. Also, since the proposal, Griffin *et al.* (2002) analyzed previous outbreaks and identified one rotavirus genotype that is associated with outbreaks involving adults in the U.S. This new knowledge suggests that the morbidity value for adults can be much more variable than previously believed depending on which rotavirus genotype is consumed. EPA now uses a range in the rotavirus adult morbidity value from 0.10–0.50 and a uniform distribution. The distribution selected reflects the variability among rotavirus genotypes.

EPA obtained additional echovirus (Type B) morbidity data to improve the analysis described in the proposal. The proposal used only Echovirus type 30 morbidity data from the Seattle Virus Watch Study (Hall *et al.*, 1970) based on the assumption that data from a single strain would minimize variability among the general population. In this rule, EPA uses multiple echovirus serotype data from both the Seattle and New York Virus Watch Studies (Kogon *et al.*, 1969) to determine the range of

morbidity rates in the general population.

c. *Are the benefits and the data used to estimate the benefits of the GWR sufficient to justify regulatory action?* EPA received several comments that addressed the calculation of benefits. Most commenters questioned whether the GWR benefits are sufficient to justify regulatory action. In particular, comments suggested that the probability of an outbreak is low and there is no linkage between undisinfected ground water and waterborne disease. EPA also received several comments about the overall lack of information suitable for estimating health benefits.

In general, EPA recognizes that the health effects data available for use in calculating GWR benefits are limited because there are no national epidemiological studies to identify waterborne disease from ground water nor is there any national system for reporting waterborne disease once it is identified.

EPA has substantially revised its benefits analysis to use a combination of measured data, calculated values, and reasonable assumptions to make predictions about benefits. The benefits determined for the GWR are based on measurement of pathogenic enteric viruses in public drinking water wells, so these data are directly applicable to making predictions about possible avoided illnesses due to elimination of these pathogens from the drinking water supply. Furthermore, it should be recognized that, in the benefits calculation, EPA does not assume that pathogen occurrence automatically results in illness in all individuals consuming water from that drinking water supply well. EPA used dose-response data from human feeding studies to determine the probability that an individual would become infected by consuming water with a range of pathogen concentrations. For echovirus (one of the enteroviruses), illness rates and ranges were determined from epidemiology studies on the general population. For rotavirus, illness rates and ranges were determined from epidemiology studies on the general population and from the symptomatic response to infection in human challenge studies.

d. *Transparency of regulatory impact analysis.* Some commenters expressed that the Regulatory Impact Analysis for the proposed GWR (USEPA, 2000f) did not provide a clear description of the critical assumptions underlying the cost and benefit analysis.

EPA believes that it has made the GWR EA for the final rule more transparent than the analysis done for the proposal. Changes include (1) Expanded text on the basis for most of the assumptions used in the analysis, (2) expanded text and new diagrams describing how the different steps in the analysis are combined to produce an aggregate analysis, and (3) expanded text on how the nonquantified benefits complement the quantified benefits analysis.

3. Risk Management

a. *What is EPA's response to comments that EPA chose the wrong option and that the benefits do not justify the cost or that the rule is not cost-effective?* Consistent with EPA's statutory requirements, the Agency carefully considered benefits and costs in proposing and promulgating the GWR. The Agency's decision for the final rule is described in VII.A. The Agency believes that this rule provides benefits at a cost that is justified. In making decisions for the final rule, EPA considered both quantified and nonquantified benefits and costs as well as the other components of the Health Risk Reduction and Cost Analysis (HRRCA) outlined in section 1412(b)(3)(C) of the SDWA.

In the proposal, the Multi-Barrier approach (Regulatory Alternative 3) had net benefits similar to the proposed regulatory Alternative 2, Sanitary Survey and Triggered Monitoring. However, the Multi-Barrier approach provided a greater reduction in illnesses and deaths, especially to children. After an exhaustive review of the benefits and cost estimates used in the proposal resulting from public comments, peer review, and the NDWAC Arsenic Review panel, the Agency updated both the benefit and cost analysis for each rule option. The risk-targeted approach, which was selected for the final rule, has lower net benefits than Alternative 1, but more than Alternatives 3 and 4. EPA believes that the additional benefits realized under Alternative 2 justify its selection over Alternative 1, despite the lower net benefits.

Other commenters noted that the proposed rule is not cost-effective. The mean cost per viral illness avoided for the final rule ranges from $1,476 to $1,488, at three percent and seven percent discount rates respectively. These represent the lowest values of all alternatives considered and are much lower than either Alternative 1 or Alternative 4. Thus, Alternative 2 is the most cost-effective rule alternative by this measure.

b. *Did the Agency consider that some systems may have negative net benefits, and did the Agency conduct an incremental analysis by system size and type?* Some commenters noted that the costs may exceed benefits for smaller size systems. EPA agrees that for some drinking water regulations the costs may exceed the benefits because the populations served by these systems are much smaller. Generally, large systems benefit from economies of scale which eases the relative impact on these systems. In addition, many GWR benefits remain nonquantified.

Other commenters suggested that EPA should exclude or set different standards for small systems based on benefit and cost analysis, including incremental analysis, by system size or type. However, the SDWA does not generally provide a basis for establishing tailored drinking water standards as these commenters suggest. Rather, the SDWA is designed to ensure uniform levels of public health protection across the country (except as specifically provided for in variances from the standard).

Thus EPA disagrees with the suggestion that the level of the final standard be altered to address system size or type. However, as discussed in detail in the preamble of this rule, the rule provides flexibility that reduces burden on small systems and reflects individual system conditions. Financial and technical assistance is also available through various funding authorities. Regarding affordability, variances based on affordability are not allowed by the SDWA for regulations addressing microbial contamination, and as a result EPA did not conduct an affordability analysis. However, EPA has considered the SAB review of the Arsenic Rule and the suggestions of the NDWAC Arsenic Cost Working Group regarding the further disaggregation of the analyses. The NDWAC group recommended calculation and presentation of cost information in multiple size categories, which is done in the GWR EA (USEPA, 2006d).

In addition, the Agency took many steps to reduce the burden on small systems where possible. More information regarding this effort can be found in Chapter 6 of the GWR EA (USEPA, 2006d).

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action''. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in

response to OMB recommendations have been documented in the docket for this action.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the *Economic Analysis for the Final Ground Water Rule* (USEPA, 2006d). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in Section VII of this preamble.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0271.

The information collected as a result of this rule will allow the States and EPA to make decisions and evaluate compliance with the rule. For the first three years after the promulgation of the GWR, the major information requirements are for States and PWSs to prepare for implementation of the rule. The information collection requirements are described in 40 CFR part 141, for systems, and part 142, for States, and are mandatory. The information collected is not confidential.

EPA estimates that the annual burden on PWSs and States for reporting and recordkeeping will be 385,264 hours. This annual burden is based on an estimate that 57 States and territories will each need to provide one response each year with an average of 2,193 hours per response, and that 49,110 systems will each provide two responses each year with an average of 2.6 hours per response. The total reporting and recordkeeping cost over the three-year period of the Information Collection Request is $30,274,266 (labor costs) (USEPA, 2006a). It should be noted, however, that much of the paperwork burden of the rule will be incurred only after the three-year time horizon covered in this analysis. Subsequent ICR submissions will address future burden for activities such as triggered and compliance monitoring. There are no operation, maintenance or capital costs estimated for the first three years. The labor burden is estimated for the following activities: reading and understanding the rule, planning, training, and meeting primacy requirements. 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. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this rule.

C. Regulatory Flexibility Act (RFA)

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.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of the final GWR on small entities, EPA considered defining ''small entities'' in its regulatory flexibility assessments under the RFA to be public water systems serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition applies to this regulation as well.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule (see 65 FR 30193, May 10, 2000) and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities (USEPA, 2000a). A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (docket number EPA–HQ–OW–2002–0061; document number W–98–23–I.E–2). A summary of the Panel's recommendations is presented in the GWR proposal at 65 FR 30253, May 10, 2000 (USEPA, 2000a).

As required by section 604 of the RFA, we also prepared a final regulatory flexibility analysis (FRFA) for the final GWR. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below.

EPA is issuing this final rule to comply with section 1412(b)(8) of the SDWA, which directs EPA to ''promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems.'' The need for this final rule is based upon the substantial likelihood that fecal contamination of ground water supplies is occurring at frequencies and levels that present public health concern. Fecal contamination refers to the contaminants, particularly the microorganisms, contained in human or animal feces. These microorganisms may include bacterial and viral pathogens, which can cause illnesses in the individuals that consume them. The objective of the final GWR is to identify those systems with fecal contamination and undertake corrective action to eliminate or address that contamination.

Two significant issues were raised in comments on the IRFA for the proposed rule. First, several commenters wrote

that small water systems lack the customer base to defray the costs of installing new treatment, such as disinfection, or the cost of a new source. EPA notes that the final GWR does not mandate disinfection, but rather is a flexible regulation, targeting those high-risk systems or sources that are vulnerable to contamination. EPA also notes that financial assistance is available to small systems through programs such as the Drinking Water State Revolving Fund, the Loan and Grant program of the U.S. Department of Agriculture's Rural Utilities Services (RUS) and the Community Development Block Grant Program of the Department of Housing. The second significant issue raised in comments on the IRFA was a recommendation that EPA allow the States flexibility to consider competing fiscal impacts on small systems when implementing the rule. EPA believes the final rule has greater flexibility and is less burdensome for States and small systems than the proposal. For example, a GWS serving 1,000 people or fewer may use a repeat sample collected from a ground water source to meet the TCR to satisfy the GWR triggered source water monitoring requirements if the State approves the use of *E. coli* as a fecal indicator for ground water source monitoring.

EPA assessed the potential impact of the final GWR on small entities. There are 147,330 CWSs, NTNCWSs, and TNCWSs providing potable ground water to the public; 145,580 (99 percent) are classified by EPA as small entities. EPA has determined that all small systems are impacted by the sanitary survey requirement and a substantial number these systems will be impacted by additional requirements of the final GWR, including the triggered source water monitoring requirements and the corrective action requirements.

In addition, in the final GWR there are a number of recordkeeping and reporting requirements for all GWSs (including small systems). To minimize the burden with these provisions, the final rule uses a risk-based regulatory strategy, whereby the monitoring requirements are based on system characteristics and not directly related to system size. In this manner, the rule takes a system-specific approach to regulation.

To prevent conflict and overlap with other Federal rules, this final rule leverages the existing TCR monitoring framework to the extent possible (*e.g.*, by using the results of the routine TCR monitoring to determine if source water monitoring is required). GWSs that do not reliably treat to 4-log inactivation or removal of viruses are required to collect a source water sample following a total coliform-positive sample in the distribution system. Additionally, systems may utilize one of the follow-up monitoring samples required under the TCR to meet the triggered source water sampling requirements of this final rule.

As a result of the input received from stakeholders, the EPA workgroup, and other interested parties, EPA constructed four regulatory options: The sanitary survey option, the sanitary survey and triggered monitoring option, the multi-barrier option, and the across-the-board disinfection option. In developing this final rule, EPA considered the recommendations to minimize the cost impact to small systems. A risk-targeted approach, based on sanitary surveys and triggered source water monitoring (which only requires corrective action if the GWS has a sanitary survey significant deficiency or source water fecal contamination), was selected as the option to protect public health and to reduce burden. Assessment source water monitoring, part of the preferred proposal option (the multi-barrier option), has been finalized as a discretionary requirement as determined by the State, allowing further flexibility and burden reduction.

To mitigate the associated compliance cost increases across water systems, this final rule also provides States with considerable flexibility when implementing other requirements of the rule. This flexibility will allow States to consider the characteristics of individual systems when determining an appropriate corrective action. For example, States have the flexibility to allow systems to fix existing wells, drill a new well, obtain a new source, or use any disinfection treatment technology that achieves 4-log inactivation or removal of viruses. States may also determine that the source of contamination has been eliminated if, after thorough investigation by the State and the system, the State concludes that contamination is unlikely to reoccur.

As required by section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA also is preparing a Small Entity Compliance Guide to help small entities comply with this rule. This guide will be available on EPA's Web site at *http://www.epa.gov/safewater/disinfection/gwr/index.html* or by calling the Safe Drinking Water Hotline at (800) 426–4791.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or Tribal governments in the aggregate, or the private sector in any one year (see Table VIII–1). The rule is estimated to cost State, local and Tribal governments $41.5 to $41.9 million. Public water systems that are privately owned will incur total costs of $20.3 to $20.4 million per year. A more detailed description is presented in the Economic Analysis for the Final Ground Water Rule (USEPA, 2006d), which is available in the water docket. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Table VIII-1: Ground Water System, State, and Tribal Estimated Costs

(Note: Detail may not add up to totals due to independent rounding)

	3% Discount Rate	7% Discount Rate	Percent of 3% Grand Total Costs	Percent of 7% Grand Total Costs
Ground Water Systems Costs	$ 29.5	$ 30.0	48%	48%
State Costs	$ 11.8	$ 11.7	19%	19%
Tribal Costs	$ 0.2	$ 0.2	0%	0%
Total Public	**$ 41.5**	**$ 41.9**	**67%**	**67%**
Ground Water Systems Costs	$ 20.3	$ 20.4	33%	33%
Total Private	**$ 20.3**	**$ 20.4**	**33%**	**33%**
GRAND TOTAL	**$ 61.8**	**$ 62.3**	**100%**	**100%**

In developing this rule, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. EPA held four public meetings for all stakeholders. Because of the GWR's impact on small entities, the Agency convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns, including small local governments specifically. EPA consulted with small entity representatives prior to convening the Panel to get their input on the GWR. Of the 22 small entity participants, five represented small governments. EPA also made presentations on the GWR to the national and some local chapters of the American Water Works Association, the Ground Water Foundation, the National Ground Water Association, the National Rural Water Association, and the National League of Cities.

E. Executive Order 13132: Federalism

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

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not contain a ''significant Federal government mandate'' under section 202 of the UMRA, nor does it have a significant impact on small governments. Thus, Executive Order 13132 does not apply to this rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule (65 FR 30203 and 30263, May 10, 2000) (USEPA, 2000a). A summary of the concerns raised during that consultation and EPA's response to those concerns are provided in the proposal. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop ''an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Under Executive Order 13175, EPA may not issue a regulation that has Tribal 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 Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this final rule may have Tribal implications because it may impose substantial direct compliance costs on Tribal governments and the Federal government will not provide the funds necessary to pay those costs. This rule will significantly affect communities of Tribal governments because 87 percent of PWSs in Indian Country are GWSs. Accordingly, EPA provides the following Tribal summary impact statement as required by section 5(b).

EPA consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development (see the proposed rule, 65 FR 30259, May 10, 2000) (USEPA, 2000a). Two consultations took place at national conferences; one for the National Indian Health Board and the other for the National Tribal Environmental Council. A third consultation was conducted in conjunction with the Inter-Tribal Council of Arizona, Inc. EPA received one comment on the proposed rule from a Tribal organization. The organization is concerned that the GWR will have a negative impact on their ability to provide infrastructure improvements by taking funding resources away from new water supply construction programs and applying these funds to cover compliance costs for existing water systems. EPA recognizes that the GWR will increase the compliance burden for some Tribal PWSs, however, EPA believes that the GWR will provide public health benefits that justify the increase in burden. To offset some of this burden, EPA has provided flexibility for small systems through various mechanisms. For a detailed discussion, please see Section IV of this preamble.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of this Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this rule.

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

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

While this final rule is not subject to the Executive Order because it is not economically significant as defined under Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore assessed the environmental health or safety effects of viruses on children. The results of this assessment are contained in Section VII.I.1 of the preamble of this rulemaking as well as in the final GWR EA (USEPA, 2006d).

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

1. Energy Supply

The GWR does not regulate power generation, either directly or indirectly. The public and private PWSs that the GWR regulates do not, in general, generate power. Further, the cost increases borne by customers of PWSs as a result of the GWR represent a small percentage of the total cost of water, except for a very few small systems that will need to spread the cost of installing advanced technologies over a narrow customer base. Therefore, the customers that are power generation utilities are unlikely to face any significant effects as a result of the GWR. In summary, the GWR does not regulate the supply of energy, does not generally regulate the utilities that supply energy, and is unlikely to significantly affect the customer base of energy suppliers. Thus, the GWR will not adversely affect the supply of energy.

2. Energy Distribution

The GWR does not regulate any aspect of energy distribution. PWSs that are regulated by the GWR already have electrical service. The rule is projected to increase peak electricity demand at PWSs by only 0.001 percent (see below). Therefore, EPA assumes that the existing connections are adequate and that the GWR has no discernable adverse effect on energy distribution.

3. Energy Use

Some PWSs are expected to add treatment technologies that use electrical power. This potential impact of the GWR on the use of energy was evaluated. The analyses that underlay the estimation of costs are national in scope and do not identify specific plants or systems that may install treatment in response to the GWR. As a result, no analysis of the effect on specific energy suppliers is possible with the available data. Further data are required to evaluate the effect on specific energy suppliers. The approach used to estimate the impact of energy use, therefore, focuses on national-level impacts. In this approach, EPA estimates the additional energy use due to the GWR and compares that to the national levels of power generation in terms of average and peak loads.

The first step is to estimate the energy used by the technologies or corrective action expected to be installed as a result of the GWR. Energy use is not directly estimated in the *Technology and Cost Document for the Final Ground Water Rule* (USEPA, 2006h), but the annual cost of energy for each technology and corrective action addition or upgrade necessitated by the GWR is provided. An estimate of plant-level energy use is derived by dividing the total energy cost per plant for a range of flows by an average national cost of electricity of $0.076 per kilowatt hour per year (kWh/y) (USDOE EIA, 2002). The energy use per plant for each flow range and technology or corrective action is then multiplied by the number of plants predicted to install each technology in a given flow range. The energy requirements for each flow range are then added to produce a national total. No electricity use is subtracted to account for the technologies that may be replaced by new technologies, resulting in a conservative estimate of the increase in energy use. An incremental national annual energy usage of 4,521 megawatt hours (mWh) was calculated.

The total increase in energy usage by water systems as a result of the GWR is predicted to be approximately 4.5 million kWh/y, which is less than one-ten-thousandth of one percent of the total energy produced in 2003. While the rule may have some adverse energy effects, EPA does not believe that this constitutes a significant adverse effect on the energy supply. See the *Economic Analysis for the Final Ground Water Rule* (USEPA, 2006d) for further detail.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA has identified some consensus standards and developed or modified methods for the remaining methods requirements. These methods are listed in § 141.402(c).

Most of the methods that EPA is approving for the detection of *E. coli* in source waters are consensus methods described in *Standard Methods for the Examination of Water and Wastewater (20th Edition)* (APHA, 1998). The three *E. coli* methods that are not consensus methods are newly developed: MI agar (a membrane filter method), the ColiBlue 24 test (a membrane filter method) and the E*Colite test (a defined dehydrated medium to which water is added). EPA has already evaluated and approved these three methods for use under the TCR. Of the three enterococci methods EPA is approving in this rule, two are consensus methods in *Standard Methods*; the third (Enterolert) was described in a peer-reviewed journal article (Budnick *et al.*, 1996).

The two methods EPA proposed for the detection of coliphage in source water are not consensus methods. For the coliphage tests, EPA is approving the use of two methods: *EPA Method 1601* (Two-Step Enrichment Presence-Absence Procedure) (USEPA, 2001a) and *EPA Method 1602* (Single Agar Layer Procedure) (USEPA, 2001b). *EPA Method 1601* is a new method optimized for the detection of a single coliphage in a small (100–1,000 mL) water sample. EPA did not use the consensus method for coliphage in *Standards Methods* (20th edition) (Method 9211D) (APHA, 1998) rather, EPA modified and optimized Method 9211D to improve its sensitivity and versatility.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal Agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

The Environmental Justice Executive Order requires the Agency to consider environmental justice issues in the rulemaking and to consult with minority and low-income stakeholders. The Agency has considered environmental justice issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders. The GWR applies to all PWSs (CWSs, NTNCWSs, and NTCWSs) that use ground water as their source water. Consequently, the health protection benefits provided by this rule are equal across all income and minority groups served by these systems. Existing regulations such as the SWTR, IESWTR, and LT2ESWTR provide similar health benefit protection to communities that use surface water or ground water under the direct influence of surface water.

Nonetheless, the Agency held a stakeholder meeting on March 12, 1998, to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. See the discussion of this meeting in the proposed rule for further information (65 FR 30261, May 10, 2000) (USEPA, 2000a).

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 8, 2007.

L. Analysis of the Likely Effect of Compliance With the GWR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of SDWA, as amended, requires that in promulgating an NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, managerial, and financial capacity of public water systems. This analysis can be found in the GWR Economic Analysis (USEPA, 2006d). Analyses reflect only the impact of new requirements, as established by the GWR; the impacts of previously established requirements on system capacity are not considered.

IX. Consultation With Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services; and Peer Review

In accordance with sections 1412(d) and 1412(e) of the SDWA, the Agency consulted with the Science Advisory Board, the National Drinking Water Advisory Council (NDWAC), and the Secretary of Health and Human Services.

In addition, this rule was supported by influential scientific information. Therefore, the Agency conducted a peer review in accordance with OMB's Final Information Quality Bulletin for Peer Review (OMB, December 15, 2004). EPA developed charge questions related to the statistical approach used to characterize national occurrence of viral pathogens and fecal indicators; risk characterization including dose-response modeling; characterization of morbidity, mortality, and severity for Type A and Type B viruses; characterization of nonquantified benefits; and national risk reduction (benefits) and costs for the GWR. The Peer Review Report is located in the docket for this rule.

X. References

Abbaszadegan, M., M. LeChevallier, and C. Gerba. 2003. Occurrence of viruses in U.S. groundwaters. Journal AWWA. 95(9):107–120.

Abbaszadegan, M. 2002. Viruses in drinking water and groundwater. p. 3288–3300. In G. Bitton (ed.), Encyclopedia of Environmental Microbiology. John Wiley & Sons, Inc., New York. ISBN 0–471–35450–3.

Abbaszadegan, M., P.W. Stewart, M.W. LeChevallier, J.S. Rosen, and C.P. Gerba. 1999a. *Occurrence of Viruses in Ground Water in the United States.* American Water Works Association Research Foundation. Denver, CO, 189 pp.

Abbaszadegan, M., P.W. Stewart, and M.W. LeChevallier. 1999b. A strategy for detection of viruses in groundwater by PCR. Applied and Environmental Microbiology. 65(2):444–449.

Abbaszadegan, M., M. Denhart, M. Spinner, G. Di Giovanni, and M. LeChavallier. 1999c. Identification of viruses present in ground water cell culture harvest by PCR. In: Proceedings, Water Quality Technology Conference. American Water Works Association, Denver, CO.

Anderson, A.D., A.G. Heryford, J.P. Sarisky, C. Higgins, S.S. Monroe, R.S. Beard, C.M. Newport, J.L. Cashdollar, G.S. Fout, D.E. Robbins, S.A. Seys, K.J. Musgrave, C. Medus, Jan Vinje, J.S. Bresee, H.M. Mainzer, and R.I. Glass. 2003. A waterborne outbreak of Norwalk-like virus among snowmobilers-Wyoming, 2001. Jour. Infect. Diseases. 187:303–306.

Angulo, F.J., S. Tippen, D. Sharp, B.J. Payne, C. Collier, J. Hill, T.J. Barrett, R.M. Clark, E. Geldreich, H.D. Donnell, and D.L. Swerdlow. 1997. A community waterborne outbreak of Salmonellosis and the effectiveness of a boil water order. Am. J. Public Health. 87(4):580–584.

APHA. (American Public Health Association). 1998. *Standard Methods for the Examination of Water and Wastewater (20th ed.).* 1015 Fifteenth Street, NW., Washington, DC 20005.

ASDWA (Association of State Drinking Water Administrators). 1998. *Results and Analysis of ASDWA Survey of BMPs in Community Ground Water Systems.* April 1998.

ASDWA (Association of State Drinking Water Administrators). 1997. *Survey of Best Management Practices for Community Ground Water Systems.* ASDWA: Washington DC, December.

Atherholt, T., E. Feerst, B. Hovendon, J. Kwak, and D. Rosen. 2003. Evaluation of indicators of fecal contamination in groundwater. Journal of the American Water Works Association. 95(10):119–131.

Banks, W.S.L. and D.A. Battigelli. 2002. Occurrence and distribution of microbiological contamination and

enteric viruses in shallow ground water in Baltimore and Harford Counties, Maryland. USGS Water-Resources Investigations Report. 01–4216. 32 pp.

Banks, W.S.L., C.A. Klohe, and D.A. Battigelli. 2001. Occurrence and distribution of enteric viruses in shallow ground water and factors affecting well vulnerability to microbiological contamination in Worcester and Wicomico Counties, Maryland. USGS Water-Resources Investigations Report. 01–4147.

Barwick, R.S., D.A. Levy, G.F. Craun, M.J. Beach, and R.L. Calderon. 2000. Surveillance for waterborne-disease outbreaks—United States, 1997–1998. Morbidity and Mortality Weekly Report. 49(SS04):1–35.

Battigelli, D.A. 1999. Monitoring ground waters in Wisconsin, Minnesota, and Maryland for enteric viruses and candidate viral indicators. Unpublished report. February 23, 1999.

Bergmire-Sweat, D., J. Morgan, K. Wilson, K. Von Alt, L. Marengo, T. Bennett, Y.M. Lee, V.C. Tsang, W.R. MacKenzie, and B. Furness. 1999. Cryptosporidiosis at Brushy Creek: describing the epidemiology and causes of a large outbreak in Texas, 1998. In: Proceedings, International Conference on Emerging Infectious Diseases, Milwaukee, WI. American Water Works Association, Denver, CO.

Berlin, L.E., M.L. Rorabaugh, F. Heldrich, K. Roberts, T. Doran, and J.F. Modlin. 1993. Aseptic meningitis in infants <2 years of age: diagnosis and etiology. J. Infect. Dis. 168:888–892.

Bopp, D.J., B.D. Sauders, A.L. Waring, J. Ackelsberg, N. Dumas, E. Braun-Howland, D. Dziewulski, B.J. Wallace, M. Kelly, T. Halse, K.A. Musser, P.F. Smith, D.L. Morse, and R.J. Limberger. 2003. Detection, isolation, and molecular subtyping of *Escherichia coli* O157:H7 and *Campylobactor jejuni* associated with a large waterborne outbreak. J. Clin. Microbiol. 41:1740180.

Borchardt, M.A., N.L. Haas, and R.J. Hunt. 2004. Vulnerability of drinking-water wells in LaCrosse, Wisconsin, to enteric-virus contamination from surface water contributions. Applied and Environmental Microbiology. 70(10):5937–5946.

Budnick, G.E., R.T. Howard and D.R. Mayo. 1996. Evaluation of enterolert for enumeration of enterococci in recreational waters. Appl Environ Microbiol. 62:3881–3884.

Canter L. and R.C. Knox. 1984. *Evaluation of Septic Tank System Effects on Ground Water*. U.S. Environmental Protection Agency, Washington D.C. EPA publication No. EPA–300/2–84–107.

CDC. 2005. Environmental Health Assessment for Epi-Aid 2004–076: Outbreak of gastroenteritis with multiple etiologies among resort island visitors and residents—Ohio, 2004. National Center for Environmental Health, Division of Emergency and Environmental Health Services, Environmental Health Services Branch, Technical Assistance Team. Unpublished report, August, 2005. 74 pp.

CDC. 1997. Paralytic Poliomyelitis United States, 1980–1994. MMWR Weekly. 46(04):79–83. *http://www.cdc.gov/epo/mmwr/preview/mmwrhtm/00045949.htm.*

CDC. 1996. *Shigella sonnei* outbreak associated with contaminated drinking water—Island Park, Idaho, August 1995. MMWR. 45(11):229–231.

Cherry, J.D. 1995. Enterovirus. In Remington and Klein, eds. Infectious Diseases of the Fetus and Newborn Infant, 4th ed. Pp. 404–446. Philadelphia, WB Saunders Company.

Chippewa County Health Department. 1992. A preliminary report on the water-borne disease outbreak on Drummond Island in late August 1991. Sault Ste. Marie, Michigan. Unpublished report.

Craun, G.F. and R. Calderon, 1996. Microbial risks in ground water systems, epidemiology of waterborne outbreaks. Pp. 9–15 in: Under the Microscope, Proceedings of the Ground water Foundation's 12th Annual Fall Symposium. 1996. Boston, MA. Amer. Water Works Association, Denver, CO.

Dalldorf, G., and J.L. Melnick. 1965. Coxsackieviruses. Pp. 474–511 in: Horsefall, F.L. and L. Tamms. eds., Viral and Rickettsial Infections of Man. 4th ed. Philadelphia, J.B. Lippincott.

Davis, J.V. and E.C. Witt, III, 2000. Microbiological and chemical quality of ground water used as a source of public supply in southern Missouri—phase I, May 1997–March 1998. Water-Resources Investigations Report 00–4038. USGS, U.S. DOI, Rolla, Missouri. 77 pp.

Doherty, K. 1998. Status of the New England ground water viral study. In: Proceedings, American Water Works Association Annual Meeting, Dallas, Texas, June 23, 1998. American Water Works Association, Denver.

DynCorp. 2000. Letter from M.L. Pope to P. Berger at EPA Office of Water. May 4, 2000.

Femmer, S. 2000. Microbiological and chemical quality of ground water used as a source of public supply in southern Missouri—phase II, April–July, 1998. Water-Resources Investigations Report 00–4260. U.S. DOI, USGS, Rolla, Missouri. 62 pp.

Francy, D.S., R.N. Bushon, J. Stopar, E.J. Luzano, and G.S. Fout. 2004. Environmental Factors and Chemical and Microbiological Water-Quality Constituents Related to the Presence of Enteric Viruses in Ground Water From Small Public Water Supplies in Southeastern Michigan. Scientific Investigations Report 2004–5219. U.S. DOI, USGS, Reston, Virginia. 60 pp.

Fujioka, R.S. and B.S. Yoneyama. 2001. ''Assessing the vulnerability of groundwater sources to fecal contamination.'' Journal Amer. Water Works Assoc. 93(8):62–71.

Garg, A. X., L. Moist, D. Matsell, H.R. Thiessen-Philbrook, R.B. Haynes, R.S. Suri, M. Salvadori, J. Ray, and W.F. Clark. 2005. Risk of hypertension and reduced kidney function after acute gastroenteritis from bacteria-contaminated drinking water. Canadian Medical Association Journal. 173(3):1–8.

Gerba, C. P., J. B. Rose, and C. N. Haas. 1996. Sensitive populations: who is at the greatest risk? Int. J. Food Micro. 30:113–123.

Glass, R.I., J. Noel, T. Ando, R. Fankhauser, G. Belliot, A. Mounts, U.D. Parashar, J.S. Bresee, and S.S. Monroe. 2000. The epidemiology of enteric caliciviruses from humans: a reassessment using new diagnostics. Journal of Infectious Diseases. 181(Suppl 2):S254–61.

Griffin, D.D., M. Fletcher, M.E. Levy, M. Ching-Lee, R. Nogami, L. Edwards, H. Peters, L. Montague, J.R. Gentsch, and R.I. Glass. 2002. Outbreaks of adult gastroenteritis traced to a single genotype of rotavirus. Journal of Infectious Diseases. 185:1502–1505.

Ground Water Education in Michigan. 1992. A Vacation that's Enough to Make you Sick? Ground Water Education in Michigan. 4(1).

Haas, C.N. 1993. Microbial sampling: is it better to sample many times or use large samples? Water Science and Technol. 27:19–25.

Hall, C. E., M. K. Cooney, and J. P. Fox. 1970. The Seattle virus watch program. I. Infection and illness experience of virus watch families during a community-wide epidemic of echovirus type 30 aseptic meningitis. AJPH. 60:1456–1465.

Harrington, W., A.J. Krupnick, and W.O. Spofford, Jr. 1985. *The Benefits of Preventing an Outbreak of Giardiasis Due to Drinking Water Contamination.* EPA/Resources for the Future Report.

Health Canada. 2000. *Waterborne Outbreak of Gastroenteritis Associated with a Contaminated Municipal Water Supply, Walkerton, Ontario, May-June 2000.* Communicable Disease Report. October 15, 2000. Volume 26–20.

Jacangelo, J.G., S. Adham, and J.M. Laine. 1995. *Application of Membrane Filtration Techniques for Compliance with the Surface Water and Ground Water Treatment Rules.* AWWA. Denver, CO.

Jenista, J.A., K.R. Powell, and M.A. Menegus. 1984. Epidemiology of neonatal enterovirus infection. J Pediatr. 104:685–690.

Juranek, D. 1997. National estimate of waterborne disease occurrence; A daunting task. Presentation to the CDC/EPA Waterborne Disease Workshop; EPA 815–R–98–004. October 9–10, 1997. Washington, DC.

Kaplan, M.H., S.W. Klein, J. McPhee, and R.G. Harper. 1983. Group B coxsackievirus infections in infants youner than three months of age: A serious childhood illness. Reviews of Infectious Diseases. 5(6):1019–1032.

Karim, M.R., M. LeChevallier, M. Abbaszadegan, A. Alum, J. Sobrinho, and J. Rosen. 2004. Microbial indicators for assessing the vulnerability of groundwater to fecal contamination. American Water Co. Report. 106 pp.

Karim, M.R., M. Abbaszadegan, A. Alum, and M. LeChevallier. 2003. Virological quality of groundwater. In: *Proceedings, Water Quality Technology Conference: Philadelphia, PA.*

Kogon, A., I. Spigland, T.E. Frothingham, L. Elveback, C. Williams, C.E. Hall, and J.P. Fox. 1969. The Virus Watch Program: a continuing surveillance of viral infections in metropolitan New York families. American Journal of Epidemiology. 89(1):51–61.

Kramer, M.H., B.L. Herwaldt, G.F. Craun, R.L. Calderon, and D.D. Juranek. 1996. Waterborne disease: 1993–1994. Journal AWWA. 88(3):66–80.

Lawson, H.W., M.M. Braun, R.I.M. Glass, S. Stine, S. Monroe, H.K. Atrash, L.E. Lee, and S.J. Engelender. 1991. Waterborne outbreak of Norwalk virus gastroenteritis at a southwest U.S. resort: role of geological formations in contamination of well water. Lancet. 337:1200–1204.

Lederberg, J. (editor). 1992. *Encyclopedia of Microbiology*, Vol 2. Academic Press, Inc. New York. Pp. 69–75.

Lee, S.H., D.A Levy, G.F. Craun, M.J. Beach, and R.L. Calderon. 2002. Surveillance for Waterborne-Disease Outbreaks–United States, 1999–2000. MMWR. 51(SS08):1–28.

Lee, Y–M., P.W. Johnson, J.L. Call, M.J. Arrowood, B.W. Furness, S.C. Pichette, K.K. Grady, P. Reeh, L. Mitchell, D. Bergmire-Sweat, W.R. Mackenzie, and V.C.W. Tsang. 2001. Development and application of a quantitative, specific assay for *Cryptosporidium parvum* oocyst detection in high-turbidity environmental water samples. Am. J. Trop. Med. Hyg. 65(1):1–9.

Levy, D.A., M.S. Bens, G.F. Craun, R.L. Calderon, and B.L. Herwaldt. 1998. Surveillance for Waterborne-Disease Outbreaks—United States, 1995–1996. MMWR. 47(SS–5):1–34.

Lieberman, R., L. Shadix, B. Newport, and C. Frebis. 2002. *Microbial Monitoring of Vulnerable Public Groundwater Supplies.* American Water Works Association Research Foundation, Denver, CO. 162 pp.

Lindsey, B.D., Raspberry, J.S. and Zimmerman, T.M. 2002. *Microbiological Quality of Water from Non-community Supply Wells in Carbonate and Crystalline Aquifers of Pennsylvania.* U.S. Geological Survey Water-Resources Investigations Report 01–4268. 30 pp.

Livernois, J. 2002. *The Economic Costs of the Walkerton Crisis. The Walkerton Inquiry.* Toronto: Ontario Ministry of the Attorney General.

Marciano-Cabral, F., R. MacLean, A. Mensah, L. LaPat-Polasko. 2003. Identification of Naegleria fowleri in domestic water sources by nested PCR. Applied and Environmental Microbiology. 69(10):5864–5869.

Melnick, J.L. 1996. Enteroviruses: poliovirus, coxsackievirus, echovirus, and newer enteroviruses. In: Fields, B.N., D.M. Knipe, and P.M. Howrey. eds. Fields Virology. Philadelphia, Lippincott Raven Publishers.

Miller, K.J. and J. Meek. 2006. *Helena Valley Ground Water: Pharmaceuticals, Personal Care Products, Endocrine Disruptors (PPCPs) and Microbial Indicators of Fecal Contamination.* Montana Department of Environmental Quality Open File Report.

Minnesota Department of Health. 2000. Minnesota Department of Health Viral Occurrence Study. 7 pp.

Missouri Department of Health. 1992. Summary of Investigation, Hepatitis A Outbreak, Apostolic Church and School, Racine, MO. Unpublished report. 5 pp.

Modlin, J.F. 1986. Perinatal Echovirus infection: Insights from a literature review of 61 cases of serious infection and 16 outbreaks in nursuries. Reviews of Infectious Diseases. 8(6):918–926.

Modlin, J.F. 1997. Enteroviruses: coxsackievirus, echoviruses and newer enteroviruses. In: Long, S.S., *et al.* eds. Principles and Practice of Pediatric Infectious Diseases. New York, Churchill Livingston.

Moore, A.C., B.L. Herwaldt, G.F. Craun, R. L. Calderon, A.K. Highsmith, and D.D. Juranek. 1993. Surveillance for waterborne disease outbreaks—United States, 1991–1992. Morbidity and Mortality Weekly Report. Surveillance Summary SS–5, U.S. Centers for Disease Control and Prevention. 42(SS–05):1–22.

National Drinking Water Advisory Council. 2001. *Report of the Arsenic Cost Working Group to the National Drinking Water Council.* August 14, 2001.

National Research Council. 1997. *Safe Water From Every Tap, Improving Water Service to Small Communities.* National Academy Press, Washington, DC.

New York State Department of Health. 2000. The Washington County fair outbreak report. New York State Department of Health. Albany, New York. 108 pp.

Ohio EPA. 2005. South Bass Island, Ottawa County Gastrointestinal Illness Summer 2004; Ohio Environmental Protection Agency Investigation and Actions. February 22, 2005; amended February 16, 2006. 48pp. *http://www.epa.state.oh.us/ddagw/SBIweb/Reports/SBI_EPA.pdf.*

Olsen, S.J., G. Miller, T. Breuer, M. Kennedy, C. Higgins, J. Walford, G. McKee, K. Fox, W. Bibb, and P. Mead. 2002. A waterborne outbreak of *Escherichia coli* O157:H7 infections and hemolytic uremic syndrome: implications for rural systems. Emerging Infectious Diseases. 8(4):370–375.

OMB. 2004. *Final Information Quality Bulletin for Peer Review.* December 15, 2004. 41 pp. *http://www.whitehouse.gov/omb/inforeg/peer2004/peer_bulletin.pdf.*

Parshionikar, S.U., S. Willian-True, G.S. Fout, D.E. Robbins, S.A. Seys, J.D. Cassady, and R. Harris. 2003. Waterborne outbreak of gastroenteritis associated with a norovirus. Applied and Environmental Microbiology. 69(9):5263–5268.

Rice, E.W., M.R. Rodgers, I.V. Wesley, C.H. Johnson, and S.A. Tanner. 1999. Isolation of *Arcobacter butzleri* from ground water. Letters in Applied Microbiology. 28:31–35.

Rose, J.B. 1997. Environmental ecology of *Cryptosporidium* and public health implications. Annual Rev Public Health. 18:135–161.

Smith, W.G. 1970. Coxsackie B myopericarditis in adults. Am. Heart J. 80(1):34–46.

Swerdlow, D.L., B.A. Woodruff, R.C. Brady, P.M. Griffin, S. Tippen, H. Donnel Jr., E. Geldreich, B.J. Payne, A. Meyer Jr., J.G. Wells, K.D. Greene, M. Bright, N.H. Bean, and P.A. Blake. 1992. A waterborne outbreak in Missouri of *Escherichia coli* O157:H7 associated with bloody diarrhea and death. Annals of Internal Medicine. 117(10):812–819.

Szewzyk, U., Szewzyk, R., Manz, W. and Schleifer, K.-H. 2000. Microbiological safety of drinking water. Annual Review of Microbiology. 54:81–127.

Tucker, A.W., A.C. Haddix, J.S. Bresee, *et al.* 1998. Cost-effectiveness analysis of a rotavirus immunization program for the United States. JAMA. 279(17):1371–1376.

U.S. Department of Energy, Energy Information Administration. 2002. Table 7.1 Electricity Overview (Billion Kilowatthours). *http://www.eia.doe.gov/emeu/mer/txt/mer7-1*

USEPA. 2006a. *Information Collection Request for National Primary Drinking Water Regulations: Final Ground Water Rule.* EPA–815–R–06–011.

USEPA. 2006b. *Occurrence and Monitoring Document for the Final Ground Water Rule.* EPA–815–R–06–012.

USEPA. 2006c. *Public Comment and Response Document for the Final Ground Water Rule.* EPA–815–R–06–013.

USEPA. 2006d. *Economic Analysis for the Final Ground Water Rule.* EPA–815–R–06–014.

USEPA. 2006e. *National Primary Drinking Water Regulations; Ground Water Rule; Notice of Data Availability.* 71 FR 15105, March 27, 2006.

USEPA. 2006f. *National Field Study for Coliphage Detection in Groundwater: Method 1601 and 1602 Evaluation in Regional Aquifers.* EPA–822–R–06–002.

USEPA. 2006g. *National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule.* 71 FR 388, January 4, 2006.

USEPA. 2006h. *Technology and Cost Document for the Final Ground Water Rule.* EPA–815–R–06–015.

USEPA. 2006i. *National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR); Final Rule.* 71 FR 654, January 5, 2006.

USEPA. 2005a. *Membrane Filtration Guidance Manual.* November, 2005. EPA 815–R–06–009.

USEPA. 2005b. *Manual for the Certification of Laboratories Analyzing Drinking Water.* Fifth Edition, January, 2005. EPA 815–R–05–004.

USEPA. 2003a. *Results of the Interlaboratory Validation of EPA Method 1601 for Presence/Absence of Malespecific (F+) and Somatic Coliphage in Water by Two-Step Enrichment.* July, 2003. EPA–821–R–03–015.

USEPA. 2003b. *Results of the Interlaboratory Validation of EPA Method 1602 for*

Enumeration of Malespecific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL). July, 2003. EPA–821–R–03–016.

USEPA. 2003c. *Children's Health Valuation Handbook.* October, 2003. EPA 100–R–01–002.

USEPA. 2002a. *Method 1600.* September, 2002. EPA 821–R–02–022.

USEPA. 2002b. *National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment.* 67 FR 19030, April 17, 2002.

USEPA. 2002c. *Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium).* September, 2002. EPA 821–R–02–024.

USEPA. 2001a. *Method 1601: Male-specific (F+) and Somatic Coliphage in Water by Two-step Enrichment Procedure.* Office of Water, U.S. Environmental Protection Agency, Washington, DC 20460. EPA 821–R–01–030.

USEPA. 2001b. *Method 1602: Male-specific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL) Procedure.* Office of Water, U.S. Environmental Protection Agency, Washington, DC 20460. EPA 821–R–01–029.

USEPA. 2000a. *National Primary Drinking Water Regulations: Ground Water Rule; Proposed Rule.* 65 FR 30194, May 10, 2000. EPA–815–Z–00–002.

USEPA. 2000b. *Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee Agreement in Principle.* 65 FR 83015, December 29, 2000.

USEPA. 2000c. *Guidelines for Preparing Economic Analyses.* September, 2000. EPA 240–R–00–003.

USEPA. 2000d. *Science Advisory Board Final Report.* Prepared for Environmental Economics Advisory Committee. July 27, 2000. EPA–SAB–EEAC–00–013.

USEPA. 2000e. *Health Risks of Enteric Viral Infections in Children.* Office of Science and Technology, Washington, DC. EPA–822–R–00–010.

USEPA. 2000f. *Regulatory Impact Analysis of the Proposed Ground Water Rule.* April 5, 2000.

USEPA. 2000g. *Baseline Profile Document for the Ground Water Rule.* Final Draft. July, 2000.

USEPA. 2000h. *Science Advisory Board Letter Report on EPA's Draft Proposal for the Ground Water Rule.* June 30, 2000. EPA–SAB–DWC–LTR–00–005.

USEPA. 2000i. *National Drinking Water Advisory Council Recommendations.* May 11, 2000.

USEPA. 2000j. *National Primary Drinking Water Regulations: Public Notification Rule.* 65 FR 25982, May 4, 2000.

USEPA. 1999. *Drinking Water Criteria Document for Enteroviruses and Hepatitis A: An Addendum.* January 15, 1999. EPA–822–R–98–043.

USEPA. 1998a. GWR vulnerability assessment study, April 3, 1998. Unpublished report prepared by International Consultants, Inc. for the Office of Ground Water and Drinking Water, 29 pp.

USEPA. 1998b. *National Primary Drinking Water Regulations. Interim Enhanced Surface Water Treatment Rule* (IESWTR). 63 FR 69477, December 16, 1998.

USEPA. 1998c. *National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Final Rule.* 63 FR 69389, December 16, 1998.

USEPA. 1998d. Wisconsin migrant worker camp drinking water quality study. Unpublished report. Prepared for U.S. EPA Region V, Safe Drinking Water Branch, July, 1998. 10 pp.

USEPA. 1997a. *Ground Water Disinfection Rule Workshop on Ground Water Protection Barrier Elements—Final Proceedings.* March 26–28, 1997.

USEPA. 1997b. *Response to Congress on Use of Decentralized Wastewater Treatment Systems.* April, 1997. EPA 832–R–97–001b.

USEPA. 1997c. *Policy for Use of Probabilistic Analysis in Risk Assessment.* Office of Research and Development. May 15, 1997.

USEPA. 1997d. *EPA Method 1600: Membrane Filter Test Method for Enterococci in Water.*'' May, 1997. EPA–821–R–97–004.

USEPA. 1996. *Ground Water Disinfection Rule—Workshop on Predicting Microbial Contamination of Ground Water Systems—July 10–11, 1996—Proceedings Report.* September 1996.

USEPA. 1995a. EPA Risk Characterization Program. Memorandum. March 21, 1995.

USEPA. 1995b. *Guidance for Risk Characterization.* Science Policy Council. February, 1995. 15 pp.

USEPA/Association of State Drinking Water Administrators (ASDWA). 1995. *EPA/State Joint Guidance on Sanitary Surveys.* December 1995. Pp.1–8.

USEPA. 1992. *Draft Ground-Water Disinfection Rule Available for Public Comment.* Notice of Availability and Review in 57 FR 33960, July 31, 1992.

USEPA. 1991. *Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources.* Contract No. 68–01–6989.

USEPA. 1990. Drinking Water; Announcement of Public Meeting to Discuss the Preliminary Concept Paper for the Ground Water Disinfection Requirements. Meeting Notice. 55 FR 21093, May 22, 1990.

USEPA. 1989a. *Drinking Water; National Primary Drinking Water Regulations: Total Coliforms (Including Fecal Coliforms and E. Coli); Final Rule.* 54 FR 27544, June 29, 1989.

USEPA. 1989b. *Drinking Water; National Primary Drinking Water Regulations: Disinfection; Turbidity,* Giardia lamblia, *Viruses,* Legionella, and *Heterotrophic Bacteria;* Final Rule. 54 FR 27486, June 29, 1989.

USEPA/Science Advisory Board (SAB). 1990. Reducing Risk: Setting Priorities and Strategies for Environmental Protection. September, 1990. SAB–EC–90–021.

US Government Accountability Office (USGAO). Drinking Water Key Quality Assurance Program is Flawed and Underfunded, GAO/RCED–93–97. April 1993.

Vaughn, J.M. 1996. Sample Analyses. Attachment, unpublished letter on the analysis of alluvial wells in Missouri by J. Lane and K. Duzan, Missouri Department of Natural Resources, Rolla, MO, November 7, 1996.

Ward, R.L, D.I. Bernstein, E.C. Young, J.R. Sherwood, D.R. Knowlton, and G.M. Schiff. 1986. Human Rotavirus Studies in Volunteers: Determination of Infectious Dose and Serological Response to Infection. Journal of Infectious Diseases. 154(5):871.

Worthington, S.R.H., C.C. Smart, and W.W. Ruland. 2002. Assessment of groundwater velocities to the municipal wells at Walkerton. Ground and Water: Theory to Practice. Proceedings of the 55th Canadian Geotechnical and 3rd Joint IAH-CNC and CGS Groundwater Specialty Conferences, Niagara Falls, Ontario, October 20–23, 2002. Edited by D. Stolle, A.R. Piggott and J.J. Crowder and published by the Southern Ontario Section of the Canadian Geotechnical Society. Pp. 1081–1086.

Yanko, W.A., J.L. Jackson, F.P. Williams, A.S. Walker, and M.S. Castillo. 1999. An unexpected temporal pattern of coliphage isolation in ground waters sampled from wells at varied distance from reclaimed water recharge sites. Water Resource. 33:53–64.

Yates, M.V., R.W. Citek, M.F. Kamper, and A.M. Salazar. 1999. Detecting Enteroviruses in Water: Comparing Infectivity, Molecular, and Combination Models. American Water Works Association. International Symposium on Waterborne Pathogens, Milwauke, WI.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 11, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

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; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding entries § 141.401–141.405'', § 142.14(d)(17)'', § 142.15(c)(7)'' and § 142.16(o)'' in numerical order, as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Primary Drinking Water Regulations	
* * * * * * *	
141.401–141.405	2040–0271
* * * * * * *	
National Primary Drinking Water Regulations Implementation	
* * * * * * *	
142.14(d)(17)	2040–0271
* * * * * * *	
142.15(c)(7)	2040–0271
* * * * * * *	
142.16(o)	2040–0271

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 4. Section 141.21 is amended by adding paragraph (d)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(d) * * *

(3) Sanitary surveys conducted by the State under the provisions of § 142.16(o)(2) of this chapter may be used to meet the sanitary survey requirements of this section.

* * * * *

■ 5. Section 141.28 is amended by revising paragraph (a) to read as follows:

§ 141.28 Certified laboratories.

(a) For the purpose of determining compliance with § 141.21 through 141.27, 141.30, 141.40, 141.74, 141.89 and 141.402, samples may be considered only if they have been analyzed by a laboratory certified by the State except that measurements of alkalinity, calcium, conductivity, disinfectant residual, orthophosphate, pH, silica, temperature and turbidity may be performed by any person acceptable to the State.

* * * * *

■ 6. Section 141.153 is amended by adding a new paragraph (h)(6) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(h) * * *

(6) Systems required to comply with subpart S. (i) Any ground water system that receives notice from the State of a significant deficiency or notice from a laboratory of a fecal indicator-positive ground water source sample that is not invalidated by the State under § 141.402(d) must inform its customers of any significant deficiency that is uncorrected at the time of the next report or of any fecal indicator-positive ground water source sample in the next report. The system must continue to inform the public annually until the State determines that particular significant deficiency is corrected or the fecal contamination in the ground water source is addressed under § 141.403(a). Each report must include the following elements.

(A) The nature of the particular significant deficiency or the source of the fecal contamination (if the source is known) and the date the significant deficiency was identified by the State or the dates of the fecal indicator-positive ground water source samples;

(B) If the fecal contamination in the ground water source has been addressed under § 141.403(a) and the date of such action;

(C) For each significant deficiency or fecal contamination in the ground water source that has not been addressed under § 141.403(a), the State-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) If the system receives notice of a fecal indicator-positive ground water source sample that is not invalidated by the State under § 141.402(d), the potential health effects using the health effects language of Appendix A of subpart O.

(ii) If directed by the State, a system with significant deficiencies that have been corrected before the next report is issued must inform its customers of the significant deficiency, how the deficiency was corrected, and the date of correction under paragraph (h)(6)(i) of this section.

* * * * *

■ 7. Appendix A to subpart O is amended by adding a new entry ''Fecal Indicators (enterococci or coliphage)'' to read as follows:

APPENDIX A TO SUBPART O OF PART 141—REGULATED CONTAMINANTS

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Microbiological Contaminants:						
*	*	*	*	*	*	*
Fecal Indicators (enterococci or coliphage).	TT		TT	N/A	Human and animal fecal waste.	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
*	*	*	*	*	*	*

* * *

TT=Treatment Technique.

■ 8. Section 141.202 is amended by redesignating entry (8) in Table 1 in paragraph (a) as entry (9); and adding a new paragraph (8) to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

(a) * * *

Table 1 to § 141.202—Violation Categories and Other Situations Requiring a Tier 1 Public Notice

* * * * *

(8) Detection of *E. coli*, enterococci, or coliphage in source water samples as specified in § 141.402(a) and § 141.402(b).

* * * * *

■ 9. Section 141.203 is amended by adding entry (4) to Table 1 in paragraph (a) to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

(a) * * *

Table 1 to § 141.203—Violation Categories and Other Situations Requiring a Tier 2 Public Notice

* * * * *

(4) Failure to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer under § 141.403(a).

* * * * *

■ 10. Appendix A to Subpart Q of Part 141 is amended to read as follows:

■ a. Adding I.A.11;

■ b. Redesignating entry IV.F as entry IV.G; and

■ c. Adding a new entry IV.F in alphabetical order:

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR): [3]				
A. Microbiological Contaminants				
*	*	*	*	*
11. Ground Water Rule violations	2	141.404	3	141.402(h). 141.403(d).

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]—Continued

Contaminant	MCL/MRDL/TT violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
* * * *	*		*	*
IV. Other Situations Requiring Public Notification				
* * * *	*		*	*
F. Source Water Sample Positive for GWR Fecal indicators: E. coli, enterococci, or coliphage	1	141.402(g)	N/A	N/A
* * * *	*		*	*

[1] Violations and other situations not listed in this table (*e.g.*, failure to prepare Consumer Confidence Reports) do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (*e.g.*, Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).
[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.
[3] The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * *

■ 11. Appendix B of Subpart Q of Part 141 is amended by adding entries A.1.c and A.1.d in numerical order to read as follows:

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR) **A. Microbiological Contaminants**			
* * *	*		* * *
1c. Fecal indicators (GWR): i. E. coli ii. enterococci iii. coliphage	Zero None None	TT TT TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
1d. Ground Water Rule (GWR) TT violations	None	TT	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
* * *	*		* * *

[1] MCLG—Maximum contaminant level goal.
[2] MCL—Maximum contaminant level.

* * * * *

■ 12. Appendix C to Subpart Q is amended by adding the following abbreviations in alphabetical order:

Appendix C to Subpart Q of Part 141—List of Acronyms Used in Public Notification Regulations

* * * * *

GWR Ground Water Rule

* * * * *

■ 13. A new subpart S is added to read as follows:

Subpart S—Ground Water Rule

Sec.
141.400 General requirements and applicability.
141.401 Sanitary surveys for ground water systems.
141.402 Ground water source microbial monitoring and analytical methods.
141.403 Treatment technique requirements for ground water systems.
141.404 Treatment technique violations for ground water systems.
141.405 Reporting and recordkeeping for ground water systems.

Subpart S—Ground Water Rule

§ 141.400 General requirements and applicability.

(a) *Scope of this subpart.* The requirements of this subpart S constitute National Primary Drinking Water Regulations.

(b) *Applicability.* This subpart applies to all public water systems that use ground water except that it does not apply to public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment under subpart

H. For the purposes of this subpart, ''ground water system'' is defined as any public water system meeting this applicability statement, including consecutive systems receiving finished ground water.

(c) *General requirements.* Systems subject to this subpart must comply with the following requirements:

(1) Sanitary survey information requirements for all ground water systems as described in § 141.401.

(2) Microbial source water monitoring requirements for ground water systems that do not treat all of their ground water to at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer as described in § 141.402.

(3) Treatment technique requirements, described in § 141.403, that apply to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under § 141.402, or that have significant deficiencies that are identified by the State or that are identified by EPA under SDWA section 1445. A ground water system with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of this subpart must implement one or more of the following corrective action options: correct all significant deficiencies; provide an alternate source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer.

(4) Ground water systems that provide at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in § 141.403(b).

(5) If requested by the State, ground water systems must provide the State with any existing information that will enable the State to perform a hydrogeologic sensitivity assessment. For the purposes of this subpart, ''hydrogeologic sensitivity assessment'' is a determination of whether ground water systems obtain water from hydrogeologically sensitive settings.

(d) *Compliance date.* Ground water systems must comply, unless otherwise noted, with the requirements of this subpart beginning December 1, 2009.

§ 141.401 Sanitary surveys for ground water systems.

(a) Ground water systems must provide the State, at the State's request, any existing information that will enable the State to conduct a sanitary survey.

(b) For the purposes of this subpart, a ''sanitary survey,'' as conducted by the State, includes but is not limited to, an onsite review of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(c) The sanitary survey must include an evaluation of the applicable components listed in paragraphs (c)(1) through (8) of this section:

(1) Source,

(2) Treatment,

(3) Distribution system,

(4) Finished water storage,

(5) Pumps, pump facilities, and controls,

(6) Monitoring, reporting, and data verification,

(7) System management and operation, and

(8) Operator compliance with State requirements.

§ 141.402 Ground water source microbial monitoring and analytical methods.

(a) *Triggered source water monitoring.*—(1) *General requirements.* A ground water system must conduct triggered source water monitoring if the conditions identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section exist.

(i) The system does not provide at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and

(ii) The system is notified that a sample collected under § 141.21(a) is total coliform-positive and the sample is not invalidated under § 141.21(c).

(2) *Sampling Requirements.* A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under § 141.21(a), except as provided in paragraph (a)(2)(ii) of this section.

(i) The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

(ii) If approved by the State, systems with more than one ground water source may meet the requirements of this paragraph (a)(2) by sampling a representative ground water source or sources. If directed by the State, systems must submit for State approval a triggered source water monitoring plan that identifies one or more ground water sources that are representative of each monitoring site in the system's sample siting plan under § 141.21(a) and that the system intends to use for representative sampling under this paragraph.

(iii) A ground water system serving 1,000 people or fewer may use a repeat sample collected from a ground water source to meet both the requirements of § 141.21(b) and to satisfy the monitoring requirements of paragraph (a)(2) of this section for that ground water source only if the State approves the use of *E. coli* as a fecal indicator for source water monitoring under this paragraph (a). If the repeat sample collected from the ground water source is *E.coli* positive, the system must comply with paragraph (a)(3) of this section.

(3) *Additional Requirements.* If the State does not require corrective action under § 141.403(a)(2) for a fecal indicator-positive source water sample collected under paragraph (a)(2) of this section that is not invalidated under paragraph (d) of this section, the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(4) *Consecutive and Wholesale Systems.* (i). In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample collected under § 141.21(a) must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

(ii) In addition to the other requirements of this paragraph (a), a wholesale ground water system must comply with paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B) of this section.

(A) A wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under § 141.21(a) is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under paragraph (a)(2) of this section and analyze it for

a fecal indicator under paragraph (c) of this section.

(B) If the sample collected under paragraph (a)(4)(ii)(A) of this section is fecal indicator-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and must meet the requirements of paragraph (a)(3) of this section.

(5) *Exceptions to the Triggered Source Water Monitoring Requirements.* A ground water system is not required to comply with the source water monitoring requirements of paragraph (a) of this section if either of the following conditions exists:

(i) The State determines, and documents in writing, that the total coliform-positive sample collected under § 141.21(a) is caused by a distribution system deficiency; or

(ii) The total coliform-positive sample collected under § 141.21(a) is collected at a location that meets State criteria for distribution system conditions that will cause total coliform-positive samples.

(b) *Assessment Source Water Monitoring.* If directed by the State, ground water systems must conduct assessment source water monitoring that meets State-determined requirements for such monitoring. A ground water system conducting assessment source water monitoring may use a triggered source water sample collected under paragraph (a)(2) of this section to meet the requirements of paragraph (b) of this section. State-determined assessment source water monitoring requirements may include:

(1) Collection of a total of 12 ground water source samples that represent each month the system provides ground water to the public,

(2) Collection of samples from each well unless the system obtains written State approval to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting,

(3) Collection of a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used,

(4) Analysis of all ground water source samples using one of the analytical methods listed in the in paragraph (c)(2) of this section for the presence of *E. coli*, enterococci, or coliphage,

(5) Collection of ground water source samples at a location prior to any treatment of the ground water source unless the State approves a sampling location after treatment, and

(6) Collection of ground water source samples at the well itself unless the system's configuration does not allow for sampling at the well itself and the State approves an alternate sampling location that is representative of the water quality of that well.

(c) *Analytical methods.* (1) A ground water system subject to the source water monitoring requirements of paragraph (a) of this section must collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used.

(2) A ground water system must analyze all ground water source samples collected under paragraph (a) of this section using one of the analytical methods listed in the following table in paragraph (c)(2) of this section for the presence of *E. coli*, enterococci, or coliphage:

ANALYTICAL METHODS FOR SOURCE WATER MONITORING

Fecal indicator [1]	Methodology	Method citation
E. coli	Colilert [3]	9223 B.[2]
	Colisure [3]	9223 B.[2]
	Membrane Filter Method with MI Agar	EPA Method 1604.[4]
	m-ColiBlue24 Test [5]	
	E*Colite Test [6]	
	EC–MUG [7]	9221 F.[2]
	NA–MUG [7]	9222 G.[2]
Enterococci	Multiple-Tube Technique	9230B.[2]
	Membrane Filter Technique	EPA Method 1600.[8]
	Enterolert [9]	
Coliphage	Two-Step Enrichment Presence-Absence Procedure.	EPA Method 1601.[10]
	Single Agar Layer Procedure	EPA Method 1602.[11]

Analyses must be conducted in accordance with the documents listed below. The Director of the Federal Register approves the incorporation by reference of the documents listed in footnotes 2–11 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Copies may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. The ground water system is encouraged but is not required to hold samples below 10°C during transit.

[2] Methods are described in Standard Methods for the Examination of Water and Wastewater 20th edition (1998) and copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005–2605.

[3] Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[4] EPA Method 1604: Total Coliforms and *Escherichia coli* in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium); September 2002, EPA 821–R–02–024. Method is available at *http://www.epa.gov/nerlcwww/1604sp02.pdf* or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[5] A description of the m-ColiBlue24 Test, ''Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue24® Broth,'' Method No. 10029 Revision 2, August 17, 1999, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010 or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[6] A description of the E*Colite Test, ''Charm E*Colite Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water, January 9, 1998, is available from Charm Sciences, Inc., 659 Andover St., Lawrence, MA 01843–1032 or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[7] EC–MUG (Method 9221F) or NA–MUG (Method 9222G) can be used for *E. coli* testing step as described in § 141.21(f)(6)(i) or (ii) after use of Standard Methods 9221 B, 9221 D, 9222 B, or 9222 C.

[8] EPA Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl–β–D–Glucoside Agar (mEI) EPA 821–R–02–022 (September 2002) is an approved variation of Standard Method 9230C. The method is available at *http://www.epa.gov/nerlcwww/1600sp02.pdf* or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The holding time and temperature for ground water samples are specified in footnote 1 above, rather than as specified in Section 8 of EPA Method 1600.

[9] Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092. Preparation and use of the medium is set forth in the article ''Evaluation of Enterolert for Enumeration of Enterococci in Recreational Waters,'' by Budnick, G.E., Howard, R.T., and Mayo, D.R., 1996, Applied and Environmental Microbiology, 62:3881–3884.

[10] EPA Method 1601: Male-specific (F+) and Somatic Coliphage in Water by Two-step Enrichment Procedure; April 2001, EPA 821–R–01–030. Method is available at *http://www.epa.gov/nerlcwww/1601ap01.pdf* or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[11] EPA Method 1602: Male-specific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL) Procedure; April 2001, EPA 821–R–01–029. Method is available at *http://www.epa.gov/nerlcwww/1602ap01.pdf* or from EPA's Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(d) *Invalidation of a fecal indicator-positive ground water source sample.* (1) A ground water system may obtain State invalidation of a fecal indicator-positive ground water source sample collected under paragraph (a) of this section only under the conditions specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) The system provides the State with written notice from the laboratory that improper sample analysis occurred; or

(ii) The State determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is not related to source water quality.

(2) If the State invalidates a fecal indicator-positive ground water source sample, the ground water system must collect another source water sample under paragraph (a) of this section within 24 hours of being notified by the State of its invalidation decision and have it analyzed for the same fecal indicator using the analytical methods in paragraph (c) of this section. The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

(e) *Sampling location.* (1) Any ground water source sample required under paragraph (a) of this section must be collected at a location prior to any treatment of the ground water source unless the State approves a sampling location after treatment.

(2) If the system's configuration does not allow for sampling at the well itself, the system may collect a sample at a State-approved location to meet the requirements of paragraph (a) of this section if the sample is representative of the water quality of that well.

(f) *New Sources.* If directed by the State, a ground water system that places a new ground water source into service after November 30, 2009, must conduct assessment source water monitoring under paragraph (b) of this section. If directed by the State, the system must begin monitoring before the ground water source is used to provide water to the public.

(g) *Public Notification.* A ground water system with a ground water source sample collected under paragraph (a) or (b) of this section that is fecal indicator-positive and that is not invalidated under paragraph (d) of this section, including consecutive systems served by the ground water source, must conduct public notification under § 141.202.

(h) *Monitoring Violations.* Failure to meet the requirements of paragraphs (a)–(f) of this section is a monitoring violation and requires the ground water system to provide public notification under § 141.204.

§ 141.403 Treatment technique requirements for ground water systems.

(a) *Ground water systems with significant deficiencies or source water fecal contamination.*

(1) The treatment technique requirements of this section must be met by ground water systems when a significant deficiency is identified or when a ground water source sample collected under § 141.402(a)(3) is fecal indicator-positive.

(2) If directed by the State, a ground water system with a ground water source sample collected under § 141.402(a)(2), § 141.402(a)(4), or § 141.402(b) that is fecal indicator-positive must comply with the treatment technique requirements of this section.

(3) When a significant deficiency is identified at a Subpart H public water system that uses both ground water and surface water or ground water under the direct influence of surface water, the system must comply with provisions of this paragraph except in cases where the State determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or ground water under the direct influence of surface water.

(4) Unless the State directs the ground water system to implement a specific corrective action, the ground water system must consult with the State regarding the appropriate corrective action within 30 days of receiving written notice from the State of a significant deficiency, written notice from a laboratory that a ground water source sample collected under § 141.402(a)(3) was found to be fecal indicator-positive, or direction from the State that a fecal indicator'positive collected under § 141.402(a)(2), § 141.402(a)(4), or § 141.402(b) requires corrective action. For the purposes of this subpart, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(5) Within 120 days (or earlier if directed by the State) of receiving written notification from the State of a significant deficiency, written notice from a laboratory that a ground water source sample collected under § 141.402(a)(3) was found to be fecal indicator-positive, or direction from the State that a fecal indicator-positive sample collected under § 141.402(a)(2), § 141.402(a)(4), or § 141.402(b) requires corrective action, the ground water system must either:

(i) Have completed corrective action in accordance with applicable State plan review processes or other State guidance or direction, if any, including State-specified interim measures; or

(ii) Be in compliance with a State-approved corrective action plan and schedule subject to the conditions specified in paragraphs (a)(5)(ii)(A) and (a)(5)(ii)(B) of this section.

(A) Any subsequent modifications to a State-approved corrective action plan and schedule must also be approved by the State.

(B) If the State specifies interim measures for protection of the public health pending State approval of the corrective action plan and schedule or pending completion of the corrective action plan, the system must comply with these interim measures as well as

with any schedule specified by the State.

(6) *Corrective Action Alternatives.* Ground water systems that meet the conditions of paragraph (a)(1) or (a)(2) of this section must implement one or more of the following corrective action alternatives:

(i) Correct all significant deficiencies;

(ii) Provide an alternate source of water;

(iii) Eliminate the source of contamination; or

(iv) Provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(7) *Special notice to the public of significant deficiencies or source water fecal contamination.* (i) In addition to the applicable public notification requirements of § 141.202, a community ground water system that receives notice from the State of a significant deficiency or notification of a fecal indicator-positive ground water source sample that is not invalidated by the State under § 141.402(d) must inform the public served by the water system under § 141.153(h)(6) of the fecal indicator-positive source sample or of any significant deficiency that has not been corrected. The system must continue to inform the public annually until the significant deficiency is corrected or the fecal contamination in the ground water source is determined by the State to be corrected under paragraph (a)(5) of this section.

(ii) In addition to the applicable public notification requirements of § 141.202, a non-community ground water system that receives notice from the State of a significant deficiency must inform the public served by the water system in a manner approved by the State of any significant deficiency that has not been corrected within 12 months of being notified by the State, or earlier if directed by the State. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

(A) The nature of the significant deficiency and the date the significant deficiency was identified by the State;

(B) The State-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed; and

(C) For systems with a large proportion of non-English speaking consumers, as determined by the State, information in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(iii) If directed by the State, a non-community water system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under paragraph (a)(7)(ii) of this section.

(b) *Compliance monitoring*—(1) *Existing ground water sources.* A ground water system that is not required to meet the source water monitoring requirements of this subpart for any ground water source because it provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for any ground water source before December 1, 2009, must notify the State in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for the specified ground water source and begin compliance monitoring in accordance with paragraph (b)(3) of this section by December 1, 2009. Notification to the State must include engineering, operational, or other information that the State requests to evaluate the submission. If the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source, the system must conduct ground water source monitoring as required under § 141.402.

(2) *New ground water sources.* A ground water system that places a ground water source in service after November 30, 2009, that is not required to meet the source water monitoring requirements of this subpart because the system provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source must comply with the requirements of paragraphs (b)(2)(i), (b)(2)(ii) and (b)(2)(iii) of this section.

(i) The system must notify the State in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source. Notification to the State must include engineering, operational, or other information that the State requests to evaluate the submission.

(ii) The system must conduct compliance monitoring as required under § 141.403(b)(3) of this subpart within 30 days of placing the source in service.

(iii) The system must conduct ground water source monitoring under § 141.402 if the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(3) *Monitoring requirements.* A ground water system subject to the requirements of paragraphs (a), (b)(1) or (b)(2) of this section must monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer as follows:

(i) *Chemical disinfection*—(A) *Ground water systems serving greater than 3,300 people.* A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in § 141.74(a)(2) at a location approved by the State and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the State-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.

(B) *Ground water systems serving 3,300 or fewer people.* A ground water system that serves 3,300 or fewer people must monitor the residual disinfectant concentration using analytical methods specified in § 141.74(a)(2) at a location approved by the State and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water system must maintain the State-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. The ground water system must take a daily grab sample during the hour of peak flow or at another time specified by the State. If any daily grab sample

measurement falls below the State-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the State-determined level. Alternatively, a ground water system that serves 3,300 or fewer people may monitor continuously and meet the requirements of paragraph (b)(3)(i)(A) of this section.

(ii) *Membrane filtration.* A ground water system that uses membrane filtration to meet the requirements of this subpart must monitor the membrane filtration process in accordance with all State-specified monitoring requirements and must operate the membrane filtration in accordance with all State-specified compliance requirements. A ground water system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when:

(A) The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses;

(B) The membrane process is operated in accordance with State-specified compliance requirements; and

(C) The integrity of the membrane is intact.

(iii) *Alternative treatment.* A ground water system that uses a State-approved alternative treatment to meet the requirements of this subpart by providing at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer must:

(A) Monitor the alternative treatment in accordance with all State-specified monitoring requirements; and

(B) Operate the alternative treatment in accordance with all compliance requirements that the State determines to be necessary to achieve at least 4-log treatment of viruses.

(c) Discontinuing treatment. A ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source if the State determines and documents in writing that 4-log treatment of viruses is no longer necessary for that ground water source. A system that discontinues 4-log treatment of viruses is subject to the source water monitoring and analytical methods requirements of § 141.402 of this subpart.

(d) Failure to meet the monitoring requirements of paragraph (b) of this section is a monitoring violation and requires the ground water system to provide public notification under § 141.204.

§ 141.404 Treatment technique violations for ground water systems.

(a) A ground water system with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the State) of receiving written notice from the State of the significant deficiency, the system:

(1) Does not complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction, including State specified interim actions and measures, or

(2) Is not in compliance with a State-approved corrective action plan and schedule.

(b) Unless the State invalidates a fecal indicator-positive ground water source sample under § 141.402(d), a ground water system is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the State) of meeting the conditions of § 141.403(a)(1) or § 141.403(a)(2), the system:

(1) Does not complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction, including State-specified interim measures, or

(2) Is not in compliance with a State-approved corrective action plan and schedule.

(c) A ground water system subject to the requirements of § 141.403(b)(3) that fails to maintain at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source is in violation of the treatment technique requirement if the failure is not corrected within four hours of determining the system is not maintaining at least 4-log treatment of viruses before or at the first customer.

(d) Ground water system must give public notification under § 141.203 for the treatment technique violations specified in paragraphs (a), (b) and (c) of this section.

§ 141.405 Reporting and recordkeeping for ground water systems.

(a) *Reporting.* In addition to the requirements of § 141.31, a ground water system regulated under this subpart must provide the following information to the State:

(1) A ground water system conducting compliance monitoring under § 141.403(b) must notify the State any time the system fails to meet any State-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water system must notify the State as soon as possible, but in no case later than the end of the next business day.

(2) After completing any corrective action under § 141.403(a), a ground water system must notify the State within 30 days of completion of the corrective action.

(3) If a ground water system subject to the requirements of § 141.402(a) does not conduct source water monitoring under § 141.402(a)(5)(ii), the system must provide documentation to the State within 30 days of the total coliform positive sample that it met the State criteria.

(b) *Recordkeeping.* In addition to the requirements of § 141.33, a ground water system regulated under this subpart must maintain the following information in its records:

(1) Documentation of corrective actions. Documentation shall be kept for a period of not less than ten years.

(2) Documentation of notice to the public as required under § 141.403(a)(7). Documentation shall be kept for a period of not less than three years.

(3) Records of decisions under § 141.402(a)(5)(ii) and records of invalidation of fecal indicator-positive ground water source samples under § 141.402(d). Documentation shall be kept for a period of not less than five years.

(4) For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under § 141.21(c). Documentation shall be kept for a period of not less than five years.

(5) For systems, including wholesale systems, that are required to perform compliance monitoring under § 141.403(b):

(i) Records of the State-specified minimum disinfectant residual. Documentation shall be kept for a period of not less than ten years.

(ii) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the State-prescribed minimum residual disinfectant concentration for a period of more than

four hours. Documentation shall be kept for a period of not less than five years.

(iii) Records of State-specified compliance requirements for membrane filtration and of parameters specified by the State for State-approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours. Documentation shall be kept for a period of not less than five years.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

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

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 15. Section 142.14 is amended by adding paragraph (d)(17) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(17) Records of the currently applicable or most recent State determination, including all supporting information and an explanation of the technical basis of each decision, made under the following provisions of 40 CFR part 141, subpart S and 40 CFR part 142.

(i) Section 142.16(o)(2)(v). Records of written notices of significant deficiencies.

(ii) Section 141.403(a)(5)(ii) of this chapter. Records of corrective action plans, schedule approvals, and State-specified interim measures.

(iii) Section 142.16(o)(4). Records of confirmations under § 141.403(a) of this chapter that a significant deficiency has been corrected or the fecal contamination in the ground water source has been addressed.

(iv) Section 141.402(a)(5) of this chapter. Records of State determinations and records of ground water system's documentation for not conducting triggered source water monitoring.

(v) Section 141.402(d) of this chapter. Records of invalidations of fecal indicator-positive ground water source samples.

(vi) Section 141.402(a)(2)(ii) of this chapter. Records of State approvals of source water monitoring plans.

(vii) Section 142.16(o)(4)(ii). Records of notices of the minimum residual disinfection concentration (when using chemical disinfection) needed to achieve at least 4-log virus inactivation before or at the first customer.

(viii) Sections 142.16(o)(4)(iv) and 142.16(o)(4)(v) Records of notices of the State-specified monitoring and compliance requirements (when using membrane filtration or alternative treatment) needed to achieve at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer.

(ix) Sections 141.403(b)(1) and 141.403(b)(2) of this chapter. Records of written notices from the ground water system that it provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source.

(x) Section 142.16(o)(4)(vi). Records of written determinations that the ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal).

* * * * *

■ 16. Section 142.15 is amended by adding paragraph (c)(7) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(7) *Ground water rule.* (i) *Sanitary surveys.* The month and year in which the most recent sanitary survey was completed or, for a State that uses a phased review process, the date the last element of the applicable eight elements was evaluated under § 142.16(o)(2) for each ground water system.

(ii) *Corrective action requirements.* For any corrective action under § 141.403(a) of this chapter, the date the ground water system completed corrective action.

(iii) *Compliance monitoring.* All ground water systems providing at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for any ground water source(s).

* * * * *

■ 17. Section 142.16 is amended as follows:

■ a. Revise paragraph (a)(2)(iii), and

■ b. Add paragraph (o) to read as follows:

§ 142.16 Special primacy requirements.

(a) * * *

(2) * * *

(iii) *Table 1 of 40 CFR 141.202(a) (Items (5), (6), and (9))*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations listed in Appendix A of Subpart Q of Part 141 of this chapter;

(o) *Requirements for States to adopt 40 CFR part 141, subpart S.* In addition to the general primacy requirements specified elsewhere in this part, including the requirement that State regulations are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart S, must contain the information specified in this paragraph (o).

(1) *Legal authority.* The application for primacy must demonstrate the State has:

(i) The authority contained in statute or regulation to ensure that ground water systems conduct source water monitoring under § 141.402(a)(2), § 141.402(a)(3) and § 141.402(a)(4)(ii)(A) of this chapter.

(ii) The authority contained in statute or regulation to ensure that ground water systems take the appropriate corrective actions including interim measures, if necessary, needed to address significant deficiencies.

(iii) The authority contained in statute or regulation to ensure that ground water systems take the appropriate corrective actions, including interim measures if necessary, to address any source water fecal contamination identified during source water monitoring under § 141.402 of this chapter.

(iv) The authority contained in statute or regulation to ensure that ground water systems consult with the State regarding corrective action(s).

(2) *State practices or procedures for sanitary surveys.* In addition to the general requirements for sanitary surveys contained in § 142.10(b)(2), a primacy application must describe how the State will implement a sanitary survey program that meets the requirements of paragraph (o)(2)(i) of this section. A ''sanitary survey,'' as conducted by the State, includes but is not limited to, an onsite review of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(i) The State must conduct sanitary surveys that address the eight sanitary survey components listed in this section no less frequently than every three years

for community water systems, except as provided in paragraph (o)(2)(iii) of this section, and every five years for non-community water systems. The State may conduct more frequent sanitary surveys for any system. The initial sanitary survey for each community water system must be conducted by December 31, 2012, unless the system meets the requirements of paragraph (o)(2)(iii) of this section. The initial sanitary survey for each community water system that meets the requirements of paragraph (o)(2)(iii) of this section and for each non-community water system must be conducted by December 31, 2014. The sanitary survey must include an evaluation of each of the following elements as applicable:

(A) Source,

(B) Treatment,

(C) Distribution system,

(D) Finished water storage,

(E) Pumps, pump facilities, and controls,

(F) Monitoring, reporting, and data verification,

(G) System management and operation, and

(H) Operator compliance with State requirements.

(ii) The State may use a phased review process to meet the requirements of (o)(2)(i) of this section if all the applicable elements of paragraphs (o)(2)(i)(A) through (o)(2)(i)(H) of this section are evaluated within the required interval.

(iii) The State may conduct sanitary surveys once every five years for community water systems if the system either provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer for all its ground water sources, or if it has an outstanding performance record, as determined by the State and documented in previous sanitary surveys and has no history of total coliform MCL or monitoring violations under § 141.21 of this chapter since the last sanitary survey. In its primacy application, the State must describe how it will determine whether a community water system has an outstanding performance record.

(iv) The State must define and describe in its primacy application at least one specific significant deficiency in each of the eight sanitary survey elements in paragraphs (o)(2)(i)(A) through (o)(2)(i)(H) of this section. Significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(v) As a condition of primacy, the State must provide ground water systems with written notice describing any significant deficiencies no later than 30 days after the State identifies the significant deficiency. The notice may specify corrective actions and deadlines for completion of corrective actions. The State may provide the written notice at the time of the sanitary survey.

(3) *State practices or procedures for source water microbial monitoring*. The State's primacy application must include a description of the following:

(i) The criteria the State will use under §§ 141.402(a)(2)(i) and 141.402(d)(2) of this chapter for extending the 24-hour time limit for a system to collect a ground water source sample to comply with the source water monitoring requirements.

(ii) The criteria the State will use under §§ 141.402(a)(5)(i) and 141.402(a)(5)(ii) of this chapter to determine whether the cause of the total coliform-positive sample taken under § 141.21(a) of this chapter is directly related to the distribution system.

(iii) The criteria the State will use for determining whether to invalidate a fecal indicator-positive ground water source sample under § 141.402(d)(1)(ii) of this chapter.

(iv) The criteria the State will use to allow source water microbial monitoring at a location after treatment under § 141.402(e)(1) of this chapter.

(4) *State practices or procedures for treatment technique requirements.* As a condition of primacy, the State must verify that significant deficiencies or source water fecal contamination have been addressed. The State must verify within 30 days after the ground water system has reported to the State that it has completed corrective action. The State must verify either through written confirmation from the ground water system or a site visit by the State. Written notice from the ground water system under § 141.405(a)(2) of this chapter may serve as this verification. The State's primacy application must include the following:

(i) The process the State will use to determine that a ground water system achieves at least a 4-log treatment of viruses (using inactivation, removal, or a combination of inactivation and removal) before or at the first customer for a ground water source for systems that are not subject to the source water monitoring requirements of § 141.402(a) of this chapter because the ground water system has informed the State that it provides at least 4-log treatment of viruses.

(ii) The process the State will use to determine the minimum residual disinfectant concentration the system must provide prior to the first customer for systems using chemical disinfection.

(iii) The State-approved alternative technologies that ground water systems may use alone or in combination with other approved technologies to achieve at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer for a ground water source.

(iv) The monitoring and compliance requirements the State will require for ground water systems treating to at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of inactivation and removal) before or at the first customer for State-approved alternative treatment technologies.

(v) The monitoring, compliance and membrane integrity testing requirements the State will require to demonstrate virus removal for ground water systems using membrane filtration technologies.

(vi) The criteria, including public health-based considerations and incorporating on-site investigations and source water monitoring results the State will use to determine if a ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of inactivation and removal) before or at the first customer.

* * * * *

[FR Doc. 06–8763 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
November 8, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Monardella linoids ssp. viminea (Willowy Monardella); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT92

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Monardella linoides ssp. viminea (Willowy Monardella)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Monardella linoides* ssp. *viminea* (willowy monardella) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 73 acres (ac) (30 hectares (ha)) fall within the boundaries of the critical habitat, all in San Diego County, California.

DATES: This rule becomes effective on December 8, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760–431–9440). The final rule, economic analysis, and map of critical habitat will also be available via the Internet at *http://www.fws.gov/carlsbad/*.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service (Gifford Pinchot).* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat''. In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs

of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

In this document, it is our intent to discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing. For more information on the biology and ecology of *Monardella linoides* spp. *viminea,* refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54938), and the proposed critical habitat rule published in the **Federal Register** on November 9, 2005 (70 FR 67956).

Previous Federal Actions

Previous Federal actions for *Monardella linoides* ssp. *viminea* can be found in the proposed critical habitat rule published on November 9, 2005 (70 FR 67956). On September 26, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the California Native Plant Society (CNPS) alleging, in part, that the Service improperly determined that designation of critical habitat for *Monardella linoides* ssp. *viminea* was not prudent (*CNPS* v. *Norton,* No. 01–CV–1742IEG (JAH). The Service entered into a settlement agreement with the plaintiffs, under which we agreed to reconsider our ''not prudent'' finding, and, if prudent, publish a proposed critical habitat rule for *M. l.* ssp. *viminea* in the **Federal Register** on or before October 30, 2005, and publish a final critical habitat rule on or before October 30, 2006. The proposed rule was published November 9, 2005 (70 FR 67956). This final rule complies with the June 2, 2003, settlement agreement.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Monardella linoides* ssp. *viminea* during two comment periods, one associated with the publication of the proposed critical habitat rule on November 9, 2005 (70 FR 67956), and the second associated with the publication of a notice of availability for the draft economic analysis (DEA) of the proposed critical habitat designation, published in the **Federal Register** on June 1, 2006 (71 FR 31137). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the DEA.

During the first comment period that opened on November 9, 2005, and closed on January 9, 2006, we received six comments directly addressing the proposed critical habitat designation, four from peer reviewers and two from organizations or individuals. We did not receive any requests for a public hearing. During the comment period that opened on June 1, 2006, and closed on July 3, 2006, we received one additional comment addressing the proposed critical habitat designation and/or the DEA.

Overall, two commenters supported the designation of critical habitat for *Monardella linoides* spp. *viminea* and none opposed the designation. Five letters included comments or information, but did not express support or opposition to the proposed critical habitat designation. Comments received were grouped into general issue categories relating to the proposed critical habitat designation and the DEA and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four peer reviewers. The peer reviewers generally disagreed with our decision not to treat the southern populations of the species as a separate subspecies, our decision to exempt areas from critical habitat under section 4(a)(3) of the Act, and our proposal to exclude areas from critical habitat under section 4(b)(2) of the Act. Additionally, peer reviewers provided information, clarifications, and suggestions to improve the final critical habitat rule, particularly the primary constituent elements (PCEs). We address peer reviewer comments in the following summary and incorporated them into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the *Monardella linoides* spp. *viminea,* and we address them in the following summary.

Peer Reviewer Comments

(1) *Comment:* Three peer reviewers commented on the taxonomic identification of *Monardella linoides* spp. *viminea*. These comments emphasized that *M. l.* spp. *viminea* should be split into two species with the southern population designated as a new species, *M. stoneana,* based on Elvin and Sanders (2003).

Our Response: We are aware of the taxonomic change and split proposed by Elvin and Sanders (2003). The Service evaluated this information and concluded that, although the authors may be correct in their assessment of these populations, they did not provide adequate supportive evidence in their paper (Bartel and Wallace 2004). We have concluded that, until a more comprehensive taxonomic paper is published that examines all of the relevant taxa or the genus *Monardella* at a broader scale, we will continue to use the taxonomic identification of *Monardella linoides* spp. *viminea* as identified in the final listing rule.

(2) *Comment:* Three peer reviewers recommended that the Service analyze all canyons occupied by the species for inclusion as critical habitat, including the upper watershed portions of Unit 1 (Sycamore Canyon), Unit 2 (Sycamore, West Sycamore, San Clemente Canyon, Rose, Elanus, and Spring Canyons), and Unit 4 (San Clemente Canyon), regardless of Service policy on exclusions and exemptions.

Our Response: Section 4 of the Act requires that we designate critical habitat based on the best scientific or commercial information available. Therefore, all habitat known to be occupied and potentially occupied by the subspecies was analyzed to determine which areas may contain the features that are essential to the conservation of *Monardella linoides* spp. *viminea*. Habitat occupied at the time of listing may be included in critical habitat only if the essential features required by the species may require special management or protection. We do not include areas where existing management is sufficient to conserve the species.

Section 4(b)(2) of the Act directs us to consider the economic impact, national security impact, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such an area as critical habitat will result in the extinction of the species. As discussed in the proposed rule (70 FR 67956), we have determined that the benefits of excluding non-Federal lands covered by the San Diego Multiple

Species Conservation Plan (MSCP) outweigh the benefits of including non-Federal lands as critical habitat. We have included a more detailed analysis of the benefits of this habitat conservation plan (HCP) in this final rule under the Conservation Partnerships on Non-Federal Lands section below.

Additionally, section 4(a)(3) of the Act prohibits the Service from designating as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under Section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines, in writing, that such plan provides a benefit to the species for which critical habitat is proposed for designation. As discussed in the proposed rule, the lands at Marine Corps Air Station (MCAS) Miramar are covered by an approved INRMP that identifies sensitive natural resources, including *Monardella linoides* spp. *viminea,* and imposes conservation requirements and monitoring and management actions to protect the species. Therefore, the INRMP provides a benefit to *M. l.* spp. *viminea*. For more information, see the Relationship of Critical Habitat to Military Lands—Application of Section 4(a)(3) section below for a detailed discussion.

(3) *Comment:* Three peer reviewers commented on the lack of primary constituent elements (PCEs) applying to Unit 7 (Marron Valley), Unit 8 (Otay Lakes), and Unit 9 (Cedar Canyon).

Our Response: We appreciate the peer reviewers' comments regarding the ecology of Units 7, 8, and 9 (Marron Valley, Otay Lakes, and Cedar Canyon, respectively), and have amended the information in the PCEs as they relate to *Monardella linoides* spp. *viminea.* Specifically, we added boulders, stones and cracks of bedrock in rocky gorges to describe the growing substrate needed for growth, reproduction, and dispersal in the southern range of *M. l.* spp. *viminea*. For more information see the Primary Constituent Elements section below.

(4) *Comment:* One peer reviewer recommended the addition of ''unaltered ephemeral wash ecosystem with no development'' to the PCEs.

Our Response: PCE 2 includes ephemeral drainages as a habitat requirement for the subspecies. The importance of a natural hydrologic regime needed to maintain washes, sandbars, and rocky gorges where *Monardella linoides* ssp. *viminea* grows was also discussed in the Water and Physiological Requirements section of the proposed critical habitat rule (70 FR 67956) and in the final listing rule (63 FR 54938).

(5) *Comment:* One peer reviewer recommended the addition of ''continuous ephemeral wash habitat between plants in the upper-most and lower-most reaches'' to the list of PCEs.

Our Response: The ephemeral wash habitat between known occurrences is important for the conservation of *Monardella linoides* ssp. *viminea* and was one of the criteria used to identify proposed critical habitat for this species. The importance of this area was also discussed in the Primary Constituent Elements section of the proposed rule. We appreciate the comment and have clarified this point in this final rule. For more information, see the Criteria Used To Identify Critical Habitat section below.

(6) *Comment:* One peer reviewer recommended the addition of ''pollinators and sufficient habitat for pollinators to survive'' to the list of PCEs.

Our Response: As stated in the proposed critical habitat rule, we are unaware of any studies documenting specific pollinators of *Monardella linoides* ssp. *viminea*. We did not determine the area needed to maintain pollinators to be essential in the proposed or this final critical habitat designation.

(7) *Comment:* One peer reviewer commented that part of Unit 2 (San Clemente Canyon part of the Sycamore, West Sycamore, San Clemente Canyon, Rose, Elanus, and Spring Canyons), below I–15, might not be essential habitat because the canyon is now a perennial stream due to alterations in the hydrological system.

Our Response: According to recent survey information, the stream flowing through this canyon still functions as an ephemeral stream, although the ground water may be higher in this area than other locations along the stream. Occurrences in this part of Unit 2 were present at the last survey in 2002 (Kassebaum, 2006, p. 3).

(8) *Comment:* One peer reviewer recommended that the Service renegotiate with the plaintiffs to produce a new proposed designation of critical habitat that splits *Monardella linoides* spp. *viminea* into two species and have peer review occur earlier in the proposal stage.

Our Response: We believe we used the best available information in the development of the proposed critical habitat rule. With the exception of comments received regarding the taxonomic identification of the southern population of *Monardella linoides* spp. *viminea* (see our response to comment #1), we did not receive information during the comment periods to suggest that the information used in the development of the proposal was flawed. Since the Service continues to recognize the taxonomic identification of *M. l.* spp. *viminea* as presented in the final listing rule, the areas we determined to be essential to the conservation of the subspecies would have been the same as those outlined in the proposed critical habitat rule, regardless of the taxonomic issue.

(9) *Comment:* One peer reviewer commented that the Service should recheck data for Elanus Canyon, because the INRMP indicates that the subspecies does not occur in this canyon.

Our Response: We received no information to refute the INRMP. Comments received in response to publication of the proposed critical habitat rule from MCAS Miramar (Pharris 2006, p. 1) indicate that the information in their INRMP regarding occupied habitat on their land is up-to-date and correct, including information that the species occurs in Elanus Canyon.

(10) *Comment:* One peer reviewer provided additional information on the benefits of the MCAS Miramar's INRMP. Besides *Monardella linoides* spp. *viminea* being managed under a level II conservation effort, MCAS Miramar has developed a long-term monitoring plan including monitoring and a habitat enhancement project to be initiated in 2006.

Our Response: We appreciate the additional information regarding MCAS Miramar's ongoing management and monitoring actions for the subspecies and have included the new information in this final rule. For more information see the Relationship of Military Lands to Critical Habitat—Application of Section 4(a)(3) section below.

(11) *Comment:* One peer reviewer commented that the source reference for survey data on lands owned by the City of San Diego and under private ownership outlined in Table 1 of the proposed rule was incorrectly referenced to GIS data from MCAS Miramar.

Our Response: We appreciate the correction and have provided the corrected citations. Private lands in Sycamore Canyon (pre-2000), City of San Diego lands in the West Sycamore Canyon (pre-2000), and State lands in Otay Lakes (2000) had incorrect references to the GIS layer provided by MCAS (no date). The correct references are CNDDB (2005) for the private lands

in Sycamore Canyon (pre-2000), and GIS layer from the Service (2000) for the City of San Diego lands in the West Sycamore Canyon (pre-2000) and State lands in Otay Lakes (2000).

(12) *Comment:* One peer reviewer recommended that the Service review current California Department of Fish and Game Natural Diversity Database (CNDDB) and herbarium specimens at Rancho Santa Ana Botanic Garden, University of California (UC)-Riverside, UC-Irvine, and the San Diego Natural History Museum to identify any additional occurrences before finalizing critical habitat boundaries.

Our Response: We reviewed the most current CNDDB records (2006) and herbarium specimens from the four organizations listed above and found four new or expanded records for this species that were submitted to CNDDB after the publication of the proposed rule (70 FR 67956). These records were recorded for *Monardella stoneana* (occurrence numbers 1, 2, 7, and 9), which we consider as *Monardella linoides* spp. *viminea* (see response to comment #1). Each of the four new occurrences are within areas identified as habitat essential for the conservation of *M. l.* spp. *viminea* in the proposed rule. Therefore, this new information does not change the final critical habitat designation.

(13) *Comment:* One peer reviewer commented that the final rule should clearly state that the consequence of the *Gifford Pinchot* decision reflects the Director of the Service's guidance and that this guidance should be spelled out clearly.

Our Response: The Service has provided clarification of the consequence of the *Gifford Pinchot* decision in this final rule. For more information, see Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to *Monardella linoides* spp. *viminea* and Its Critical Habitat section below.

(14) *Comment:* One peer reviewer recommended deleting paragraphs that describe section 3(5)(A) of the Act since that section is not applicable to the rule.

Our Response: We have not included the paragraphs describing section 3(5)(A) of the Act in this final rule because no habitat was determined not to meet the definition of critical habitat under section 3(5)(A) of the Act.

(15) *Comment:* One peer reviewer recommended that the explanation of the new Section 4(a)(3)(b) should quote the statute instead of paraphrasing, and should explain what constitutes a ''benefit'' under the law or Service guidelines.

Our Response: In this final rule, we quote the statute and provide clarification of what constitutes a benefit under section 4(a)(3)(b) (see section titled Relationship of Military Lands to Critical Habitat—Application of Section 4(a)(3)). As stated below, MCAS Miramar's INRMP will benefit the species by providing species management under a level II conservation effort that includes avoiding or minimizing the effect of planning action on endangered species and wetlands. In addition to the station-wide population census, MCAS Miramar has a long-term monitoring plan in place, and has planned a habitat enhancement project to be implemented in 2006.

(16) *Comment:* One peer reviewer commented that the Service has not made a clear statement about the determination of habitat being exempted on MCAS Miramar. The Service has shown a benefit, because the core of the northern population is located on the base, but the Service should show that *Monardella linoides* spp. *viminea* is adequately protected.

Our Response: We believe the level II conservation effort adequately protects the subspecies. Additionally, the MCAS Miramar conducts a station-wide population census under a long-term monitoring plan and has initiated a habitat enhancement project that will benefit the species. Refer to section entitled Relationship of Military Lands to Critical Habitat—Application of Section 4(a)(3) for more information on this exemption.

(17) *Comment:* One peer reviewer recommended adding a summary table that shows acres of occupied habitat broken down by acres protected, planned for protection, and acres not targeted for protection.

Our Response: A summary table outlining this information is provided in Table 1 of the draft economic analysis (DEA) of the proposed critical habitat designation for willowy monardella (CRA International 2006). In this final rule, we have provided acreages for occupied areas exempted from proposed critical habitat and excluded from final critical habitat based on benefits provided by MCAS Miramar's IRNMP, the San Diego County MSCP, and the Bureau of Land Management's (BLM) Otay Mountain wilderness designation. For more information, see Relationship of Military Lands to Critical Habitat—Application of Section 4(a)(3) section below for a detailed discussion.

(18) *Comment:* One peer reviewer commented that our conclusion that ''any management plan will almost always provide more benefit than the critical habitat designation'' is not reasonable.

Our Response: As stated in the Supplementary Information section of the proposed critical habitat rule, section 7(a)(2) of the Act limits adverse effects to the species either through jeopardy or destruction or adverse modification of its habitat where there is a Federal nexus. It does not affect purely State or private actions on State or private land, nor does it require positive habitat improvements or enhancement of the species' status. Thus, the Service believes that any management plan that has enhancement or recovery as the management standard will almost always provide more benefit than the designation of critical habitat.

(19) *Comment:* One peer reviewer commented that the Service and BLM should work together to prepare a fire suppression plan for the wilderness area (Otay Mountain) that would minimize the likelihood of fire suppression activities destroying plants. The peer reviewer also recommended adding a discussion of how designation of critical habitat could help accomplish the development of such a plan.

Our Response: The Service agrees that development of a fire suppression plan could minimize impacts to *Monardella linoides* spp. *viminea* plants and other sensitive species and their habitats, and looks forward to working with BLM to prepare a fire suppression plan for the wilderness area (Otay Mountain). Because occupied habitat for *M. l.* spp. *viminea* on Otay Mountain is well known to BLM, designation of critical habitat would not appreciably improve identification of the species and its habitat. Moreover, the designation of critical habitat would not impose any requirement on BLM to develop a fire suppression plan. The Service will carefully consider the impacts of fire suppression plans on the species and its habitat on Otay Mountain in future consultations with BLM under section 7 of the Act.

Public Comments Related to Distribution and Status

(20) *Comment:* One commenter indicated that *Monardella linoides* ssp. *viminea* still occurs in Carroll Canyon, because the Environmental Impact Report for the Carroll Canyon Business Park states that not all plants were to be removed. The commenter also thought that harvested plants from Carroll Canyon were going to be planted back to Rose Canyon in addition to other options, but not at Lopez Canyon because that canyon already had its own source of local plants, grown from seed, which are being re-established.

Our Response: The Service's biological opinion for the Carroll Canyon Business Park states that all plants, estimated to total 122 in number, would be removed from Carroll Canyon, and that these plants should be considered for transplantation to Lopez Canyon (USFWS 2003, pp. 7 and 8). Rose Canyon was not part of the proposed action for the Carroll Canyon Business Park consultation. The final sites for transplantation will depend on the outcome of genetic testing currently underway (USFWS 2003, p. 7).

(21) *Comment:* One commenter indicated that Murphy Canyon may still have *Monardella linoides* ssp. *viminea* outside of MCAS Miramar.

Our Response: As stated in the proposed rule, we are aware of only two documented occurrences of the subspecies in Murphy Canyon, both located on MCAS Miramar (CNDDB 1997, occurrence numbers 15 and 30; CNDDB 2001, occurrence numbers 15 and 30). However, the subspecies has not been documented there since 2002, and is believed to have been extirpated (Kassebaum 2005).

(22) *Comment:* One commenter indicated that Cemetery Canyon contains suitable habitat, and it should be designated as unoccupied critical habitat.

Our Response: Monardella linoides spp. *viminea* is believed to have been extirpated from Cemetery Canyon prior to the species' listing in 1998 (CNDDB 2001, occurrence number 3; Elvin and Sanders 2003, p. 428). This site is documented as having an altered drainage pattern (CNDDB 2001), and is, therefore, unlikely to contain the PCEs required by this species. Thus, Cemetery Canyon is not considered to have habitat with features essential to the conservation of this subspecies. Additionally, we feel there is sufficient habitat designated for critical habitat without designating Cemetery Canyon; the habitat of all known populations is already protected or will be designated as critical habitat.

(23) *Comment:* One commenter suggested that overgrazing, not fire, may have caused the loss of *Monardella linoides* ssp. *viminea* in the vicinity of Otay Lake.

Our Response: The statement in the proposed critical habitat rule regarding the fire at Otay Lake was intended to demonstrate that, although severe fire could be detrimental to the plant, *Monardella linoides* spp. *viminea* is adapted to fire and survey observations support this (City 2004). We do not have any information to suggest that overgrazing may have caused the loss of the subspecies in the vicinity of Otay Lake.

(24) *Comment:* One commenter suggested that hydrology changes and lack of weed management caused the decline of *Monardella linoides* spp. *viminea* observed in Sycamore Canyon, rather than drought as mentioned in the proposed rule.

Our Response: The statement in the proposed critical habitat rule that drought may have contributed to the subspecies' decline in Sycamore Canyon is based on survey reports written by the City of San Diego (City). According to these reports, observations from the yearly surveys suggest that rainfall patterns have influenced the population at Sycamore Canyon (City 2002, p. 3; City 2003, p. 3; City 2004, p. 3). Observations included other sites, but the greatest numbers of dormant or dead plants were found at the Sycamore Canyon survey site in 2002. While changes in hydrology or lack of weed management may have affected the species in Sycamore Canyon, the survey reports did not contain any information relating the subspecies' decline to these potential impacts.

(25) *Comment:* Three commenters suggested that *Monardella linoides* spp. *viminea* should be split into two species with the southern population being designated as a new species, based on Elvin and Sanders (2003).

Our Response: Please refer to our response to comment # 1.

Public Comments Related to Protection Provided by Critical Habitat

(26) *Comment:* One commenter disagreed with the statement that designating critical habitat provides little additional protection to species, based on an article in *BioScience* (Taylor *et al.* 2005, pp. 360–367) that indicates otherwise.

Our Response: As discussed in the Supplementary Information section and other sections of this rule, we believe that, in most cases, various conservation mechanisms provide greater incentives and conservation benefits than does the designation of critical habitat. These include the section 4 recovery planning process, section 6 funding to the States, and cooperative programs with private and public landholders and Tribal nations. Critical habitat designation can provide an additional level of species protection by focusing specifically on the impacts to habitat loss, and can address cumulative effects of habitat loss in certain circumstances, but this protection can only be provided if there is a Federal nexus for agencies that are planning actions that may impact the designated critical habitat. It is our experience that landowners generally react negatively to having their property designated as critical habitat, and they are less inclined to cooperate in the conservation of the species in question as a consequence. Conversely, cooperative conservation efforts in the absence of critical habitat often provide greater conservation benefits to the species.

Comments Related to Exclusions and Exemptions From Critical Habitat

(27) *Comment:* One commenter stated that critical habitat should be designated on all extant populations regardless of an existing HCP or INRMP. Additionally, the commenter stated that INRMPs do not provide adequate protection since political pressure can allow impacts that are not anticipated.

Our Response: Refer to our responses to comments #2, #10, and #15. Our experience under the MCAS Miramar INRMP is that the Marine Corps has demonstrated a continuing commitment to implement the plan.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for *Monardella linoides* spp. *viminea,* we reviewed and considered comments from peer reviewers and the public on the proposed designation of critical habitat published on November 9, 2005 (70 FR 67956), as well as public comments on the DEA published on June 1, 2006 (71 FR 31137). As a result of comments received on the proposed rule and the DEA, and a reevaluation of the proposed critical habitat boundaries, we made changes to our proposed designation, as follows:

(1) The PCEs were modified to include the range in variability of habitat for all known populations of *Monardella linoides* spp. *viminea.* The modifications in this final rule include adding a description of habitat with essential features in the southern portion of the range of *M. l.* spp. *viminea* to the sections entitled Space for Individual and Population Growth and Normal Behavior, Water and Physiological Requirements, and Primary Constituents for *Monardella linoides* spp. *viminea.* PCE 1 was revised to include boulders and stones and cracks of bedrock in rocky gorges to describe the growing substrate needed for growth, reproduction, and dispersal of *M. l.* spp. *viminea* in the southern portion of its range. PCE 2 was revised to include rocky gorges to describe the drainages needed to maintain the necessary dynamic habitat processes for the southern range of *M. l.* spp. *viminea.* PCE 3 was revised to include the

chaparral habitat type to describe the adjacent habitat that allows for adequate sunlight for nutrient uptake for photosynthesis in the southern range of *M. l.* spp. *viminea.*

(2) We re-evaluated areas determined to contain habitat with essential features in Unit 1 (Sycamore Canyon), and removed areas that did not contain the PCEs for the subspecies. These revisions resulted in the removal of the 1 ac of land owned by the Padre Dam Municipal Water District, and the removal of 42 ac (17 ha) of private land, reducing the final critical habitat acreage for Unit 1 from 115 ac (47 ha) to 73 ac (30 ha).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. Conservation is a process which contributes to improving the status of the species. Individual actions may still be considered conservation even though in and of themselves they do not remove the species' need for protection under the Act.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Areas outside of the geographic areas occupied by the species at the time of listing may be included in critical habitat only if we determine that such areas are essential for the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically would be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical or biological features (primary constituent elements, PCEs) that are essential to the conservation of

the species, and within areas occupied by the species at the time of listing that may require special management considerations or protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The known primary constituent elements required for *Monardella linoides* spp. *viminea* are derived from the biological needs of the *M. l.* spp. *viminea* as described below and in the proposed critical habitat designation published in the **Federal Register** on November 9, 2005 (70 FR 67956).

Primary Constituent Elements for Monardella linoides spp. viminea

Under our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the *Monardella linoides* spp. *viminea.* All areas considered for designation as critical habitat for *M. l.* spp. *viminea* were within the geographical areas occupied by the species at the time it was listed and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the subspecies and the requirements of the habitat to sustain the essential life history functions of the subspecies, we have determined that the *Monardella linoides* spp. *viminea*'s PCEs are:

(1) Coarse, rocky, sandy alluvium on benches, stabilized sandbars, channel banks, sandy washes, and/or among boulders and stones, and/or in cracks of bedrock in rocky gorges along and within the ephemeral drainages that provide space for growth, reproduction, and dispersal;

(2) Ephemeral drainages where water flows only after peak seasonal rains and major flooding events that periodically scour riparian vegetation and redistribute alluvial material by eroding and developing stream channels, benches, sandbars, and rocky gorges, thus maintaining the necessary dynamic habitat processes for *Monardella linoides* spp. *viminea;* and

(3) Coastal sage, riparian scrub, or chaparral with an open and semi-open canopy and little or no herbaceous understory situated along ephemeral drainages and adjacent floodplains to ensure that *Monardella linoides* spp. *viminea* receives adequate sunlight for nutrient uptake for photosynthesis.

This designation is designed for the conservation of those areas containing PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Monardella linoides* spp. *viminea.* This includes data in the final rule listing the species as endangered (published in the **Federal Register** on October 13, 1998 (63 FR 54938)), reports submitted during section 7 consultations, research published in peer-reviewed articles and agency reports, and regional Geographic Information System (GIS) coverages. We have also reviewed available information that pertains to the habitat requirements of the subspecies. The material included data in reports submitted during section 7 consultations; research published in peer-reviewed articles and agency reports; and regional Geographic Information System (GIS) coverages. We designated no areas outside the geographical area occupied by the species at the time of listing.

We used the following criteria to identify habitat that contains the features essential to *Monardella linoides* spp. *viminea:* (1) Areas known to be occupied at the time of listing or known to be currently occupied; and (2) ephemeral washes and drainage areas associated with documented occurrences.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the *Monardella linoides* spp. *viminea* within the boundaries of critical habitat. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or adjacent critical habitat.

We are designating critical habitat in areas that we determined were occupied at the time of listing, and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. Lands were designated based on sufficient PCEs being present to support life processes of *Monardella linoides* spp. *viminea.* Some lands contain all PCEs and support multiple life processes. Some lands contain only a portion of the PCEs necessary to support *M. l.* spp. *viminea's* particular use of that habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed animal species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Often HCPs also incorporate conservation measures to benefit listed plant species although take of plant species is not prohibited under the Act. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat where we determine that the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing that contain one or more PCEs may require special management considerations or protections. As stated in the final listing rule (63 FR 54938), threats to *Monardella linoides* ssp. *viminea* include habitat alteration resulting from

urban development, sand and gravel mining, human activities (*i.e.*, off-road vehicle (ORV) use and trampling), and invasion of nonnative species. These activities could impact the PCEs determined to be essential for conservation of *M. l.* ssp. *viminea,* and thus require special management considerations or protections.

Urban development and sand and gravel mining upstream of *Monardella linoides* ssp. *viminea* occurrences may alter the hydrologic regime needed to maintain the habitat characteristics required by *M. l.* ssp. *viminea.* Conversion of intermittent water flows to persistent water flows may increase scour and erode terraces and benches, washing away rooted plants and reducing available habitat (PCEs 1 and 2). Kelly and Burrascano (2006, p. 4) attribute the disappearance of terraces in Lopez Canyon to increased erosion associated with urban runoff from upstream development. The use of pesticides or herbicides in residential and commercially landscaped areas within the watershed may impact water quality if used upslope or above a stream (PCE 2). Water diversion, such as water removal from the drainage system occupied by the subspecies, could reduce the amount of water flowing downstream following seasonal flooding events. Such reductions in downstream water flow may result in decreased deposition of alluvial material and a subsequent reduction in the amount of available habitat (PCEs 1 and 2). Disruption of the hydrologic cycle could also result in a decrease in the number of seeds that could have been transported downstream during seasonal flooding events, thereby fragmenting populations (PCE 2). Special management may be required to reduce impacts to *M. l.* ssp. *viminea* habitat resulting from alterations in the hydrologic regime associated with development in the local watershed. Such management may include bank replacement or stabilization to maintain the substrate, restoration of intermittent water flows, erosion and runoff control measures, and prohibitions against grading during the rainy season.

Alteration of the hydrologic regime can also lead to an increase in native and nonnative plant species throughout riparian areas where *Monardella linoides* ssp. *viminea* occurs. Increased water flow associated with urban runoff has led to dense stands of riparian vegetation in the upper reaches of Lopez Canyon where *M. l.* ssp. *viminea* once occurred (Kelly and Burrascano 2006, p. 39). Increases in riparian vegetation within ephemeral drainages may also be responsible for losses of *M. l.* ssp. *viminea* in lower San Clemente Canyon. Conversely, decreased water availability may result in conversion of habitat from mesic to xeric, in which more drought tolerant plants could expand into *M. l.* ssp. *viminea* habitat and create unnaturally high canopy cover or dense riparian vegetation, rendering the habitat unsuitable for *M. l.* ssp. *viminea.* Invasive species control may be required to maintain an open or semi-open canopy of coastal sage and riparian scrub with minimal herbaceous understory, as is required for *M. l.* ssp. *viminea* (PCE 3) to persist.

Human activities (*e.g.*, ORV activities and trampling) along streams can change the character of the riparian area and associated vegetation in ways that make portions of the riparian corridor less suitable for *Monardella linoides* ssp. *viminea* habitat. For example, heavy trampling may erode or denude stream banks and washes, thereby reducing or eliminating available habitat (PCE 1). Special management (*i.e.*, bank replacement or stabilization) and prohibitions against ORV use during the rainy season may be required to maintain the substrate and reduce impacts to *M. l.* ssp. *viminea* habitat resulting from human use within the local watershed.

Critical Habitat Designation

The areas described below constitute our best assessment of areas occupied at the time of listing that meet the definition of critical habitat. Table 1 outlines the area determined to meet the definition of critical habitat, including the area excluded from the final critical habitat designation, and the one area designated as final critical habitat for *Monardella linoides* spp. *viminea.*

TABLE 1.—AMOUNT OF LAND DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT, AMOUNT OF LAND EXCLUDED FROM THE FINAL CRITICAL HABITAT DESIGNATION, AND AMOUNT OF LAND DESIGNATED CRITICAL HABITAT FOR MONARDELLA LINOIDES SPP. VIMINEA

Geographic area	Land meeting the definition of critical habitat	Land excluded or exempted from critical habitat	Critical habitat
Unit 1 Sycamore Canyon	73 ac (30 ha)	0 ac (0 ha)	73 ac (30 ha)
Unit 2 MCAS Miramar	1,863 ac (754 ha)	1,863 ac (754 ha)*	0 ac (0 ha)
Unit 3 Sycamore, West Sycamore and Spring Canyons	207 ac (84 ha)	207 ac (84 ha) [1]	0 ac (0 ha)
Unit 4 San Clemente Canyon	9 ac (4 ha)	9 ac (4 ha) [1]	0 ac (0 ha)
Unit 5 Elanus Canyon	13 ac (5 ha)	13 ac (5 ha) [1]	0 ac (0 ha)
Unit 6 Lopez Canyon	77 ac (31 ha)	77 ac (31 ha) [1]	0 ac (0 ha)
Unit 7 Marron Valley	42 ac (17 ha)	42 ac (17 ha) [1]	0 ac (0 ha)
Unit 8 Otay Lakes	146 ac (59 ha)	146 ac (59 ha) [1]	0 ac (0 ha)
Unit 9 Otay Mountain	67 ac (27 ha)	67 ac (27 ha) [2]	0 ac (0 ha)
Totals	2,497 ac (1,011 ha)	2,424 ac (981 ha)	73 ac (30 ha)

*Exempted from critical habitat under section 4(a)(3) of the Act in the proposed rule (70 FR 67956).
[1] Excluded from final critical habitat under section 4(b)(2) based on the San Diego MSCP.
[2] Excluded from final critical habitat under section 4(b)(2) based on the BLM's Wilderness designation and Memorandum of Understanding (MOU) with the MSCP.

Below, we present a brief description of the area included in the final designation and reasons why this area meets the definition of critical habitat for *Monardella linoides* spp. *viminea.*

Unit 1: Sycamore Canyon

Unit 1 consists of 73 ac (30 ha) in the Sycamore Canyon area and supports one of the largest occurrences of *Monardella linoides* ssp. *viminea* (CNDDB 2001). This unit was known to be occupied at the time of listing and is currently known to be occupied. Unit 1 contains all of the PCEs identified for *M. l.* ssp. *viminea* and represents 1 of the 10 specific areas in San Diego County that support this species and 1 of only 15

occurrences of *M. l.* ssp. *viminea* (see proposed critical habitat designation for more information on species distribution; 70 FR 67956). Given the restricted range and low numbers of occurrences, this unit is necessary to minimize the risk of extinction from random events and urban development. In Unit 1, habitat with features essential to the conservation of *Monardella linoides* ssp. *viminea* may require special management to minimize impacts by nonnative invasive weeds; fire; indirect and direct effects of development, including altered hydrology; and recreational activities. The majority of lands within Unit 1 are in an area proposed to be set aside as an on-site preserve to benefit *M. l.* ssp. *viminea* conservation in this section of Sycamore Canyon.

All of Unit 1 is located on private lands within the City of Santee. These private lands are the site of the being proposed for the Fanita Ranch development project. Fanita Ranch is currently developing an HCP that will serve as the foundation for the City of Santee's subarea plan under the MSCP. As stated in the proposed critical habitat rule (70 FR 67956), we would have considered excluding this area from the final designation if we had received a proposed or approved HCP that provides benefits for *Monardella linoides* ssp. *viminea,* or had entered into an approved conservation agreement with Fanita Ranch that provides assurances of adequate conservation measures to be implemented by Fanita Ranch to protect and manage for the species on their lands. We did not receive an HCP or enter into a conservation agreement, and, thus, we are not excluding lands owned by Fanita Ranch from this final designation of critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in certain circumstances, including where a new species is listed or critical habitat is subsequently designated that may be affected, if the Federal agency has retained discretionary involvement or control

over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Monardella linoides* spp. *viminea* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Monardella linoides spp. viminea and Its Critical Habitat

Jeopardy Standard

Prior to designation of critical habitat, the Service has applied an analytical framework for M*onardella linoides* spp. *viminea* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the *M. l.* spp. *viminea.* The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Monardella linoides* spp. *viminea* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004, memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of *M. l.* spp. *viminea* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Monardella linoides* spp. *viminea* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the *M. l.* spp. *viminea* include, but are not limited to:

(1) Actions that would significantly alter the natural hydrologic pattern of intermittent flows and peak seasonal flooding necessary to support *Monardella linoides* ssp. *viminea.* These activities could include Federal authorization for urban and agricultural development in the watershed that changes the amount, timing, frequency, and magnitude of stream flows. Increased and/or more frequent water flows associated with urban runoff could lead to dense stands of riparian vegetation that may out-compete *M. l.* ssp. *viminea.* Changes in the magnitude of seasonal flooding may increase scouring and erosion of terraces, banks, and benches and thereby reduce the quality and availability of suitable soils and habitat. Conversely, reduced water flow could result in more xeric conditions that would limit plant growth and reproduction and thereby allow more drought-tolerant plants to compete with *M. l.* ssp. *viminea.*

(2) Actions associated with sand and gravel mining, stream channelization, flood channel management, highway construction, and dredging that would remove alluvium from stream channels or change the physical structure of the stream channel by altering floodplains, benches, sand bars, and stream channels. Federal authorization for projects that physically alter the stream channel may remove suitable alluvium from stream channels and result in the loss and degradation of habitat for *Monardella linoides* ssp. *viminea.*

We consider the single unit designated as critical habitat, as well as those that have been excluded or not included, to contain features essential to the conservation of the *Monardella linoides* spp. *viminea.* All units are within the geographic range of the species and all were occupied by the species at the time we proposed critical habitat (based on observations made within the last 6 years). Federal agencies already consult with us on activities in areas currently occupied by *M. l.* spp. *viminea*, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *M. l.* spp. *viminea*.

Relationship of Critical Habitat to Military Lands—Application of Section 4(a)(3)

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife, and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not

designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. The INRMP developed by MCAS Miramar, the only military installation located within the range of the critical habitat designation for *Monardella linoides* spp. *viminea*, was analyzed for non-inclusion under the authority of 4(a)(3) of the Act.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in MCAS Miramar's INRMP will provide benefits to *Monardella linoides* spp. *viminea* occurring in habitats within or adjacent to MCAS Miramar. Approximately 1,863 ac (754 ha) of essential habitat was exempted from this critical habitat designation under section 4(a)(3) of the Act.

Under MCAS Miramar's INRMP, the species is managed under a level II conservation effort that includes avoiding or minimizing the effect of planning action on endangered species and wetlands. In addition to the station-wide population census, MCAS Miramar has a long-term monitoring plan in place and has a habitat enhancement project to benefit *Monardella linoides* spp. *viminea* to be implemented in 2006.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90 to 100 percent of their known occurrences restricted to Federal lands), and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, CCAs, CCAAs, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (e.g., reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species' recovery and provide a superior level of conservation than critical habitat alone. The Department's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant Program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (e.g., Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species' conservation by extending species' protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

In our critical habitat designations, we use the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that we propose to designate as critical habitat. We have determined that non-federal lands within the plan area of the City of San Diego subarea plan and the County of San Diego subarea plan, both of which are approved HCPs tiered to the San Diego Multiple Species Conservation Program, should be excluded under section 4(b)(2) of the Act. A detailed analysis of our use of these provisions is provided in the following paragraphs.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any reasonable and prudent measures or terms and conditions. Mandatory measures and terms and conditions to implement such measures are only specified when the proposed action would result in incidental take of a listed animal species. Reasonable and prudent alternatives to the proposed Federal action would only be suggested when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service conflated the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affect currently-occupied critical habitat. The Court ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and not to provide conservation or long-term benefits to areas affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Monardella linoides* spp. *viminea*. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas are identified in this notice as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for *Monardella linoides* spp. *viminea* is already well established among State and local governments and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. This is particularly true in the case of plants, such as *Monardella linoides* spp. *viminea.* Although plants are not subject to the prohibition on take in section 9 of the Act, the Service encourages applicants to include them as covered species in HCPs by incorporating measures to protect them and their habitat under the plans. If as a result of the Federal nexus created by such inclusion, plants are subjected to increased numbers of consultations under section 7 due to designation of critical habitat, applicants will likely be discouraged from incorporating conservation measures for plants in their HCPs. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

Many conservation or management plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, the Service's decision to approve an HCP or NCCP/HCP application is subject to the consultation requirement. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)—Exclusion Under Section 4(b)(2) of the Act

San Diego Multiple Species Conservation Program (MSCP)

Below, we first provide some general background information on the San Diego MSCP, followed by an analysis under section 4(b)(2) of the Act of the benefits of including San Diego MSCP lands within the critical habitat designation, an analysis of the benefits of excluding these lands, and an analysis of why we believe the benefits of exclusion are greater than those of inclusion. Finally, we provide a determination that exclusion of these lands would not result in extinction of *M. l.* ssp. *viminea.*

We are excluding from the final critical habitat designation approximately 494 ac (200 ha) of non-Federal lands within the City of San Diego subarea plan and the County of San Diego subarea plan of the San Diego MSCP under section 4(b)(2) of the Act. *M. l.* ssp. *viminea* is a covered species under these two approved and legally operative subarea plans. These HCPs provide special management and protection for the physical and biological features essential for the conservation of *M. l.* ssp. *viminea* that exceed the level of regulatory control that would be afforded this subspecies by the designation of critical habitat. We believe that the benefits of excluding essential habitat covered by these HCPs from the critical habitat designation would outweigh the benefits of including them as critical habitat, and that the exclusion under consideration would not result in the extinction of *M. l.* ssp. *viminea.*

In southwestern San Diego County, the MSCP effort encompasses more than 582,000 ac (236,000 ha) and anticipates the participation of 12 jurisdictions. Under the broad umbrella of the MSCP, each of the 12 participating jurisdictions prepares a subarea plan that implements the goals of the MSCP within that particular jurisdiction. Three of the 12 jurisdictions cover lands that support *M. l.* ssp. *viminea.* Two of the jurisdictions, the County of San Diego and the City of San Diego, have completed subarea plans. The third jurisdiction, the City of Santee, is currently preparing its subarea plan. We conduct a consultation on each subarea plan and associated permit under section 7 of the Act to ensure they are not likely to result in jeopardy, or adversely modify or destroy the designated critical habitat, of any covered species. We also review the plans under Section 10 of the Act to ensure they meet the criteria for issuance of an incidental take permit and are consistent with the terms and goals of the MSCP. We completed these analyses for the City of San Diego and County of San Diego subarea plans prior to issuing incidental take permits to those jurisdictions.

The regional MSCP is also a regional subarea plan under the State of California's Natural Communities Conservation Plan (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). Over the 50-year term of the City and County permits, the MSCP provides for the establishment of approximately 171,000 ac (69,573 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego) to benefit the 85 federally listed and sensitive species, including *M. l.* ssp. *viminea*, covered under the plan. Private lands within the MHPA and

PAMA lands are subject to special restrictions on development and, as they are committed to the preserve, must be legally protected and permanently managed to conserve the covered species. Public lands owned by the City and County and by the State of California and Federal government that are identified for conservation under the MSCP must also be protected and permanently managed to protect the covered species. The MSCP requires the City and County to develop broad framework and site-specific management plans, subject to the review and approval of the Service and CDFG, to guide the management of all preserve lands under City and County control. The plans incorporate requirements to monitor and adaptively manage *M. l.* ssp. *viminea* habitats over time. Under the MSCP, the State and Federal governments have also committed to provide similar management for their preserve lands.

As discussed above, each take authorization holder prepares a framework management plan as a condition of its implementing agreement. The framework management plan provides general direction for all preserve management issues within the subarea plan's boundaries. Area-specific management directives are developed for managing lands that are conserved as part of the reserves. The framework and area-specific management plans are comprehensive and address a broad range of management needs at the preserve and species levels. These plans include the following: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor/interpretive and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse age classes; (17) use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (Final MSCP Plan 1998). These management measures benefit *Monardella linoides.* ssp. *viminea* and reduce the threats to this species. The MSCP also provides for a biological monitoring program, and *M. l.* ssp. *viminea* is identified as a first priority plant species for field monitoring (Final MSCP Plan 1998). Species prioritized for field monitoring (such as *M. l.* ssp. *viminea*) face the greatest threats to their viability, and detailed field monitoring assesses both immediate threats and long-term population trends. The City of San Diego monitors *M. l.* ssp. *viminea* on an annual basis (City of San Diego 2000, pp. 1–11; 2001, pp. 1–6; 2002, pp. 1–7; 2003, pp. 1–6; and 2004, pp. 1–9). Moreover, the rare plant monitoring plan under the MSCP is being updated with the assistance of the U.S. Geological Survey Biological Research Division and a three-member independent scientific advisory group.

In addition to the restrictions on development and conservation obligations that apply within the MHPA and PAMA, the MSCP incorporates processes to protect sensitive species of limited distribution, including *Monardella linoides* ssp. *viminea*, within the plan area. Under the City of San Diego's subarea plan, impacts to narrow endemic species inside the MHPA will be avoided and outside the MHPA will be protected as appropriate by (1) avoidance, (2) management, (3) enhancement, or (4) transplantation to areas identified for preservation. Under the County of San Diego's subarea plan, narrow endemic plants, including *M. l.* ssp. *viminea*, would be conserved under their Biological Mitigation Ordinance using a process that (1) requires avoidance to the maximum extent feasible, (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible, and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property. Thus, these processes to protect narrow endemic plants, including *M. l.* ssp. *viminea*, whether located on lands targeted for preserve status within the MHPA and PAMA or located outside of those areas, ensure these limited distribution species are protected wherever they occur. Considered as a whole, the protection and management of *M. l.* ssp. *viminea* provided under the City and County subarea plans will ensure the permanent conservation of this species and its habitat within the areas covered by the plans.

We are therefore excluding from critical habitat a portion of Sycamore Canyon and all of West Sycamore and Spring Canyons (Unit 3 in Table 1), San Clemente Canyon (Unit 4 in Table 1), Elanus Canyon (Unit 5 in Table 1), Lopez Canyon (Unit 6 in Table 1), Marron Valley (Unit 7 in Table 1), and Otay Lakes (Unit 8 in Table 1) under section 4(b)(2) of the Act because they are covered by the City and the County subarea plans. All of the populations of *Monardella linoides* ssp. *viminea* anticipated to be conserved by the MSCP under the City of San Diego and County of San Diego subarea plans occur in these geographical areas. These populations will be conserved and will be managed and monitored pursuant to or consistent with the MSCP. The framework and area-specific management plans (described above) provide management and monitoring of *M. l.* ssp. *viminea.*

The portions of Sycamore Canyon (Units 3A, 3B, and 3C) that we are excluding from critical habitat are under either city and county ownership and are within the reserve design of the MHPA and PAMA under the city's and county's subarea plans. The majority of the county-owned PAMA lands in Sycamore Canyon has already been conserved and is being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, consistent with the framework and area-specific management plans described above. The remaining county-owned lands and city-owned lands in Sycamore Canyon have not yet been formally committed to the preserve but will continue to be protected through the city's and county's subarea plans' processes to protect narrow endemic species (described above) until these lands become part of the preserve.

Lands in West Sycamore Canyon (Unit 3D) that we are excluding from critical habitat are under city ownership and are within the reserve design of the MHPA. These lands have been already conserved and are being managed for the conservation of covered species consistent with the framework and area-specific management plans described above, including *Monardella linoides* ssp. *viminea* under the city's subarea plan.

Lands in Spring Canyon (Unit 3E) that we are excluding from critical habitat are under private ownership but are within the reserve design of the MHPA and are targeted for preservation under the city's subarea plan. The private lands in Spring Canyon have not yet been formally committed to the preserve, but are within an area that calls for 100 percent conservation of *Monardella linoides* ssp. *viminea.* The City of San Diego has recently acquired private lands in Spring Canyon through the MSCP that will benefit *M. l.* ssp. *viminea.* Populations of *M. l.* ssp. *viminea* on the remaining private lands will continue to be protected through the city's subarea plan process described above to protect narrow endemic species until these private lands become part of the preserve.

Lands in San Clemente Canyon (Unit 4) that we are excluding from critical habitat are under city ownership. The

majority of these lands is within the reserve design of the MHPA, has been committed to the preserve, and is being managed for the conservation of covered species consistent with the framework and area-specific management plans described above, including *Monardella linoides* ssp. *viminea*, under the city's MSCP subarea plan. A small portion of these lands is on city-owned lands that are not within the MHPA. Populations of *M. l.* ssp. *viminea* on the remaining city-owned lands will continue to be protected through the city's subarea plan process described above to protect narrow endemic species.

Lands in Elanus Canyon (Unit 5) that we are excluding from critical habitat are under city ownership and are within the reserve design of the MHPA. They are committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the city's subarea plan.

Lands in Lopez Canyon (Unit 6) that we are excluding from critical habitat are under city ownership and are within the reserve design of the MHPA. The lands are committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the city's subarea plan.

Lands in Marron Valley (Unit 7) that we are excluding from critical habitat are under city and State ownership and are within the reserve design of the MHPA. The city-owned lands have been committed to the preserve and are being managed for the conservation of covered species, including *Monardella linoides* ssp. *viminea*, under the city's subarea plan. State Lands are being managed pursuant to commitments made by the State of California to implement the MSCP on State-owned lands.

Lands in Otay Lakes (Unit 8) that we are excluding from critical habitat are under City of San Diego, City of Chula Vista, State of California, and private ownership. These lands are also within the MHPA and PAMA, and are either already committed to the preserve or are targeted for 100 percent preservation under the city's and county's subarea plans. The lands owned by the City of Chula Vista were formerly owned by Otay Ranch and were conveyed to the city as mitigation for the Otay Ranch development. These lands are conserved within the County of San Diego's subarea plan. The preserve lands are being managed for the conservation of the covered species, including *Monardella linoides* ssp. *viminea*, under the city's and county's subarea plans and pursuant to commitments made by the State of California to implement the MSCP on State-owned lands. Those lands not yet formally committed to the preserve will continue to be protected through the county's subarea plan process described above to protect narrow endemic species until these lands become part of the preserve.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We expect the MSCP to provide substantial protection and management of the PCEs within essential habitat for *Monardella linoides* ssp. *viminea* on MSCP conservation lands. We expect the MSCP to provide active management for *M. l.* ssp. *viminea* on non-Federal lands in contrast to designation of critical habitat, which would only preclude their destruction or adverse modification. Moreover, the educational benefits that would result from critical habitat designation, including informing the public of areas that are necessary for the long-term conservation of the subspecies, are already in place as a result both of material provided on our website and through public notice-and-comment procedures required to establish the MSCP and specific subarea plans.

In contrast to the lack of an appreciable benefit of including these lands as critical habitat, the exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSCP. As discussed above, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing an implementing complex regional HCPs, such as the MSCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the MSCP and such minor benefit is outweighed by the benefits of maintaining partnerships with local jurisdictions and private landowners with lands covered by the MSCP.

We have reviewed and evaluated the benefits of inclusion and the benefits of exclusion of lands as critical habitat for *Monardella linoides* ssp. *viminea.* Based on this evaluation, we find that the benefits of excluding lands in the planning area for the MSCP outweigh the benefits of including those lands as critical habitat for *M. l.* ssp. *viminea.*

Exclusion Will Not Result in Extinction of the Species

Exclusion of these 494 ac (200 ha) of non-Federal lands will not result in extinction of *Monardella linoides* ssp. *viminea* because these lands will be conserved and managed for the benefit of this species pursuant to the approved MSCP subarea plans. The jeopardy standard of section 7 and routine implementation of habitat protection through the section 7 process also provide assurances that the species will not go extinct.

Relationship of Critical Habitat Within the Bureau of Land Management—Exclusion Under Section 4(b)(2) of the Act

Federal lands managed by the Bureau of Land Management (BLM) are an integral part of the conservation strategy of San Diego MSCP. However, BLM, like any other Federal agency, is not a permittee under the section 10(a)(1)(B) permit for the San Diego MSCP. The BLM, Service, CDFG, City of San Diego, and County of San Diego, in cooperation with the San Diego Association of Governments (SANDAG), signed a Memorandum of Understanding (MOU) in June 1994, committing to cooperate in habitat conservation planning and management related to the San Diego MSCP. Under the MOU, BLM agreed to take the following actions to assist in implementing the MSCP's conservation goals and objectives: (1) To make maintenance and management of the area's unique biological diversity a principal goal in the design and implementation of its conservation programs; (2) to coordinate with the other signatory parties regarding assessment of the wildlife values of those lands managed by BLM within San Diego County; (3) to coordinate with signatory parties to resolve any BLM, State, regional or local land management prescriptions that are inconsistent with existing or proposed conservation objectives; (4) to work with the County, the City, SANDAG, CDFG, and Service in identifying the lands it manages for inclusion within the region's habitat conservation systems; and (5) to work with signatory parties to acquire key habitat areas using a variety of techniques. Thus, while not a permittee to the section 10(a)(1)(B) permit for the San Diego MSCP, BLM lands, in particular those on Otay Mountain that support a variety of listed and sensitive covered MSCP species, are a key component of the overall reserve design for the MSCP.

At the time of the MOU (and at the time of listing), *Monardella linoides* ssp. *viminea* was not known to occur on BLM lands at Otay Mountain. Since the development and approval of the San Diego MSCP, new information has identified a previously unknown population of *M. l.* ssp. *viminea* on BLM lands at West Otay Mountain. Surveys

in 2000 counted 202 clumps of *M. l.* ssp. *viminea*, making this occurrence the fourth largest population at that time. The populations of *M. l.* ssp. *viminea* on BLM lands at Otay Mountain are within the area covered by the MOU. Congress formally designated BLM lands on Otay Mountain as the Otay Mountain Wilderness in 1999 (Otay Mountain Wilderness Act, Pub. L. 106–145, December 9, 1999). The occurrences of *M. l.* ssp. *viminea* on Otay Mountain are within the designated boundaries of the Otay Mountain Wilderness. The inclusion of these occupied habitats within a designated wilderness provides additional significant protection for this area and complement BLM's objective to manage these public lands to provide protection and enhancement for biological values.

The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) restricts vehicles, new developments, chainsaws, mountain bikes, leasing, and mining from the wilderness area. Grazing is permitted within the wilderness area; however, no grazing allotments currently exist. Thus, the population and habitat of *Monardella linoides* ssp. *viminea* on BLM land receives conservation protection consistent with the Otay Mountain Wilderness, MOU, and San Diego MSCP. Our analysis below examines the benefits of inclusion and benefits of exclusion of approximately 67 ac (27 ha) of Federal lands managed by the BLM from critical habitat Unit 9 under section 4(b)(2) of the Act. These lands are within the designated Otay Mountain Wilderness that is targeted for conservation under the MOU for the San Diego MSCP.

Benefits of Inclusion

We believe there would be minimal benefit from designating critical habitat for *Monardella linoides* ssp. *viminea* on BLM lands because the habitat essential for this species on Otay Mountain is already conserved within the Otay Mountain Wilderness and is targeted for conservation under the MOU for the San Diego MSCP as explained above.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat may provide a different level of protection under section 7(a)(2) for *M. l.* ssp. *viminea* that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of a listed species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided is still a limitation on the adverse effects that occur as opposed to a requirement to provide a conservation benefit.

The inclusion of these 67 ac (27 ha) of Federal land in critical habitat designation is unlikely to provide any additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot.* Inclusion of this area in critical habitat would require Federal agencies to ensure that their actions on these Federal lands are not likely result in the destruction or adverse modification of critical habitat. The potential benefits resulting from this additional analysis to determine destruction or adverse modification of critical habitat are likely to be minimal to nonexistent because the extensive restrictions on permitted uses and the prohibition on development of designated wilderness lands virtually eliminates the possibility of future Federal actions likely to negatively impact essential habitat for *Monardella linoides* ssp. *viminea* within this area.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit *M. l.* ssp. *viminea* and its habitat. However, as discussed above, the importance of protecting the biological resource values of these lands, including *M. l.* ssp. *viminea,* has already been clearly and effectively communicated to Federal, State, and local agencies and other interested organizations and members of the public through designation of the lands as wilderness, through the 1994 MOU, and through the MSCP approval and implementation process.

In short, we expect BLM's MOU for the San Diego MSCP to result in special management of the PCEs, and the MOU, in conjunction with the wilderness designation, to result in substantial protection within habitat with features essential for the conservation of *Monardella linoides* ssp. *viminea* on Federal lands on Otay Mountain. We expect the MOU to provide a greater level of management for *M. l.* ssp. *viminea* on Federal lands than would designation of critical habitat.

Benefits of Exclusion

In contrast to section 7(a)(2) of the Act, the wilderness designation and 1994 MOU committing the BLM to manage its lands for the benefit of *M. l.* ssp. *viminea* and other covered species go well beyond a simple requirement to avoid adverse modification of critical habitat. BLM has demonstrated its proactive commitment to the conservation goals and objectives of the MSCP by entering into the 1994 MOU and thereby becoming a key partner in the MSCP. Excluding these 67 ac (27 ha) of BLM lands from critical habitat designation recognizes BLM's commitment under their MOU to manage their lands consistent with the MSCP, and provides additional incentive to BLM to maintain and strengthen the partnerships created by its official participation in the MSCP planning process, especially considering the high level of cooperation by the participants in the MSCP to conserve this taxon. BLM's commitment to species' conservation under the MSCP is in line with the agency's requirement to utilize its programs for the furtherance of the purposes of the Act under section 7(a), and may exceed the conservation value provided by a critical habitat designation alone since BLM, as a partner in an existing conservation program, is able focus limited Federal resources toward proactive conservation of sensitive species.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the benefits of exclusion of the lands containing features essential to the conservation of *Monardella linoides* ssp. *viminea* within the designated Otay Mountain Wilderness, although minimal, outweigh the even more minimal benefits of inclusion of these lands as critical habitat. We have therefore excluded essential habitat for *M. l.* ssp. *viminea* on lands owned by the BLM on Otay Mountain from this final critical habitat designation.

Exclusion Will Not Result in Extinction of the Species

Exclusion of these 67 ac (27 ha) of Federal lands will not result in extinction of *Monardella linoides* ssp. *viminea* because these lands will be permanently protected for the benefit of this species and its essential habitat pursuant to the Otay Mountain Wilderness Act and will be actively managed pursuant to the 1994 MOU for the San Diego MSCP. The protection of the Otay Mountain population of *M. l.* ssp. *viminea* and its habitat, along with

the conservation of the remaining populations and essential habitat of this species under the San Diego MSCP and MCAS Miramar INRMP, will ensure the species' continued existence.

The jeopardy standard of section 7 and routine implementation of habitat conservation through the section 7 process also provide assurances that the species will not go extinct.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) allows the Secretary to exclude areas from critical habitat for economic reasons if he determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on June 1, 2006 (71 FR 31137). We accepted comments on the draft analysis until July 3, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Monardella linoides* spp. *viminea.* This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis estimates that because all of the essential habitat proposed as critical habitat is conserved or will be conserved under the MSCP and there are only minor effects to future development, there are negligible, unquantifiable potential economic impacts anticipated from the critical designation as proposed. Therefore, no habitat was excluded due to economic impacts.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section) or for downloading from the Internet at *http://www.fws.gov/carlsbad/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the economic analysis indicates that the potential economic impacts associated with the proposed designation of critical habitat are negligible, we conclude that this final rule will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the final rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat, and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combined thereof, in a designation constitutes our regulatory alternative analysis.

As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (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 government jurisdictions). However, 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. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than

$11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Monardella linoides* spp. *viminea*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The economic analysis determined there will be no effects on small business because there are no reasonable foreseeable economic effects.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Monardella linoides* spp. *viminea* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives''. Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed plant species, we may identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species. However, these recommendations are advisory only.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule (63 FR 54938) and this critical habitat designation. Within the final critical habitat units the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the U.S. Forest Service and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(6) Activities funded by the Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Monardella linoides* spp. *viminea*. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule (63 FR 54938) and proposed critical habitat designation (70 FR 67956). These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, and Federal Highway Administration funding for road improvements. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation

is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will 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. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for *Monardella linoides* spp. *viminea* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates''. These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance''. It also excludes ''a duty arising from participation in a voluntary Federal program'', unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority'', if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program''.

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Monardella linoides* spp. *viminea* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Monardella linoides* spp. *viminea*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are unoccupied areas that are essential for the conservation, of *Monardella linoides* spp. *viminea*. Therefore, we have not designated critical habitat for *M. l.* spp. *viminea* on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary authors of this package are staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for ''*Monardella linoides* ssp. *viminea*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Monardella linoides ssp. *viminea*.	Willowy monardella	U.S.A. (CA), Mexico	Lamiaceae	E	649	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.96(a), add critical habitat for *Monardella linoides* ssp. *viminea* in alphabetical order under Family Lamiaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Lamiaceae: *Monardella linoides* ssp. *viminea* (willowy monardella)

(1) Critical habitat is depicted for San Diego, California, on the map below.

(2) The primary constituent elements of critical habitat for *Monardella linoides* ssp. *viminea* are the habitat components that provide:

(i) Coarse, rocky, sandy alluvium on benches, stabilized sandbars, channel banks, sandy washes, and/or among boulders and stones, and/or in cracks of bedrock in rocky gorges along and within the ephemeral drainages that provide space for growth, reproduction, and dispersal;

(ii) Ephemeral drainages where water flows only after peak seasonal rains and major flooding events that periodically scour riparian vegetation and redistribute alluvial material by eroding and developing stream channels, benches, sandbars, and rocky gorges, thus maintaining the necessary dynamic habitat processes for *Monardella linoides* spp. *viminea*; and

(iii) Coastal sage, riparian scrub, or chaparral with an open and semi-open canopy and little or no herbaceous understory situated along ephemeral drainages and adjacent floodplains to ensure that *Monardella linoides* spp. *viminea* receives adequate sunlight for nutrient uptake for photosynthesis.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining the map unit were created on a base of USGS 7.5′ quadrangles, and the critical habitat unit was then mapped using a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the unit.

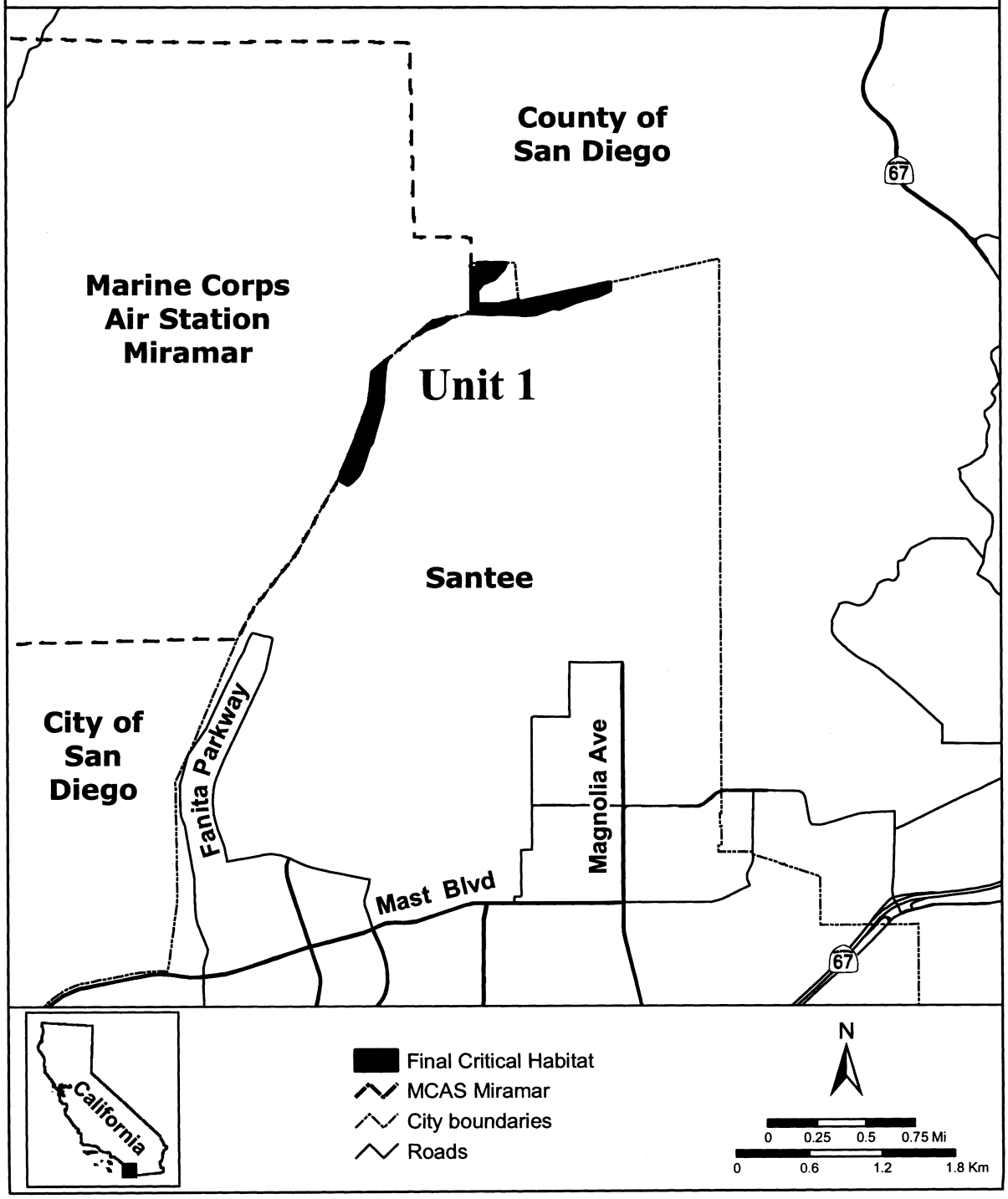
(5) Unit 1: Sycamore Canyon, consisting of private lands within the City of Santee, San Diego County, California.

(i) From USGS 1:24,000 quadrangle San Vicente Reservoir, lands bounded by the following UTM NAD27 coordinates (E, N): 501841,3640342; 501821, 3640300; 501819, 3640294; 501800, 3640274; 501743, 3640211; 501719, 3640200; 501700, 3640200; 501700, 3640192; 501645, 3640169; 501600, 3640115; 501587, 3640100; 501600, 3640100; 501600, 3640000; 501700, 3640000; 501800, 3640000; 501800, 3640009; 501844, 3640015; 501900, 3640028; 501940, 3640038; 501942, 3640017; 502000, 3640030; 502100, 3640052; 502200, 3640074; 502300, 3640096; 502301, 3640096; 502319, 3640100; 502400, 3640118; 502500, 3640140; 502600, 3640162; 502614, 3640165; 502700, 3640184; 502700, 3640117; 502667, 3640101; 502666, 3640100; 502600, 3640071; 502591, 3640067; 502530, 3640052; 502500, 3640044; 502431, 3640025; 502400, 3640012; 502369, 3640000; 502300, 3639972; 502277, 3639963; 502226, 3639968; 502202, 3639959; 502200, 3639958; 502100, 3639922; 502089, 3639918; 502000, 3639911; 501900, 3639917; 501801, 3639920; 501800, 3639920; 501701, 3639918; 501700, 3639918; 501600, 3639924; 501540, 3639927; 501552, 3639929; 501552, 3639930; 501552, 3639939; 501551, 3639974; 501551, 3640000; 501551, 3640030; 501551, 3640036; 501551, 3640041; 501551, 3640043; 501551, 3640069; 501551, 3640100;

501550, 3640135; 501550, 3640183; 501550, 3640200; 501550, 3640214; 501550, 3640236; 501549, 3640295; 501549, 3640300; 501600, 3640300; 501600, 3640343; 501689, 3640345; 501700, 3640344; 501800, 3640343; thence returning to 501841, 3640342. Lands bounded by the following UTM NAD27 coordinates (E, N): 501382, 3639892; 501318, 3639846; 501300, 3639838; 501243, 3639812; 501200, 3639801; 501199, 3639800; 501168, 3639786; 501112, 3639749; 501100, 3639748; 501120, 3639764; 501162, 3639800; 501177, 3639813; 501200, 3639832; 501233, 3639860; 501238, 3639861; 501279, 3639870; 501300, 3639874; 501314, 3639877; 501321, 3639879; 501331, 3639881; thence returning to 501382, 3639892. Lands bounded by the following UTM NAD27 coordinates (E, N): 500864, 3639549; 500842, 3639500; 500833, 3639419; 500832, 3639400; 500827, 3639300; 500822, 3639200; 500821, 3639185; 500806, 3639117; 500800, 3639101; 500800, 3639100; 500798, 3639096; 500772, 3639000; 500745, 3638900; 500744, 3638900; 500728, 3638852; 500702, 3638808; 500700, 3638802; 500699, 3638800; 500668, 3638700; 500648, 3638637; 500630, 3638600; 500626, 3638594; 500600, 3638565; 500554, 3638515; 500530, 3638500; 500524, 3638500; 500500, 3638515; 500452, 3638545; 500454, 3638550; 500465, 3638576; 500466, 3638579; 500475, 3638600; 500477, 3638605; 500500, 3638659; 500515, 3638695; 500517, 3638700; 500541, 3638757; 500559, 3638800; 500583, 3638857; 500600, 3638898; 500601, 3638900; 500606, 3638912; 500637, 3639000; 500642, 3639013; 500664, 3639074; 500673, 3639100; 500700, 3639176; 500706, 3639193; 500707, 3639200; 500718, 3639299; 500718, 3639300; 500729, 3639400; 500732, 3639427; 500733, 3639439; 500763, 3639464; 500800, 3639495; 500806, 3639500; 500823, 3639515; thence returning to 500864, 3639549.

(ii) Note: Map of Unit 1 (Map 1) follows:

Map of
Final Critical Habitat for *Monardella linoides* ssp. *viminea* (willowy monardella)
Unit 1, Sycamore Canyon, San Diego County, California



* * * * *

Dated: October 25, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–9095 Filed 11–7–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
November 8, 2006

Part IV

Nuclear Regulatory Commission

10 CFR Parts 20 and 32
National Source Tracking of Sealed Sources; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 32

RIN 3150–AH48

National Source Tracking of Sealed Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to implement a National Source Tracking System for certain sealed sources. The amendments require licensees to report certain transactions involving these sealed sources to the National Source Tracking System. These transactions include manufacture, transfer, receipt, disassembly, or disposal of nationally tracked sources. The amendments also require each licensee to provide its initial inventory of nationally tracked sources to the National Source Tracking System and annually reconcile the information in the system with the licensee's actual inventory. In addition, the amendments require manufacturers to assign a unique serial number to each nationally tracked source.

DATES: *Effective Date:* This final rule is effective on February 6, 2007.

Compliance Dates: Compliance with the reporting provisions in 10 CFR 20.2207 is required by November 15, 2007, for Category 1 sources and November 30, 2007, for Category 2 sources.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
A. What Action Is the NRC Taking?
B. What Is a Nationally Tracked Source?
C. Who Does This Action Affect?
D. How Will Information Be Reported to the National Source Tracking System?
E. Will a Licensee Need To Report Its Current Inventory to the System?
F. What Information Will Be Collected on Source Origin?
G. What Information Will Be Collected on Source Transfer?
H. What Information Will Be Reported for Receipt of Sources?
I. What Information Will Be Reported on Source Endpoints?
J. How Will the National Source Tracking System Information Be Kept Current?
K. How Will Incorrect Information Be Changed in the National Source Tracking System?
L. Some Licensees Now Must Report Similar Information to the Nuclear Materials Management Safeguards System. Will This Rule Result in a Duplication in Reporting?
M. Are the Actions Consistent With International Obligations?
N. When Do These Actions Become Effective?
O. Who Will Have Access to the Information and What Will It Be Used For?
P. What Other Things Are Required by This Action?
III. Analysis of Public Comments on the Proposed Rule
IV. Section by Section Analysis of Substantive Changes
V. Criminal Penalties
VI. Agreement State Compatibility
VII. Voluntary Consensus Standards
VIII. Environmental Impact: Categorical Exclusion
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Certification
XII. Backfit Analysis
XIII. Congressional Review Act

I. Background

After the terrorist attacks in the United States on September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements, with particular focus on radioactive material of concern. This radioactive material (which includes Cobalt-60, Cesium-137, Iridium-192 (Ir-192), and Americium-241, as well as other radionuclides) has the potential to be used in a radiological dispersal device (RDD) or a radiological exposure device (RED) in the absence of proper security and control measures. The NRC's review took into consideration the changing domestic and international threat environments and related U.S. Government-supported international initiatives in the nuclear security area, particularly activities conducted by the International Atomic Energy Agency (IAEA).

In June 2002, the Secretary of Energy and the NRC Chairman met to discuss the adequate protection of inventories of nuclear materials that could be used in a RDD. At the June meeting, the Secretary of Energy and the NRC Chairman agreed to convene an Interagency Working Group on Radiological Dispersal Devices to address security concerns. In May 2003, the joint U.S. Department of Energy (DOE)/NRC report was issued. The report was entitled, ''Radiological Dispersal Devices: An Initial Study to Identify Radioactive Materials of Greatest Concern and Approaches to Their Tracking, Tagging, and Disposition.'' One of the report's recommendations is development of a national source tracking system to better understand and monitor the location and movement of sources of interest. The full report contains a list of radionuclides and thresholds above which tracking of the sources is recommended. Note that in the public version of the report, the table of radionuclides has been redacted.

The NRC has also supported U.S. Government efforts to establish international guidance for the safety and security of radioactive materials of concern. This effort has resulted in a major revision of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct). The revised Code of Conduct was approved by the IAEA Board of Governors in September 2003, and is available on the IAEA Web site. In particular, the Code of Conduct contains a recommendation that each IAEA Member State develop a national source registry of radioactive sources that includes at a minimum Category 1 and Category 2 radioactive sources as described in Annex 1 of the Code of Conduct. The source registry recommendation addressed 16 radionuclides.

The work on the DOE/NRC joint report was done in parallel with the work on the Code of Conduct and the development of IAEA TECDOC–1344, ''Categorization of Radioactive Sources.'' The IAEA published this categorization system for radioactive sources in August 2005 in its Safety Series as RS–G–1.9, Categorization of Radioactive Sources. The report, available on the IAEA Web site, provides the underlying methodology for the development of the Code of Conduct thresholds. The categorization system is based on the potential for sources to cause deterministic effects and uses the 'D' values as normalizing factors. The 'D' values are radionuclide-specific activity levels for the purposes of emergency planning and response. The quantities of concern identified in the DOE/NRC report are similar to the Code of Conduct Category 2 threshold values, so to allow alignment between domestic and international efforts to increase the safety and security of radioactive sources, NRC has adopted the Category 2 values.

The U.S. Government has formally notified the Director General of the IAEA of its strong support for the current Code of Conduct. Although the Code of Conduct does not have the stature of an international treaty and its provisions are non-binding on IAEA Member States, the U.S. Government

has endorsed the Code of Conduct and is working toward implementation of its various provisions. This rulemaking reflects those Code of Conduct recommendations related to the source registry and which are consistent with NRC responsibilities under the Atomic Energy Act.

Efforts to improve controls over sealed sources face significant challenges, especially balancing the need to secure the materials without discouraging their beneficial use in academic, medical, and industrial applications. Radioactive materials provide critical capabilities in the oil and gas, electrical power, construction, and food industries; are used to treat millions of patients each year in diagnostic and therapeutic procedures; are used in a variety of military applications; and are used in technology research and development by academic, government, and private institutions. These materials are as diverse in geographical location as they are in functional use.

NRC considers national source tracking to be part of a comprehensive radioactive source control program for radioactive materials of greatest concern. Although a national source tracking system can not ensure the physical protection of sources, it can provide greater source accountability, which should foster increased control by licensees. A national source tracking system in conjunction with controls such as those imposed by Orders on irradiator licensees, manufacturer and distributor licensees, and other material licensees will result in improved security and control for radioactive sources. It will also result in improved public health and safety.

To inform the development of the National Source Tracking System, the NRC established an Interagency Coordinating Committee to provide guidance regarding interagency issues associated with the development, coordination, and implementation of the system and to prevent licensees from receiving similar requests from more than one agency. The Committee consists of representatives from various Federal Agencies with an interest in source security and a representative from the Agreement States. The views of the Committee were included in the development of the requirements for the National Source Tracking System and this rulemaking. NRC will be the database manager of the National Source Tracking System, however, the other agencies may become users of the system and have limited access. DOE will have greater access as they will be responsible for entering data on sources entering or exiting the DOE complex.

Development of the National Source Tracking System is a two-part activity that includes both a rulemaking and an information technology development component. When completely operational, the National Source Tracking System will be a Web-based system that will allow licensees to meet the proposed reporting requirements on-line. The system will contain information on NRC licensees, Agreement State licensees, and the DOE complex as appropriate.

This final rulemaking establishes the regulatory foundation for the National Source Tracking System recommended in the DOE/NRC report and expands on implementation of the Code of Conduct recommendation to develop a national source registry.

There is clearly broad U.S. Government and international interest in tracking radioactive sources to improve accountability and control. There is no single U.S. source of information to verify the licensed users, locations, quantities and movement of these materials. Separate NRC and Agreement State systems contain information on licensees and the maximum amounts of materials they are authorized to possess, but these systems do not record actual sources or their movements.

To address this lack of information on such issues as actual material possessed, the NRC, in cooperation with the Agreement States, began working on an interim database of sources of concern. In November 2003, both NRC and Agreement State licensees were contacted and requested to voluntarily provide some basic information on the sealed sources located at their facilities. Of the approximately 2600 licensees contacted, over half of the licensees reported possessing Category 1 or Category 2 sealed sources. The interim database was updated in 2005 and will continue to be updated until the National Source Tracking System is operational. The interim database will ultimately be replaced by the National Source Tracking System. While the interim database provides a snapshot in time, the National Source Tracking System will provide information on an ongoing basis.

The President signed the Energy Policy Act of 2005 into law on August 8, 2005. It contains a provision on national source tracking that requires the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. The regulations must be issued no later than one year after the date of enactment of the Act. The Act requires the tracking system to: (1) Enable the identification of each radiation source by serial number or other unique identifier; (2) require reporting within 7 days of any change of possession of a radiation source; (3) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and (4) provide for reporting through a secure internet connection. The Act further requires the NRC to coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources. Under the Act, radiation source means a Category 1 source or a Category 2 source as defined in the Code of Conduct and any other material that poses a threat, as determined by the Commission, by regulation, other than spent nuclear fuel and special nuclear material.

This final rule on National Source Tracking meets the requirements enumerated above, which were applicable to source tracking and imposed by the Energy Policy Act of 2005. The rule requires the reporting of transfers and receipts of sources by the close of the next business day, which meets the requirement for reporting within 7 days of any change of possession. The information to be reported includes the serial number of the source, which addresses identification of each source by serial number. On-line reporting is one of the methods by which licensees may report; this meets the requirement to allow reporting through a secure internet connection. Current NRC and Agreement State regulations require licensees to immediately report, after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material at the Category 1 or 2 level. Therefore, this final rule does not include provisions for reporting loss of control of, or accountability for, a radiation source.

II. Discussion

A. What Action Is the NRC Taking?

The NRC is issuing a rule that implements a new program called the National Source Tracking System. The final rule requires licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. This information captures the origin of each nationally tracked source (manufacture or import), all transfers to other licensees, all receipts of nationally

tracked sources, and endpoints of each nationally tracked source (disassembly, disposal, decay, or export). Ultimately, the National Source Tracking System will be able to provide a domestic life history account of all nationally tracked sources.

A system of this type needs prompt updating to be useful and accurate. In order to capture information as soon as possible, this rule requires licensees to report information on nationally tracked source transactions by the close of the next business day. Although the Energy Policy Act of 2005 provides for reporting within 7 days, the rule requires reporting by the close of the next business day. After discussions within the Interagency Coordinating Committee, NRC determined that 7 days was too long a time period. NRC has determined that the close of the next business day is the appropriate timeframe for reporting.

To ease the burden on licensees, the NRC is establishing a secure Internet-based interface to the National Source Tracking System. While on-line access should be fast, accurate, and convenient for licensees, the NRC will also allow licensees the option of completing and mailing or faxing paper forms. In addition, licensees will also be able to provide batch information using a computer-readable format file. The format will be specified in a guidance document on implementation of the National Source Tracking System.

B. What Is a Nationally Tracked Source?

A sealed source consists of radioactive material that is sealed in a capsule or is closely bonded to a non-radioactive substrate designed to prevent leakage or escape of the radioactive material. In either case, it is effectively a solid form of radioactive material which is not exempt from regulatory control. A nationally tracked source is a sealed source containing a quantity of radioactive material equal to or greater than the Category 2 levels listed in the new Appendix E to 10 CFR part 20. A nationally tracked source may be either a Category 1 source or a Category 2 source.

For the purpose of this rulemaking, the term nationally tracked source does not include material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Material encapsulated solely for disposal refers to material that, without the disposal packaging, would not be considered encapsulated. For example, a licensee's bulk material that it plans to send for burial may be placed in a matrix (e.g., mixed in concrete) to meet burial requirements. The placement of the radioactive material in the matrix material may be considered encapsulating. This type of material is not covered by the rule. However, if a nationally tracked source were to be placed in a matrix material, the sealed source would still be covered by the rule.

Category 1 nationally tracked sources are those containing a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold. The definition of nationally tracked source is based on the IAEA Code of Conduct and is consistent with the definition of sealed sources in other parts of the NRC regulations and with definitions contained in Agreement State regulations.

The specific radioactive material and amounts covered by this rule are listed in Appendix E to part 20. The radionuclides and thresholds of 16 of the radionuclides are identical to the Table I values from the Code of Conduct. The IAEA Code of Conduct includes a recommendation that these radionuclides and thresholds be included in a national source registry. The U.S. Government has formally endorsed these values. The NRC has adopted the Category 2 values to allow alignment between domestic and international efforts to increase the safety and security of radioactive sources. The Energy Policy Act of 2005 states that Category 1 and Category 2 sources are to be included in the National Source Tracking System.

The Terabecquerel (TBq) values listed in Appendix E are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only and are rounded after conversion. The Ci values are not intended to be the regulatory standard.

Table I of the IAEA Code of Conduct lists 16 radionuclides that should be included in a national source registry. Included in this listing is radium (Ra)-226. Before the Energy Policy Act of 2005 was signed into law, the NRC did not have the authority to regulate Ra-226; therefore it was not included in the proposed rule for national source tracking. Section 651(e) of the Energy Policy Act of 2005 amends section 11e. of the Atomic Energy Act to give NRC authority over discrete sources of Ra-226 and other radioactive materials if they are produced, extracted, or converted after extraction for use in commercial, medical, or research activities. Therefore, NRC is adding Ra-226 to Appendix E in this final rule. Ra-226 sealed sources will now be included in the National Source Tracking System. The term 'discrete source' will be defined in a separate rulemaking to implement section 651(e) of the Energy Policy Act of 2005. That final rule is to be issued by February 7, 2007.

In the proposed rule, the Commission expanded the National Source Tracking System list of radionuclides to include 6 radionuclides that are not on the Code of Conduct list and one radionuclide that is listed in the Code of Conduct but is not included in the source registry recommendation. The 7 additional radionuclides included in the proposed rule were actinium (Ac)-227, plutonium (Pu)-236, Pu-239, Pu-240, polonium-210, thorium (Th)-228, and Th-229. The DOE/NRC RDD report recommendation for a National Source Tracking System included these 7 radionuclides. The thresholds for these radionuclides were developed using the same methodology as those listed in the Code of Conduct. These radionuclides are also included in the interim database. Based on information from the interim database, NRC and Agreement State licensees do not possess large numbers of nationally tracked sources containing these radionuclides. DOE, however, is more likely to possess these isotopes, and therefore, it was determined that these isotopes should be included in the National Source Tracking System. Therefore, the Commission included them in the proposed rule. The source tracking system NRC is required to establish under the Energy Policy Act of 2005 covers ''radiation sources'' as defined in the Act (Category 1 and Category 2 sources and any other material as determined by the Commission other than spent nuclear fuel and special nuclear materials). Three plutonium (Pu) isotopes (Pu-236, Pu-239, Pu-240) are being removed from Appendix E because these isotopes are not ''radiation sources'' within the meaning of the Act. Two other Pu isotopes (Pu-238 and Pu-239/Be) are being retained in Appendix E because they are listed in the Code of Conduct.

C. Who Does This Action Affect?

The final rule applies to any person (entity or individual) in possession of a Category 1 or Category 2 source. It applies to all NRC licensees; including, for example:

Manufacturers and distributors of Category 1 and Category 2 sources;

Medical facilities, radiographers, irradiators, reactors, and any other licensees that are the end users of nationally tracked sources; and

Disposal facilities and waste brokers.

Agreement States will impose legally binding requirements on their licensees such that all licensees, both NRC and Agreement State, will begin reporting at the same time.

The final rule applies whether the source is actively used or in long-term storage.

Nationally tracked sources are possessed by all types of licensees, but primarily by byproduct material licensees. Nationally tracked sources are used in the oil and gas, electrical power, construction, medical, and food industries. They are used in a variety of military applications and in technology research and development. Nationally tracked sources are classified either Category 1 or 2 based on the activity level of the radioactive material of concern. Category 1 sources are typically used in devices such as radiothermal generators and irradiators, and in practices such as radiation teletherapy. Category 2 sources are typically used in industrial gamma radiography, blood irradiators, and some well logging.

D. How Will Information Be Reported to the National Source Tracking System?

Licensees have several options for reporting transaction information to the National Source Tracking System. These reporting methods include on-line, computer-readable format files, paper, fax, and telephone. For most licensees, the most convenient, least burdensome method will be to report the information on-line (e.g. through the Internet). To report information on-line, a licensee will need to establish an account with the National Source Tracking System. Once an account is established, the licensee will be provided with access to the on-line system. A licensee will have access only to information regarding its own material or facility; a licensee will not have access to information concerning other licensees or facilities. When logged on, the licensee will be able to type the necessary information onto the on-line forms. Once a source is in the system, the licensee will be able to click on the source and report a transfer or other transaction. Identifying information such as license number, facility name, address, manufacturer, model number, serial number, etc. will not need to be typed in a second time.

Many licensees conduct a large number of transactions, especially manufacturing and distribution licensees. We recognize that most licensees have a system for maintaining their information on sources. The National Source Tracking System will be able to accept batch load information from licensees systems using a computer-readable format. This will ease the reporting burden for a licensee with a large number of transactions. The licensee will be able to electronically send a batch load using a computer-readable format file that contains all of the transactions that occurred that day. Licensees can also use this format to report their initial inventory.

Licensees will also be able to complete a paper version of the National Source Tracking Transaction form and submit the form by either mail or fax. Additionally, licensees will be able to provide transaction information by telephone and then follow-up with a paper copy.

Additional guidance on submitting information will be provided before the effective date of the reporting requirements. The guidance will contain mailing addresses and telephone and fax numbers for providing information to the National Source Tracking System, as well as information on the computer-readable format to be used. The NRC plans to hold several workshops on reporting information to the National Source Tracking System which will include hands-on training. The workshops will be held before the effective date of the reporting requirements. Licensees (both NRC and Agreement State) will receive information on when and where the workshops will be held.

E. Will a Licensee Need to Report Its Current Inventory to The System?

Yes, licensees are required to report their current inventory of nationally tracked sources by a specified date. There are separate reporting dates for Category 1 and Category 2 nationally tracked sources. Licensees are required to report all Category 1 sources to the National Source Tracking System by November 15, 2007, and all Category 2 sources by November 30, 2007.

To ease the reporting process, information already in the interim database will be downloaded to the National Source Tracking System. Each licensee that reported information to the interim database will be provided a copy of its information and asked to either verify the information or provide updated information. NRC staff and the company that will operate the National Source Tracking System will work with licensees to make sure the initial inventory information is correct. Licensees that did not provide information to the interim database must provide the information on their nationally tracked source inventory by the specified dates. Disposal facilities do not need to report sources that have already been buried or otherwise disposed.

For sources that are stored in a device, the licensee must report the serial number of the source within the device. Licensees are not required to report the device number. Sources are usually not placed permanently in the device, but are removed from the device at the end of the source's useful life. Because some licensees track their sources by device number, the National Source Tracking System contains an optional reporting field for reporting the device serial number. Licensees will be able to search their data by device number. For licensees reporting by the paper form, the device number can be added to the comment field.

F. What Information Will Be Collected on Source Origin?

Each time a nationally tracked source is manufactured in the United States, the licensee must report the source information to the National Source Tracking System. The information must be reported by the close of the next business day. The licensee must report the manufacturer (make), model number, serial number, radioactive material, activity at manufacture, and manufacture date for each source. The licensee must also provide its license number, facility name, address, and the name of the individual that prepared the report. Manufacturers may make one report that includes both the manufacture and transfer of sources, as long as the transfer occurs within the reporting timeframe of the manufacture. The information required for both transactions will need to be included in the report.

Some sources are recycled or reconfigured. For example, a source that has decayed below its usefulness is sometimes returned to the manufacturer for reconfiguration. The decayed source may be placed in a reactor and reactivated. The source retains its serial number, but now has a new activity. The new activity and date must be reported to the National Source Tracking System.

For every nationally tracked source that is imported, the facility obtaining the source must report the source information to the National Source Tracking System by the close of the next business day after receipt of the imported source at the site. For the purposes of the National Source Tracking System, this is considered the source origin unless the source had been previously possessed in the United States. The licensee must report the manufacturer (make), model number, serial number, radioactive material,

activity at manufacture or import, and manufacture or import date for each source. The licensee must also provide its license number, facility name, address, and the name of the individual that prepared the report and the date of receipt. The licensee must also provide information on the facility (name and address) that sent the source and the import license number.

Under separate regulations on import/export of radioactive material, licensees are required to notify the NRC of imports of radioactive material at Category 2 levels or above (70 FR 37985; July 1, 2005). This notification includes source identification information, if available. Initially, NRC staff will enter the notification information into the National Source Tracking System, but eventually, import/export licensees will be able to make the notifications to the NRC using the on-line reporting mechanism of the National Source Tracking System. For example, if the notification includes the detailed source information, a licensee that is receiving an imported nationally tracked source will be able to report the transaction as a simple receipt using the on-line method. Much of the source information will already be in the National Source Tracking System; the licensee will be able to click on the pending import and then click on the source to indicate that the source had been received at the site.

G. What Information Will Be Collected on Source Transfer?

Each time a nationally tracked source is transferred to another authorized facility, the licensee must report the transfer to the National Source Tracking System by the close of the next business day. The licensee must report the recipient name (facility the source is being transferred to), address, and license number, the shipping date, the estimated arrival date, and the identifying source information (manufacturer, model number, serial number, and radioactive material). If the source is being exported, the export license number is reported for the recipient's license number. The licensee also must provide its name, address, and license number, as well as the name of the individual making the report. For nationally tracked sources that are transferred as waste under a Uniform Low-level Radioactive Waste Manifest, the licensee must also report the waste manifest number and the container identification number for the container with the nationally tracked source.

Source transfer transactions are transfers between different licensees and transfers from a licensee to another authorized facility, such as a DOE site or a foreign entity. A source transfer transaction does not include transfers to a temporary domestic job site. Domestic transactions in which the nationally tracked source remains in the possession of the licensee do not require a report to the National Source Tracking System. For example, a radiographer conducting business does not need to report transfers between temporary job sites, even if the temporary job site is located in another State or if the work is conducted under a reciprocity agreement.

H. What Information Will Be Reported for Receipt of Sources?

A licensee must report each receipt of a nationally tracked source by the close of the next business day. The licensee must report the identifying source information (manufacturer, model number, serial number, and radioactive material) and the date of receipt. The licensee must include its facility name, address, and license number and the name of the individual that prepared the report. The licensee must also provide the name, address, and license number of the facility that sent the source because this information is necessary to match the transactions. If the source is an import, the licensee must report the source activity and associated activity date. The import license number is reported as the license number of the sending facility. If a licensee receives a nationally tracked source as part of a waste shipment, the licensee must provide the Uniform Low-level Radioactive Waste Manifest number and the container identification for the container that contains the nationally tracked source. A waste broker or disposal facility are examples of licensees that might receive a nationally tracked source as part of a waste shipment. To avoid unnecessary exposure, these licensees are not expected to open the waste container to verify the presence of the nationally tracked source; they may rely on the information from the licensee who shipped the source.

I. What Information Will Be Reported on Source Endpoints?

Endpoints for a source include export, disassembly, disposal, decay, loss or theft, and destruction of the source. Some of the endpoints are reversible (export, loss, theft) and some are permanent (disassembly, disposal, destruction). Exports are treated as a transfer. (See Section G for more information on source transfer.) An export is considered a reversible endpoint because the source can be imported back into the country. The export license number is reported as the license number of the receiving facility.

Some licensees disassemble sources for possible recycle. The source is taken apart, the radioactive material is removed, and the material may be used for manufacture of new sources or sent for disposal. This is not the same as reconfiguration where the source is not destroyed. The licensee must report the disassembly of any nationally tracked source to the National Source Tracking System by the close of the next business day. Once a source has been disassembled, it is no longer tracked. This is a permanent endpoint. Licensees that report a disassembly transaction must include the source information (manufacturer, model number, serial number, and radioactive material), license information (name, address, license number, name of person making the report), and the date of the disassembly.

Disposal of a source is reported by the licensee conducting the actual burial in a low-level disposal facility or other authorized disposal mechanism. Licensees sending a source to a low-level burial ground for disposal treat the transaction as a transfer. The licensee must include the waste manifest number and the container identification number. The disposal facility is not expected to open the waste container to verify the contents, and may report the information from the licensee who sent the waste for disposal. The disposal facility must report to the National Source Tracking System the date and method of disposal, the waste manifest number, and the container identification number for the container with the nationally tracked source. The disposal facility must also provide its facility name and license number, as well as the name of the individual who prepared the report. The report must be made by the close of the next business day.

The National Source Tracking System automatically calculates the decay of a source so licensees do not need to report an endpoint of decay. Once a source has decayed below Category 2 levels, it is no longer considered to be a nationally tracked source. The source will be automatically removed from a licensee's active inventory in the National Source Tracking System. The licensee will receive a notification that the source has decayed below the tracking level and that transactions for this source no longer need to be reported. The data on the source will, however, be retained in the system.

Licensees must continue to report accidental destruction of sources to the NRC Operations Center or to their Agreement State. The Agreement States

provide the information to the NRC Operations Center. NRC staff will enter the information from the event report into the National Source Tracking System. Because sealed sources are designed to be robust, accidental destruction is rare. An example of accidental destruction includes sources destroyed during attempts to remove them from devices.

Other endpoints that will be captured by the National Source Tracking System include the loss or theft of a source or the abandonment of a source in a well. These events are already reported to either NRC or to the Agreement States. Licensees are not required to report this information a second time to the National Source Tracking System. Agreement State licensees must continue to report to their Agreement State. NRC staff will obtain the information on these events from the event reports or the Nuclear Medical Event Database and enter the information into the National Source Tracking System. Agreement State staff may also enter the information into the system. Loss and theft of a source are considered to be reversible endpoints and source abandonment in a well is considered a permanent endpoint.

J. How Will the National Source Tracking System Information Be Kept Current?

Data integrity for the National Source Tracking System is extremely important. Licensees are expected to provide correct information to the National Source Tracking System and to double-check the accuracy of their information before submission. However, to maintain the accuracy, currency, and reliability of the National Source Tracking database, licensees are required by this rule to correct any mistakes in their inventory information and annually verify the accuracy of their data.

If licensees accurately report their transactions in a timely manner, the National Source Tracking System will contain correct, up-to-date information. However, we recognize that some transactions may be missed and that errors may be introduced into the system over time. Discrepancies might result from the failure to report the receipt of a source or failure to report the transfer of a source to another licensee. Inaccuracies can result from errors in the initial inventory report, selection of the wrong model number, or incorrectly typing the serial number. Each licensee is required to correct any errors or missed transactions that it becomes aware of within 5 business days of the discovery.

In addition, each licensee is required to reconcile its on-site inventory of nationally tracked sources with the information previously reported to the National Source Tracking System. This reconciliation occurs during the month of January each year. Each licensee will be able to print a copy of its inventory information from the National Source Tracking System. Licensees without on-line access will receive a paper copy from the NRC of their information in the National Source Tracking System. Each licensee must compare the information contained in the system to its own inventory, including a check of the model and serial number of each source. This reconciliation does not require the licensee to conduct an additional physical inventory of its sources. The NRC's regulations already require licensees to conduct physical inventories either annually, semi-annually, or quarterly, depending on the type of license. Each licensee must reconcile any differences by reporting the appropriate transaction(s) or corrections to the National Source Tracking System. The reconciliation must be completed by January 31 of each year.

In addition, each licensee must report to the National Source Tracking System that their data in the National Source Tracking System is correct. Licensees reporting their reconciliation using non-electronic methods will have to use a hard copy form, which will be provided with the paper copy of the information contained in the National Source Tracking System. The first reconciliation will occur in January 2008.

K. How Will Incorrect Information Be Changed in the National Source Tracking System?

Licensees will be able to correct errors in the National Source Tracking System at any time, either online or through any other permitted reporting mechanism. Each licensee is responsible for correcting any errors in its inventory information in the National Source Tracking System, regardless of the source of the error, within 5 business days of the discovery.

L. Some Licensees Now Must Report Similar Information to the Nuclear Materials Management Safeguards System. Will This Rule Result in a Duplication in Reporting?

Yes, some information on plutonium (Pu) and thorium (Th) is collected by both the Nuclear Materials Management Safeguards System (NMMSS) and the National Source Tracking System. The current regulations require reporting transfers, receipts, and inventories to NMMSS of one gram or more of Pu and any Th that has foreign obligations. However, NMMSS does not collect information at the source level; therefore, the detailed information (make, model, serial number) on sealed sources cannot be extracted from NMMSS to provide input into the National Source Tracking System. The National Source Tracking System will only have information on sealed sources and will not contain information on sources that are not considered sealed or on any bulk material that a licensee may possess. The thresholds are also different for the two systems. Therefore, NRC will not be able to extract information from the National Source Tracking System to support NMMSS. Neither system is able to collect the needed information for the other system without modifications to the databases and additional changes to the regulations. The two systems also have different purposes.

In practice, NRC finds that these Pu and Th sources are typically held by licensees for long time periods and are not routinely transferred to other licensees, so incidences of double-reporting are expected to be rare. Only 10 licensees reported possessing Pu Category 1 or Category 2 sources and no licensee reported Th sources to the interim database. The NRC does not believe that the limited number of licensees and transactions likely to be affected by this dual reporting requirement imposes an unnecessary burden. The NMMSS and the National Source Tracking System collect information on these radionuclides for different purposes and in different formats and with different levels of detail and thresholds as needed by each system. Therefore, the Commission believes that NMMSS and the National Source Tracking System should remain separate.

M. Are the Actions Consistent With International Obligations?

Yes, the National Source Tracking System is consistent with international obligations. The system is intended to respond to the recommendation in the IAEA Code of Conduct for development of a national source registry. In addition, attendance at international meetings provides the NRC staff with information on the actions of other countries to implement Code of Conduct recommendations. To the extent feasible, NRC will utilize data formats compatible with those of other countries.

N. When Do These Actions Become Effective?

The requirements for Category 1 nationally tracked sources will be implemented by November 15, 2007. This means that by this date any licensee that possesses a Category 1 level source must have reported its initial inventory and must begin reporting all transactions involving Category 1 sources to the National Source Tracking System. The requirements for Category 2 nationally tracked sources will be implemented by November 30, 2007. By this date, all licensees must have reported their initial inventory of nationally tracked sources and begin reporting all transactions to the National Source Tracking System. For all other provisions, the final rule is effective 90 days after publication in the **Federal Register.**

O. Who Will Have Access to the Information and What Will It Be Used For?

Information in the National Source Tracking System is considered Official Use Only—Security-Related Information; the information is not considered to be Safeguards Information or Safeguards Information—Modified Handling. A licensee will be able to view its own data, but not data for other licensees. NRC, as the database manager, will have access to all of the information. Agreement State staff will be able to view information on the licensees in their State, but will not be able to view information on licensees in other States. The one exception is information related to lost or stolen sources. Agreement State staff will be able to view the information on lost or stolen sources for all licensees. This will enable better coordination of recovery efforts. Other Federal and State agencies will also be able to view the information on lost or stolen sources and other information on a need-to-know basis.

The National Source Tracking System will be used for a variety of purposes. This standardized, centralized information will help NRC and Agreement States to monitor the location and use of nationally tracked sources; conduct inspections and investigations; communicate nationally tracked source information to other government agencies; verify legitimate ownership and use of nationally tracked sources; and further analyze hazards attributable to the possession and use of these sources.

P. What Other Things Are Required by This Action?

The final rule also requires manufacturers of nationally tracked sources to use a unique serial number for each source. The combination of manufacturer, model, and serial number will be used in the National Source Tracking System to track the history of each source.

III. Analysis of Public Comments on the Proposed Rule

The proposed rule on National Source Tracking was published on July 28, 2005 (70 FR 43646). The comment period ended on October 11, 2005. The NRC received 33 comment letters on the proposed rule. The NRC also held two public meetings on the proposed rule during the comment period. The first meeting was held in Rockville, Maryland on August 29, 2005, and the second meeting was held in Houston, Texas on September 20, 2005. Approximately 90 people attended the two meetings, with 17 individuals providing comments. The overall commenter mix on the proposed rule included federal agencies, states, licensees, industry organizations, and individuals. Copies of the public comments and the public meeting transcripts are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD or on the NRC's rulemaking Web site located at *http://ruleforum.llnl.gov.* NRC also invited comment on the basis change of the rule from common defense and security to public health and safety. The notice inviting comment on the basis change was published June 13, 2006 (71 FR 34024) for a 20-day public comment period. The comment period was extended to July 28, 2006 (71 FR 37862; July 3, 2006). Fourteen comment letters were received on the basis change. In addition, a letter from two members of Congress was placed in the rule docket. Comments on the basis change and the associated responses are addressed in Comments G.12–G.19.

The comments and responses have been grouped into 12 areas. NRC specifically sought comments on the first six areas: (1) Inclusion of Category 3 Sources; (2) inclusion of Ra-226; (3) inclusion of transfers between temporary job sites; (4) inspection of waste shipments; (5) data quality assurance; and (6) data protection. The other six comment areas are: (1) General; (2) rule language; (3) regulatory analysis; (4) implementation; (5) system aspects; and (6) miscellaneous. To the extent possible, all of the comments on a particular subject are grouped together. A discussion of the comments and the NRC staff's responses follow.

A. Category 3 Sources

In the proposed rule, NRC specifically invited comment on whether Category 3 sources should be included in the National Source Tracking System. Category 3 sources are those containing a quantity equal to or greater than the Category 3 threshold (1/10th of the Category 2 threshold) but less than the Category 2 threshold. Although the NRC did not plan to include Category 3 sources in this rulemaking, Category 3 sources could be included in the National Source Tracking System in the future. The potential issue was that a licensee possessing a large number of Category 3 sources could present a security concern. Therefore, NRC sought information on the number of additional licensees that would be impacted, the number of Category 3 sources possessed by licensees, and how often those sources changed hands.

Twenty-four commenters addressed the issue of Category 3 sources, including three Agreement States. The majority of commenters on this issue were opposed to including Category 3 sources in the National Source Tracking System; only six commenters supported the inclusion, including two Agreement States and one non-Agreement State. Reasons for inclusion varied. According to one commenter, the higher activity Category 3 sources may pose a threat nearly comparable to the threat posed by Category 2 sources and should be tracked aggressively. Some commenters thought that Category 3 sources should be included because an accumulation of sources could possibly threaten national security. Others stated that any level of any radioactive material used in an RDD or RED would cause panic among the population. One commenter noted that the IAEA has indicated that Category 3 sources carry a potential risk of harm that warrants inclusion in a tracking system, but Member States did not want to include the Category 3 sources in the national registry recommendation because the large number of such sources and the economic cost for tracking them could be overly burdensome. The commenter stated that Category 3 sources should be included unless it can be shown that to do so is unreasonably burdensome (due to the large number of sources and the economic cost of tracking them). The commenter noted that, by IAEA definition, Category 3 sources are dangerous and could result in permanent injury, as well as cause serious social and economic impact, if not managed or securely protected.

Commenters argued that the Category 3 sources should be tracked to help prevent their possible entry into the scrap metal industry, pointing out that the Category 3 sources were more likely to be introduced into the recycle stream. Commenters stated that the Category 3 sources present a danger to the metals-recycling industry, its employees, and their communities. Two commenters provided data on clean-up costs for contaminated steel mills. Commenters stated that public health and safety concerns, as well as security concerns, support the inclusion of Category 3 sources at this time. One commenter stated that with modest additional investment, NRC has the ability to track Category 3 sources and that the failure to do so will foreclose an opportunity to advance a rule which would be truly protective of public safety and the environment. Another commenter stated that additional data needs to be collected on the inclusion of Category 3 sources, but noted that any study should not be done in such a way that would disrupt the current implementation schedule for Category 1 and Category 2 source tracking. One commenter argued that the data from the inclusion of Category 3 sources would enable the government to more effectively manage the protection of the public health and safety and the economic vitality of the United States scrap metal industry and that the data could be used to monitor market trends, establish projections for low-level waste disposal, and allocate resources for programs to identify and develop alternate technologies.

Most of the commenters opposed to the inclusion of Category 3 sources cited the increased burden that would be imposed on licensees and the NRC. One commenter noted that the inclusion of Category 3 sources would require over 7,000 additional transaction reports every year for his company; most commenters did not provide specific numbers, but indicated that there would be a significant increase in the transaction reports from thousands to tens of thousands.

According to one commenter, inclusion of Category 3 sources would significantly increase the number of impacted licensees and all medical facilities that perform radiation therapy procedures would be impacted. One commenter noted that most of the sources are used in teletherapy or gamma sterotactic radiosurgery units and that once the sources are placed in the machines, tampering or stealing the sources becomes very difficult. A couple of commenters pointed out that many of these sources are used extensively in generally licensed gauges at fixed facilities and that most of the individuals possessing these materials do not even realize that they have an NRC or Agreement State license. The commenters felt that these individuals would be unlikely to understand the tracking system and would need additional education to understand their responsibilities under the tracking system. Commenters stated that including Category 3 sources in the tracking system would unduly burden manufacturers and licensees due to the large number of Category 3 sources that are in common use throughout the United States. Other commenters pointed out that licensees are required to maintain inventory records and that this should be sufficient. Some of the commenters suggested inventory reporting instead of source transactions.

Commenters pointed out that many of the Category 3 sources are lower risk and do not pose a significant terrorist threat in comparison to Category 1 and 2 sources. One commenter stated that including Category 3 sources would go beyond the IAEA Code of Conduct recommendation and that to maintain consistency with the Code of Conduct, NRC should not include Category 3 sources. One commenter opposed the inclusion of Category 3 sources now and in the future because implementing standards more stringent than the IAEA code of conduct will generate confusion and not integrate the United States plan with international efforts in this regard. One Agreement State stated that inclusion of Category 3 sources does not fall within the security requirements and should not be included. The State noted that if a licensee possessed enough sources in the aggregate it would be under increased security control requirements.

Several commenters expressed concern that inclusion of Category 3 sources would bog down the system development process, hinder the timely implementation of the system, and potentially degrade the quality of the information in the database. Commenters noted that there will be a breaking-in period while both the regulated and regulators learn to complete, report, and maintain the necessary reports. Commenters noted that inclusion of Category 3 sources would dramatically increase the number of records and would diminish the effectiveness of the rule (by increasing the likelihood of data entry error, impacting timeliness, and through sheer volume). Several commenters noted that the issue could be revisited after the National Source Tracking System has been implemented and is running smoothly. Two commenters suggested that before including Category 3 sources, the NRC should conduct a roundtable discussion with stakeholders to fully understand the impact of the rulemaking on the medical community and to ensure that final regulations do not impose unintended problems in the practice of medicine.

Response: As part of the proposed rulemaking on the National Source Tracking System, NRC requested the views of potentially impacted stakeholders on the inclusion of Category 3 sources in the National Source Tracking System. The comments received expressed strong views on this topic. At this point NRC staff does not have adequate information to support inclusion of Category 3 sources. There are also issues related to possession of Category 3 sources under a general license that need to be addressed before a final decision can be made. In addition, the Radiation Source Protection and Security Task Force, established by the Energy Policy Act of 2005, reviewed the National Source Tracking System and suggested that the issue of including Category 3 sources in the system should be evaluated and a final decision made on the issue.

In this rulemaking, the Commission is not making a final determination on what additional sources should be included in the National Source Tracking System. This rulemaking addresses Category 1 and 2 sources on the date this rule becomes effective. If additional material is added to the National Source Tracking System, it will be done through subsequent rulemaking. In a June 9, 2006, Staff Requirements Memorandum, the Commission has directed the NRC staff to conduct a one-time survey of Category 3.5 sources (one-tenth of Category 3) and develop a proposed rule to include Category 3 data in the National Source Tracking System.

B. Ra-226

At the time the proposed rule was published, NRC did not have authority over Ra-226. Because the IAEA Code of Conduct included Ra-226 in its recommendation for a source registry, NRC specifically invited comment on whether States would be willing to develop regulations that would require their licensees to report Ra-226 to either the State or to the National Source Tracking System. NRC received input from six commenters, including four States. The commenters all supported the inclusion of Ra-226 in the tracking system.

The Energy Policy Act of 2005 brought discrete sources of Ra-226 that are produced, extracted, or converted

after extraction, for use in a medical, research, or commercial activity, under the regulatory authority of the NRC. Because the NRC now has authority over Ra-226 sealed sources, Ra-226 has been added to Appendix E in this final rule. The NRC is currently developing a rulemaking that will, among other things, define discrete sources of Ra-226. NRC intends to issue final regulations by February 7, 2007, which will provide licensees adequate time to become familiar with new Ra-226 requirements before the implementation of the National Source Tracking System.

C. Temporary Job Sites

As drafted, the proposed rule only covered source transfers between different licensees and/or authorized facilities such as a DOE site or an export. It did not include transfer to a temporary job site. Therefore, transactions in which the nationally tracked source remained in the possession of the licensee would not have required a report to the National Source Tracking System. NRC specifically invited comment on whether licensees should be required to report as a transaction the use of a nationally tracked source at temporary job sites, whether in the same State or a different State, and if temporary job site transactions were included in the System, how much additional burden would be involved and what the reporting timeframe should be. Twenty-four commenters addressed this issue, including two Agreement States. The overwhelming majority of commenters were opposed to reporting transactions for source use at temporary job sites. One State supported the inclusion of transfers to temporary job sites arguing that security at temporary job sites could easily be compromised and reporting would provide information on what sources are on the state highways. Two Agreement States stated that while reporting use at temporary job sites would be useful, it should only be required when licensees perform temporary jobs across State lines. The information could then be compared to existing reciprocity reports if the host State was allowed access to the necessary information. The commenters stated that host States should be allowed access to the data to confirm what sources are within their borders.

Commenters opposed to the inclusion of reporting transactions at temporary job sites indicated that this would impose a large burden, the information reported would not add any value, and in fact would be out of date by the time it was reported. Commenters stated that many licensees can work at several job sites per day, noting that crews could conceivably go to eight different jobs each day. The commenters stated that reporting these movements would not add anything to the physical security of the sources, a point the NRC acknowledged in the Statement of Considerations for the proposed rule. Commenters also pointed out that these sources are used at tens of thousands of temporary job-sites annually and that their inclusion in the System would increase the already burdensome proposal by factors of hundreds or thousands. One commenter estimated that his company would amass an additional 41,250 reports annually if temporary job site transfers were included. Other commenters noted that it would require additional staff to make the reports; the estimates provided ranged from a quarter person-year to an additional full-time person. One commenter estimated that it would cost $41,600 annually to report source use at temporary job sites. Commenters also noted that due to the transitory nature of the temporary job sites, there may be no easy means of providing the information (*i.e.*, no computer, no internet, fax, etc. at the remote locations). Commenters indicated that by the time the information was reported, it would no longer be valid as the source would already be at a new location. Commenters also pointed out that radiographers are required to maintain a utilization log for each source and that the logs are available for review by NRC or Agreement State inspectors.

Commenters stated that as long as the source remains in the possession of the licensee, there would be an appropriate level of security. Several commenters noted that they are under an immediate detection assessment and response order; therefore, they already need to know where their sources are, and are required to respond to and report any problem to the NRC. They indicated that reporting temporary job site transfers would not improve incident response time. Several commenters stated that the volume of reports generated on temporary job sites would inundate the system and would likely require more manpower at the NRC. Another commenter noted that the risk of error would be increased due to the amount of movement of the sources on a daily basis. One commenter stated that the meaningless information would compromise the integrity of the entire database. Lastly, several commenters suggested that instead of reporting transactions involving temporary job sites, a shorter (monthly or quarterly) source inventory verification period should be imposed.

Response: NRC has carefully considered the information provided by the commenters and has determined that temporary job site transactions should not be reported to the National Source Tracking System. Requiring reporting of temporary job site transfers would impose a large additional burden on licensees without a corresponding benefit. The information would not be beneficial as it would likely be out of date by the time it was reported to the tracking system. Thus, States would not be able to use the information for checking what sources are within their borders because the sources would likely have been relocated before the data could be entered. As for requiring a more frequent reconciliation period instead of temporary job site reporting, the purpose of temporary job site reporting, if required, was not to provide verification that a licensee is still in possession of a source. A more frequent inventory reconciliation would impose a large burden without a corresponding benefit. NRC is not requiring the reporting of sources being transferred to temporary job sites to the National Source Tracking System.

D. Inspection of Waste Shipments

Waste brokers and disposal facilities are examples of licensees that might receive a nationally tracked source as part of a waste shipment. Because opening waste containers can result in unnecessary exposure for workers, these licensees typically do not open the containers to check contents, although a waste broker may open containers in order to consolidate shipments. After acceptance of a waste shipment, disposal facilities routinely move the container to the disposal area. The proposed rule did not require disposal facilities and waste brokers to verify the presence of the nationally tracked source in a waste container; they may rely on the verification of the licensee who shipped the source. Because there was to be no verification by the recipient that the source was in the waste container, NRC specifically invited comment on whether the waste broker or disposal facility should be required, at a minimum, to investigate the container for any indication of tampering. The inspection for tampering would provide additional assurance that the source was still in the container.

Six commenters provided input on this question, including two Agreement States. The comments on this issue were mixed. One commenter stated that one cannot assume the material is present and that verification of the presence of

the source in the disposal container is necessary for an efficient tracking system. The commenter noted problems at several sites with trying to go back and determine exactly what happened to the material to be disposed. Two commenters supported some sort of verification but suggested the use of a tamper-proof seal for a visual indication of possible tampering with a container. Two commenters stated that the current system is adequate and that waste brokers and disposal facilities should not be required to open the containers because it would subject workers to additional radiation exposure. The commenters also noted that the tamper proof seals currently required on transport containers provide sufficient indication that the source is still in the container. One commenter stated that due to ALARA considerations, content verification should be performed only once, with subsequent reliance on container tamper seals. The commenter suggested that two signatures be obtained to verify contents of the package before the seal is applied and that this would be the responsibility of the original licensee packaging the source.

Response: NRC has determined that no additional requirements are necessary for verifying waste shipments. NRC agrees that due to ALARA considerations, waste brokers and disposal facilities should not open a container to verify the presence of a source. Licensees must incorporate a feature, such as a seal, that is not readily breakable and that, while intact, would be evidence that the package has not been opened by unauthorized persons. Licensees generally verify that the seal is intact before handling the container, and NRC does not believe that it is necessary to require such a practice. If this becomes a problem, NRC would consider imposing additional requirements.

E. Quality Assurance

The quality of the information reported to the National Source Tracking System is extremely important. While the proposed rule did contain a provision to correct errors within five days of discovery, there were no required pre-submission data quality checks. To address data quality assurance concerns, NRC specifically invited comment on a proposal to require licensees to double-check the accuracy of the data by using two independent checkers before submission of the transaction report. NRC sought information concerning whether the proposed quality assurance requirement was the appropriate requirement for quality assurance and if not, suggestions for appropriate requirements, and what additional burden a quality assurance requirement would impose on licensees.

Twelve commenters, including three Agreement States, addressed quality assurance in their comments. Two of the commenters were in favor of quality assurance requirements. One commenter stated that inclusion of a quality assurance provision on data submission would be a good idea if it could be managed electronically, but was opposed to a counter signature approach. The other commenter supported a quality assurance provision if the verification was limited to comparison with manufacturer-supplied data or manifests and confirmation of tamper seal integrity.

Ten commenters opposed adding additional quality assurance requirements. Several of the commenters stated that annual reconciliation should be adequate to ensure quality assurance. Several commenters stated that there is no reason to believe that the information provided by the shipper would not be accurate and that the validity of the information could be checked during inspection. Commenters also noted that some data quality assurance would occur when two parties are involved in a transaction; the recipient of a source verifies the data when acknowledging receipt of a source. One commenter stated that mandating a second review is too prescriptive. The commenter noted that most companies have a quality assurance program and should be able to make the decision internally whether a second review is required. The commenter was not aware of any other regulation that specifically requires a quality assurance check prior to submission of data to the NRC.

Most of the commenters stated that requiring an independent check before data submission or any other requirement would impose a large financial burden on licensees, particularly smaller licensees. Commenters stated that for many small companies, resources are limited and personnel may not be available to conduct an additional check. Commenters noted that the requirement might necessitate the hiring of additional personnel. One commenter noted that if the quality control work was limited to confirming proper transcription of data, the burden would be about 30 minutes per transaction. One commenter noted that the inclusion of a quality assurance provision is no guarantee that an occasional error could not occur, and that the potential for error is reduced if the required recordkeeping and reporting are kept simple.

Response: NRC has decided not to impose additional quality assurance on the data submission. The large additional burden that would be imposed, particularly on small licensees, is not warranted. The source tracking system will have some built-in checks; for example, an alarm will be triggered if information submitted by the transferring company and the receiving company do not match. The annual reconciliation will also serve a quality assurance function. The inspection program will also be revised to include inspections related to the National Source Tracking System. In addition, information submitted to the National Source Tracking System must be complete and accurate in all material respects as required by NRC regulations (for example, 10 CFR 30.9, 40.9, 50.9, 70.9, 76.9). If data quality becomes a problem, the NRC would consider imposing additional quality assurance requirements.

F. Data Protection

In the proposed rule, NRC specifically invited comment on whether designation of the information as Official Use only would provide sufficient protection of the information or whether to require licensees to protect the information that is reported to the National Source Tracking System and, if additional protection is necessary, at what level of protection. Six commenters addressed this topic and supported retaining the designation as Official Use Only. While commenters agreed that the data is sensitive, they did not recommend additional provisions to protect the data. Commenters were opposed to designating the data as Safeguards Information (SGI) and noted that designation of the data as SGI would be onerous to implement and could result in unintended restrictions on routine data. Commenters stated concern about protection of the aggregated information and recommended that additional protection measures be taken. One commenter stated the information should be excluded from public disclosure under 10 CFR 2.390.

Response: NRC has decided that no additional measures are necessary to protect the information possessed by individual licensees. The data does not meet the definition of SGI and will be designated as Official Use Only—Security-Related Information once it is submitted to the National Source Tracking System. The information will be treated in the same manner as other

information designated as Official Use Only—Security-Related Information. A licensee will only have access to its information in the National Source Tracking System. Access for other persons, including NRC staff, will be on a need to know basis.

G. General

Comment G.1: One commenter stated that the proposed rule would make great strides towards assisting the metals industry in eliminating radioactive sources from the scrap feed stock because it provides better oversight, management, and stewardship of certain sealed sources. The commenter believes that the National Source Tracking System requirement will provide the NRC the necessary oversight to ensure that these sealed sources would be less likely to be managed in a way that could lead to their inadvertent or intentional disposal in the waste or the recycling streams.

Response: The commenter expresses general support for the rule, therefore, no response is necessary.

Comment G.2: One commenter objected to the statement that National Source Tracking ''will provide greater source accountability which will foster increased control by licensees.'' The commenter indicated that the statement implies that the NRC believes that licensees have not been providing adequate accountability or control for these sources in the past. The commenter disagrees with this implication and cites the excellent record of licensees.

Response: The statement was not intended to imply that licensees have not historically provided adequate accountability and control over these sources. However, in today's threat environment, NRC has determined that enhanced controls are necessary to ensure the continued protection of these materials. National Source Tracking is one aspect of the enhanced security program, and will provide NRC with information on what licensees actually possess verus what radioactive material they are authorized to possess.

Comment G.3: Two commenters stated that there is no need for a national source tracking system and another commenter stated that the rule is in excess. One commenter stated that the sources are already tracked by the respective NRC office or Agreement State via licensing and inspection, noting that licensees are required to inventory their material. The commenter stated that the source tracking system would add an additional layer of bureaucracy and would be a waste of money. The second commenter stated that the proposed rule would increase costs for licensees without improving the security of licensed material. The commenter stated that the NRC already possesses information through the existing regulatory framework on who manufactures, receives, transfers and disposes of sealed sources. One commenter suggested that if NRC wants to track sources it should be via the submission of quarterly inventories.

Response: NRC disagrees with the commenters. The Energy Policy Act of 2005 requires NRC to issue regulations for a mandatory source tracking system. Currently, sources are not tracked by either NRC or the Agreement States. Most licenses establish a maximum possession limit, but most do not list individual sources. While regulatory agencies know what material a licensee is authorized to possess, they may not know what that licensee actually possesses at its facility. While licensees are required to maintain an inventory of the radioactive materials that they possess, there is no requirement that they report their inventory to their regulatory agency, although inspectors may review the inventory listing as part of an inspection. The National Source Tracking System will provide the NRC with the up-to-date information it needs to monitor the location of higher activity material; the submission of quarterly inventories would not be a sufficient tracking mechanism for these higher-risk radioactive sources.

Comment G.4: One commenter stated that the proposed rule inappropriately references the IAEA Code of Conduct and suggests that the IAEA is asking for more than is already required in the present United States regulatory environment. The commenter expressed the belief that the United States regulatory framework for licensing already meets the IAEA requirements.

Response: NRC disagrees with the commenter. The United States Government has made a commitment to comply with the recommendations in the IAEA Code of Conduct, so it is appropriate for the proposed rule to reference the IAEA document. The IAEA Code of Conduct specifically recommends that Member States establish a national source registry, a mechanism that is not part of the current U.S. regulatory framework.

Comment G.5: A commenter stated that the proposed regulation violates the Agreement between the Agreement States and the Federal Government.

Response: NRC disagrees with the commenter. There is no violation of the Section 274b. Agreements between certain States and the NRC. The commenter did not provide any additional information on exactly what aspect of the proposed rule was in violation. Promotion of the common defense and security was the basis for the proposed rule and on that basis NRC would not have relinquished that function to the Agreement States under Section 274b. of the Atomic Energy Act. However, upon further review the Commission has determined to promulgate the rule under its authority to protect the public health and safety.

Comment G.6: One commenter pointed out that the statement identifying Category 3 sources as those that have 1/10th of the radioactivity of Category 2 sources is misleading. The commenter noted that Category 3 sources also includes sources that have radioactive levels right up to the bottom threshold of the Category 2 sources.

Response: The commenter is correct that Category 3 sources include sources that have activities up to the lower threshold of Category 2 sources. A Category 3 source is a source containing radioactive material equal to or greater than the Category 3 threshold (1/10th of the Category 2 threshold) but less than the Category 2 threshold.

Comment G.7: One commenter noted that the majority of sources that are lost or stolen every year are portable gauges, which are well below the Category 2 threshold, and that this rule would do nothing to help safeguard those sources.

Response: The commenter is correct that this rule does not cover portable gauges. NRC issued a final rule on the security of portable gauges on January 11, 2005 (70 FR 2001). The rule became effective on July 11, 2005.

Comment G.8: One commenter expressed support for the National Source Tracking System but stated that the system should meet the need to enhance the public health and safety as well as national security. Two Agreement States stated that the rule should be promulgated under health and safety and be classified as Compatibility Category B, particularly since it will be added to 10 CFR part 20, which delineates the general radiation safety standards. They indicated that States should be responsible for inspection and enforcement of the National Source Tracking System to ensure licensee compliance with the rule.

Response: The NRC agrees that the National Source Tracking System will benefit the public health and safety and is changing the basis for the rule. Accordingly the final rule is being issued under the Commission's authority to protect the public health and safety and is classified as a

Compatibility Category B. The reporting provisions are being placed in 10 CFR part 20 because part 20 applies to all licensees.

Comment G.9: One commenter questioned the inclusion of several radionuclides. The commenter noted that Pu is already accounted for and licensed separately as special nuclear material and a national database would be redundant. The commenter also did not understand why Th-229 and Cf-252 were included in the System since not many of these sources exist outside of DOE that exceed the threshold. The commenter asked if there were any future plans to track all sources no matter the size. One commenter also stated that the sources (Ir-192) are ill suited for use in RDDs or REDs.

Response: Transfers of Pu are tracked in a separate database. However, the database is inventory based; individual sources are not reported, therefore, the database and the National Source Tracking System are not redundant. Because the National Source Tracking System is to be a national system, it will include transactions from DOE facilities; therefore, radionuclides of concern to DOE need to be included. It is true that not many licensees actually possess these sources, so this provision does not impact many licensees. As stated in the Statements of Consideration of the proposed rule, NRC may consider expansion of the National Source Tracking System to include Category 3 sources at a later date (See Section A for further discussion of Category 3 sources). There are no plans to include other sources at this time. Ir-192 is included because it is listed in the Code of Conduct.

Comment G.10: A commenter questioned the benefit of having two categories of sources, besides adding unnecessary complexity to the regulation. The commenter noted that there are few differences between the requirements for Category 1 and Category 2 sources.

Response: The reporting requirements are identical for both Category 1 and Category 2 sources. However, the implementation date is different for the two categories. Future regulations codifying some of the NRC Orders may have different requirements for the two categories of sources.

Comment G.11: One State supported not only the inclusion of Category 3 sources, but the inclusion of all non-exempt sources. The commenter supported the inclusion of non-exempt sources because of the view by emergency planners that any activity level of any radioactive material used in an RDD or RED would cause panic among the population.

Response: Lower activity sources are not considered likely to be used in an RDD or RED. Inclusion of all non-exempt sources would impose a huge burden on licensees and would likely overload the tracking system such that the effectiveness of the system would be reduced.

Comment G.12: Six Agreement States expressed support for the change in basis to public health and safety. (In addition, two Agreement States suggested issuing the rule under a basis of public health and safety during the original comment period in 2005.) The six States supporting issuance of the rule under public health and safety and as a Compatibility Category ''B'' argued that: States are better positioned than NRC to assure licensee cooperation; the States are better suited and able to perform this type of oversight than the NRC; the public health and safety basis would minimize the potential for the dual regulation of a State licensee; there would be less potential for licensee confusion; some licensees may be more comfortable and willing to respond when contacted by the State officials with whom they are familiar and have an established working relationship; National Source Tracking would not necessarily increase source security but it would increase source accountability, which is a function under health and safety; States are better able to react quickly when there may be discrepancies in the reported information than the NRC; States are able to inspect in a more timely and cost-effective manner than NRC when problems arise; National Source Tracking is a logical fit with the increased controls that States are already implementing; and Agreement States have demonstrated the ability to work cooperatively with the NRC on security initiatives under public health and safety. (NRC issued orders that required strengthening of the measures regarding the control over use and storage of Category 2 quantities of radioactive material. (70 FR 72128; December 1, 2005) Agreement States issued compatible legally binding requirements at the same time.)

One industry organization also supported the basis change and supported the use of a single database. One industry organization was neutral. One commenter did not object to the basis change.

Five Agreement States are opposed to the basis change. The opposing States argued: The State's ability to quickly implement health and safety requirements for the increased controls is not a reason to change the designation of the rule (common defense and security to public health and safety) and does not mean States have the resources or desire to do so for national source tracking; lack of resources to implement the program (e.g., lack of trained experienced inspectors); concern over the additional burden from the future inclusion of Category 3 sources in the tracking system; Congress intended source tracking to be a measure to promote the national security and changing the basis would violate the express intent of Congress; the federal government is attempting to shift additional responsibilities to the States simultaneously as it is withdrawing funding of the grant support from the Department of Homeland Security; and tracking of sources is not a local or State issue but a national issue. One of the Agreement States asserted that the NRC's authority to issue rules to promote common defense and security and its authority to issue rules to protect public health and safety have distinct applicability and limitations attached, and if the functions are intertwined, Congress could not assign the one responsibility to the Agreement States and the other to the Commission.

One commenter stated that while there is certainly a nexus between safety and security, the motivation for the Energy Policy Act is the security of these materials. The commenter urged the Commission to reconsider its decision and return to a common defense and security basis which is necessary in order to faithfully implement Congressional intent.

Response: The NRC agrees that the National Source Tracking is a logical fit with the increased controls that States are implementing. A public health and safety basis is consistent with the framework for the increased controls established by the Commission and NRC continued cooperation with Agreement States to implement a national materials program. In addition, implementation of the NSTS will not increase the physical security of sources; rather, it will improve the tracking of sources to support public health and safety. The NRC supports issuance of the final rule under it public health and safety authority. NRC will develop and will maintain a single National Source Tracking System. Agreement State licensees will report to the national system. The Agreement States will be responsible for issuing legally binding requirements to their licensees that will require reporting of the necessary data. The legally binding requirements will be identical to the rule requirements

and will be issued such that they are effective at the same time as the rule.

The National Source Tracking rule solely concerns collecting data, submitting it to a national data base developed and maintained by the NRC, and ensuring the data are appropriately updated in a timely manner. As such, the National Source Tracking System fulfils the Congressional mandate in the Energy Policy Act that the NRC establish by regulation such a system for tracking radioactive sources. Issuing this rule under the NRC's authority to protect the public health and safety in no way diminishes NRC authority to take appropriate action, nor lowers the significance of NRC actions. In fact, the safety of the public is the main reason for implementing security measures for radioactive materials. NRC is very aware of the resource concerns expressed by the five Agreement States which oppose the basis change. NRC will work with all of the Agreement States to further verify the rule requirements, the implementation period and approach, understand resource impacts of system implementation, and identify and address implementation issues as they arise.

Comment G.13: One Agreement State argued that the switch of the basis for adoption of the rule does irreparable harm to the States by denying them meaningful opportunity for input in a rulemaking that will place direct demands upon State resources. The State asserted that the fact that only six States submitted comments on the proposed rule attests to the States' perception that the matter had little impact upon them. The State also asserts that the change in basis amounts to a substantive change in the rule and requires that the entire rule be reopened for comment. One commenter requested information on Agreement State interactions.

Response: The NRC disagrees with the commenter. The States have had many opportunities to provide input to the National Source Tracking System. Representatives of the States participated in the development of the requirements for the system and development of the rule. The rule and system have been discussed at the Organization of Agreement States annual meetings and the Conference of Radiation Control Program Directors annual meetings. The NRC disagrees that the change in basis warrants that the entire rule be reopened for comment. The basis change was initiated by comments received from several Agreement States and is consistent with the framework established for the increased controls.

Comment G.14: Two Agreement States, while supporting the basis change, recommended that NRC consider revising the security orders issued to certain manufacturer and distributor licensees to implement the source tracking reporting requirements. The commenters stated that this could reduce the regulatory burden for those Agreement States that have a large number of manufacturer and distributor licensees that routinely transfer large numbers of Category 1 and 2 sources.

Response: Because the final source tracking rule is being issued under the basis of public health and safety, the Agreement States will be responsible for issuance of legally binding requirements for their licensees that possess Category 1 or 2 sources, including State licensees that received NRC orders. NRC has chosen to impose the tracking system reporting requirements by rule rather than by orders. See also response to Comment G.12 concerning resources.

Comment G.15: One Agreement State disagreed with the statement that ''the requirements are laid out in the rule and it should be a straightforward matter for States to develop the legally binding requirements.'' Two States also disagreed with the estimate of approximately 1 hour for inspection. The States indicated that their experience with inspecting for the increased controls as part of routine inspections demonstrated that NRC underestimated the effort involved. One State indicated that NRC has not allowed for or provided adequate training opportunity for the State to conduct these inspections.

Response: The NRC staff disagrees with the comment. The rule does lay out the reporting requirements that Agreement States will need to impose on their licensees. NRC will work with the States to develop the legally binding requirements for State licensees. In reference to training, it is not clear if the commenter is referring to training related to inspections for the National Source Tracking or the increased controls. A Temporary Instruction will be issued for use by NRC inspectors; Agreement States will have access to the instruction and can also use it to conduct inspections. As for the time estimate required for the inspection, NRC staff believes one hour on average to be adequate to perform a simple check to make sure that the licensee has accurately reported sources to the National Source Tracking System. NRC will also utilize existing mechanisms for communicating and working with the Agreement States to help ensure a consistent uniform national approach to implementing the rule. We will use an approach similar to the one we used with the increased controls, e.g., routine calls, electronic communications, formation of an NRC-State working group. Through these interactions, the NRC will continue to coordinate with the states to understand any issues with the impact of NSTS implementation on state resources.

Comment G.16: One commenter requested information on the budgetary needs for implementation of the National Source Tracking System and copies of correspondence. The commenter requested information on the cost for Agreement States to develop their own tracking systems and how they would coordinate transfers between licensees in different geographic locations.

Response: Information on the cost of the rulemaking is available in the Regulatory Analysis completed to support this rulemaking and relevant correspondence is available in ADAMS. Under this framework, NRC will develop and will maintain the tracking system; Agreement States will not be developing their own systems. All licensees will report to the national system. Agreement States are not expected to coordinate the tracking of sources when transfers to different states occur.

G.17: One commenter stated that transactions involving aggregation of sources whose activity level, if taken together, exceed the Category 2 threshold should be included because the security and safety threats of such a transaction would be the same as that associated with a transaction involving a single Category 2 level source. The commenter further asked how, from a security and safety perspective, NRC could justify tracking an import of aggregated Category 2 sources until the sources reach the U.S. after which they might be essentially ignored if such aggregated sources are not included in the tracking system.

Response: The NSTS will not consider transactions involving the aggregation of sources. The System will be an item-level tracking system for individual sources. If aggregation were considered, the smaller sources would be entering and exiting the system. The system data would become unreliable as the source moved in and out of the system. Some licensees would be required to report information on Category 3 sources and some would not. It is important to note that the NSTS does not impose any additional security requirements on the sources. The security and control measures are imposed by Order or other legally binding requirements. Those security

and control requirements do consider aggregation of sources. Additionally, imports of Category 1 and 2 radioactive material are not tracked under the import/export rule, but licensees are required to provide notification to the U.S. government of the estimated arrival date for imports.

G.18: One commenter stated that a February 26, 2006, report by the NRC Inspector General (IG) entitled ''Audit of the Development of the National Source Tracking System (NSTS)'' found that the proposed tracking system ''may not account for all byproduct material that represents a risk to the common defense and security and public health and safety. Such risks could result in economic, psychological, and physical harm to the United States and public.'' The commenter requested information on whether the two recommendations from the report: (1) To conduct a comprehensive regulatory analysis for the NSTS that explores other viable options and (2) to validate the existing data in the Interim Database were followed prior to the Commission vote.

Response: The rule on National Source Tracking was originally developed for Category 1 and 2 sources. Data were not available to conduct a cost-benefit analysis of including additional sources in the tracking systems. As for validating data in the Interim Database, the staff did take some measures for improvement in the 2005 survey of licensees. The analysis of the 2005 data was available before the Commission vote.

G.19: One commenter requested information on Agreement State responsibility to share information when a source is missing, lost, or stolen. The commenter also requested information on coordination with Agreement States and U.S. Customs and Border Protection to confirm the legitimacy of imports of shipments of risk-significant sources. The commenter requested the complete timeline for the process of adding Category 3 sources to the tracking system, what analysis would be required, and information on Agreement State regulation of Category 3 sources.

Response: This rule does not change the requirements for reporting of lost, stolen or missing sources. The U.S. Customs and Border Protection program is not impacted by this rule, and the notification information is required by the import/export rule. Agreement States do not have authority to issue import or export licenses as that is reserved for the NRC. The inclusion of Category 3 sources is addressed in this section, item A. All Agreement States regulate Category 3 sources.

H. Rule Language

Comment H.1: One commenter stated that manufacturers should only be required to report upon the transfer of sources. The commenter noted that sources are manufactured based on specific orders and that the sources are transferred quickly to the recipient (the same day or within a couple of days of each order). The commenter stated that requiring reporting of both the manufacture and the transfer of sources would impose an unnecessary burden on the manufacturer to enter the information twice. The commenter noted that entering data upon manufacture would not provide any useful information as that source would be shipped out and that the creation date is irrelevant in the context of tracking the locations of sources once they are in use.

Response: The manufacture date is the point of origin for the source, and is needed by the system to calculate decay of the source. A manufacturer may report both the manufacture of a new source and the transfer of the source in a single report, provided that the transfer occurs within the reporting timeframe of the manufacture and the licensee submits all information for both transactions. If the transfer occurs after the close of the next business day after the date of manufacture, the licensee must make two separate reports.

Comment H.2: Two Agreement States suggested that additional information should be collected on the transactions. The commenters stated that the information should include the State in which the source is located, the State to which a source is being transferred, and the State from which a source is transferred.

Response: The NRC agrees with the commenter. The information on the States involved in a transaction is part of the system. Licensees will provide the actual address (location of a facility) when establishing an account in the system. The final rule language has also been revised to add the address of the licensee as required information.

Comment H.3: One commenter stated that the rule was missing a transaction on recycling of sources, or disposal or disassembly of sources for recycling. The commenter noted that the disposal transaction does not adequately capture this activity because it requires a waste manifest number. The commenter noted that his company disassembled 1,809 Co-60 sources in the last year, and that these sources would have been tracked in the National Source Tracking System. The commenter noted that new sources were created out of the recovered Co-60. The commenter stated that this type of transaction should be treated similar to a disposal transaction but without a waste manifest number. The commenter provided draft rule language for consideration and also noted that NRC Form 748 would need to be revised to reflect the new transaction. Three commenters asked how remanufacturing (recycling) of sources would be handled. The commenters noted that when older sources are melted down and new sources are created, the unique serial number is lost. The commenters stated that the tracking system needs to be able to address this type of situation.

Response: The NRC agrees with the comments and has added a new transaction for disassembly of a source to the final rule. The rule requires a licensee that disassembles a source (for any reason) to report the transaction. This is an irreversible endpoint for the source within the tracking system. If the material is used to generate a new source, the licensee must report the generation as a new source manufacture. NRC Form 748 has been revised to add this new disassembly transaction.

Comment H.4: One commenter suggested that in the definition of Nationally Tracked Sealed Source, the term ''permanently'' should be deleted in the phrase ''permanently sealed'' because of recycling considerations.

Response: The NRC agrees with the commenter and the definition has been so revised.

Comment H.5: An Agreement State commented that June would be a bad month for academic licensees to conduct the required annual reconciliation of their data because school is out and some Radiation Safety Officers take summer vacation and thus would not be available to conduct the reconciliation. The commenter suggested September or October as alternatives.

Response: The month of June was selected in the proposed rule based on the proposed implementation date of the final rule. Because the implementation date of the final rule has changed, the reconciliation date has also changed. Reconciliation will be required in the month of January each year. In determining a suitable time for reconciliation, NRC took into consideration the implementation date of the new reporting requirements, the academic calendar, and peak work periods for radiographers.

Comment H.6: Two commenters requested that the reporting timeframe of the close of the next business day be extended because it would be too stringent and might be hard to meet. Commenters requested that the

timeframe be extended to three to five days. One commenter noted that one individual in each office, likely the Radiation Safety Officer, would be given the responsibility to make reports and that he/she might not always be available in that timeframe, particularly when there were a lot of other activities in the office. Another commenter noted that extending the reporting requirement to 5 business days would enable licensees involved in the transaction to verify that the transaction has been completed. One commenter stated that reporting by the close of the next business day would not be appropriate for Category 2 sources, but did not address Category 1 sources. The commenter believes the proposed reporting by the next business day requirement would be without value for enhancing the security of sources and responses to thefts and would be overly burdensome. The commenter noted that there are already requirements for immediate reporting of the loss or theft of a source and that reporting to the National Source Tracking System would not increase the physical security of the source or improve the response time of authorities in the event a source were stolen. One commenter suggested that instead of requiring reporting by the close of the next business day, that the NRC consider requiring licensees to maintain a record of the present location of the sources, make a monthly report of the movement of sources to ensure the national source registry is maintained, and to notify the planned recipient. The commenter further suggested that the NRC expand the reporting requirements in 10 CFR 20.2201 to require reporting within 24 hours when Category 1 or Category 2 sources in transit cannot be located.

Response: Although the Energy Policy Act of 2005 requires reporting a change in possession of a source within 7 days, the final rule requires reporting by the close of the next business day. The timing of reports was discussed within the Interagency Coordinating Committee and the conclusion was that allowing up to 7 days for reporting transactions was too long for reporting transactions. The Committee indicated that reporting should be by the close of the next business day. In addition, allowing a longer timeframe could create a situation in which the source recipient might report the receipt of a source before the sender of the source reports that the source had been transferred. NRC has determined that the close of the next business day is an appropriate timeframe for reporting.

Comment H.7: Two commenters suggested that rule language be added to specifically state that sources that decay below the Category 2 threshold values are automatically removed from the system and that no reporting would be required by licensees.

Response: Specific language is not needed in the rule text to incorporate the commenter's suggestion. A Nationally Tracked Source is defined in terms of Category 1 and Category 2 levels of any radioactive material listed in Appendix E. Once a source has decayed below the Category 2 threshold, by definition, it is no longer a nationally tracked source and is not required to be reported to the National Source Tracking System. The data on the source will, however, be retained in the system.

Comment H.8: One commenter proposed that a leak test be required (or confirmed as current) prior to shipping any Category 1 or Category 2 source to ensure that if any source is leaking that it be identified at the point of origin as opposed to the point of receipt.

Response: Leak testing is beyond the scope of this rulemaking. Licensees are required to periodically conduct leak tests on sealed sources for health and safety reasons. For the purposes of National Source Tracking, leak tests are not necessary.

Comment H.9: One commenter requested clarification on whether the activity levels in the table (Appendix E) apply to the parent radionuclides and the daughter products or just to the parent radionuclides.

Response: The activities in the table do not include daughter products.

Comment H.10: One commenter stated that for some radionuclides, such as Pu, the amount should be reported in grams instead of activity units.

Response: The official threshold unit for the National Source Tracking System is Becquerels. However, the system will allow reporting in other units, including grams. The system will automatically conduct the conversion into Becquerels.

I. Regulatory Analysis

Comment I.1: A commenter stated that Option 1 (no action) in the Regulatory Analysis is more viable and should be given consideration because the tracking system will be very costly to the stakeholders with little or nothing being gained by the stakeholders.

Response: The NRC disagrees with the comment. Although the rule does impose some additional burden on licensees, the NRC believes that the information to be gained is valuable. In addition, the Energy Policy Act of 2005, signed into law after publication of the proposed rule, requires NRC to issue regulations establishing a mandatory system for national source tracking. The no action alternative is no longer a viable option.

Comment I.2: One commenter noted that the draft Regulatory Analysis shows approximately 93 percent of the cost being borne by the NRC. The commenter stated that since the NRC acquires its revenue through fees on licensees, all of the cost of the system will be borne by the licensees and would end up costing each licensee approximately $18,000 annually. Another commenter questioned where the money to pay for the system will come from, noting if there are to be fees associated with the database, this should be spelled out now.

Response: There are no direct fees associated with the National Source Tracking System. The cost of the system has been removed from the fee basis and will not be recovered through annual fees.

Comment I.3: One commenter questioned how the tracking system would improve public health.

Response: The Regulatory Analysis did not state that the tracking system would improve routine public health. The attribute discussed in the Regulatory Analysis is public health (accident/event) and the document stated that the tracking system would have a positive effect. The National Source Tracking System is discussed in terms of being a preventive measure and having the capability to avert potential health effects. The National Source Tracking System will provide regulators better information on where sources are located and who possesses them. Having this information should reduce the possibility that the material could be used in an RDD or RED. As other commenters have pointed out, the tracking system should also reduce the chance of sources being introduced into the scrap metal stream.

Comment I.4: One commenter stated that the draft Regulatory Analysis grossly underestimates the cost and time it will take for industry to comply with the new requirements. The commenter stated that the NRC did not include any cost or time in order for industry to put systems in place and that licensees will need to write specific computer programs to collect the information. The commenter stated that approximately 80 man hours would be needed to implement the requirements of the new rule.

Response: It should not be necessary for most licensees to put any new systems in place or write computer programs in order to implement the rule. Licensees should already have the information required to be reported to the National Source Tracking System,

and will only need to log onto the system and enter their data. For those licensees that plan to use the electronic batch method, some computer programing may be necessary. The Regulatory Analysis has been revised to reflect this burden.

J. Implementation

Comment J.1: One commenter requested that industry be given adequate time to change procedures and conduct any necessary training before implementation of the rule. Another commenter requested guidance on the information technology aspects of implementing the system because it is going to take some effort to develop the process for electronic data downloads to the system. Commenters also requested information on when the workshops would be held.

Response: The provisions for reporting transactions are not effective for over 6 months from the publication date of the final rule. Licensees should have adequate time to train staff on new or revised procedures, if necessary. The information technology guidance will be made available prior to rollout of the system. The NRC will be holding licensee workshops before the rule's effective date. The dates for the workshops have not been set. NRC will give licensees ample notice once the dates and locations for the workshops have been determined.

Comment J.2: Three commenters stated that manufacturers typically ship newly manufactured sources the same day as their manufacture or within a day or two and that it would not make sense to then require the manufacture to reenter the data for transfer of the sources. The commenters suggested allowing one entry or form to cover both transactions.

Response: NRC will allow the use of the same form for those sources that are manufactured and shipped on the same day. Licensees will need to check both transactions on the form.

Comment J.3: One commenter noted that a big education campaign needs to be conducted for both licensees and Agreement States. The commenter noted the need for NRC and Agreement State compatibility and consistency in implementation and education. Commenters noted that implementation of the final rule will require extra effort to assure that Agreement State licensees are contacted and fully aware of the requirements of the rule.

Response: NRC agrees with the commenter on the need for training. Both NRC and Agreement State licensees will receive information on the National Source Tracking System, including information on how to establish an account, and information on training. The initial contact list will be based on licensees in the interim database. NRC will also work with the Agreement States to make sure that all impacted licensees are reached. NRC will be sponsoring workshops for both NRC and Agreement State licensees. NRC will also hold training sessions for Agreement State staff.

Comment J.4: Three commenters asked how corrections of data would be handled, both electronically and by paper. The commenters noted that without some method of noting a correction, the corrected information might be treated as a double transaction.

Response: The paper form has been revised to include a box to check for corrections. Users will also be able to correct transactions electronically. Development of the system is not complete, but in general, a licensee will be able to access its data, pick a transaction or source and click on a screen that will allow revisions.

Comment J.5: One commenter requested information on who would have access to the database and to what extent. The commenter requested information on how the database will be used and how it would improve security of nationally tracked sources. The commenter requested an example of how the database would be used and when. One commenter stated that the low-level waste compacts should be allowed to have unqualified access to the data in the National Source Tracking System database because access would facilitate determining future regional needs for disposal of sources. The commenter further stated that access would facilitate the exportation from the compact region of devices for disposal and that records maintained by the compact would confirm occurrence of the transaction.

Response: Each licensee will have access to data on its own material and facility. Agreement State officials will have access to data on licensees within their own State. DOE officials will have access to data on DOE sites. Some NRC staff will have access to all of the data in the system. Other agencies will only have limited access to the data on a need to know basis. NRC will establish a procedure for handling requests from groups/agencies for data access. As stated in the Statement of Considerations for the proposed rule, the National Source Tracking System itself will not improve the physical security of these materials. The System may improve accountability of material and is part of the overall security program.

Comment J.6: One commenter asked whether a Radiation Safety Officer for a licensee with multiple locations in various NRC and Agreement States would have access to manage the information in the database for the various locations.

Response: Yes, a Radiation Safety Officer for multiple locations could arrange to have access to the information for all of the sites for which he/she is responsible. Access will be arranged during the setup of the account information for the licensee.

Comment J.7: Two commenters stated that there should be a provision to allow licensees to address multiple sources with a single transactional entry. The example provided is the 201 distinct sealed sources contained in a gamma knife. Each source is serialized sequentially and has nearly equal activities.

Response: Licensees will be able to report multiple sources that are serialized sequentially. The on-line and batch method will easily accommodate this action. Licensees using the paper forms will need to use the comment box to provide such data.

Comment J.8: One commenter stated that the NRC should consider the time and resources that will be needed for compliance with the rule. The commenter stated that the rule would require additional manpower and office equipment and place a significant financial burden on a healthcare delivery system already under stress. The commenter asked that NRC support efforts to lobby Congress, CMS, and private payers to increase funding for the delineated radionuclide procedures to alleviate the financial burden placed on medical institutions. The commenter also asked that source tracking be postponed until such funding is secured.

Response: NRC acknowledges that the National Source Tracking System imposes additional burden on licensees required to report transactions to the system. NRC is taking measures to reduce the reporting burden. Licensees can report using several different mechanisms, with on-line and electronic reporting being the least burdensome. Licensees will not be required to invest in any additional equipment to make their reports. Most licensees already have computers and internet access. The request to lobby Congress and others is beyond the scope of the rulemaking.

Comment J.9: One commenter stated that the NRC should make a commitment to international harmonization on source tracking and take whatever steps are appropriate

towards that goal before implementation of the tracking system. The commenter stated that harmonization is needed because tracking systems implemented by other countries need to work smoothly with NRC regulations if tracking systems are to be effective and efficient. The commenter stated that if implementation by all national authorities is based on a common set of definitions and operating principles, equitable trade opportunities will be maintained. Two commenters encouraged harmonization with other countries, specifically with Canada and the United Kingdom, to ensure a compatible Web interface and data format. Another commenter stated that it is imperative that all countries implement national source tracking consistently and in the same time-frame, otherwise the rule will be only partly effective as tracking could be lost once sources are exported out of the United States. One commenter noted that if the tracking methods are identical information could be sent to both countries simultaneously.

Response: The source tracking system is a domestic system and should have no impact on trade opportunities with foreign countries. The system is not intended to track sources once they are exported out of the United States. NRC staff has met with Canadian officials to discuss source tracking. NRC staff has also attended international meetings to discuss Code of Conduct implementation, including source tracking. The import/export notifications are not part of this rulemaking.

Comment J.10: One commenter stated that the paper forms for reporting transactions are dysfunctional. The commenter stated that shipment of multiple sources would require the completion of multiple forms and would take several hours to complete. The commenter stated that the forms cannot be used in their current format and should be revised.

Response: The commenter did not provide any specifics as to the deficiencies with the form or make any suggestions for improvement. If a licensee chooses to use the paper form, it will be limited in the number of sources that can be included on the form; the size of the form is limited. Instead of filing multiple forms, the licensee could attach an addendum sheet that lists all of the sources for a transaction. The licensee would simply need to add a note to the comment section that states ''see addendum for additional sources.'' The NRC has revised the instructions for the form to explain this option. For reports made online, there will be no limit to the number of sources that can be included in a single transaction report.

Comment J.11: One commenter urged the NRC to combine the reporting required under the import/export final rule (70 FR 37985; July 1, 2005) with the reporting required under this rule. The commenter stated that it would be redundant for a licensee to notify the NRC twice of every international shipment and would add an undue and unnecessary paperwork burden.

Response: The initial deployment of the National Source Tracking System will not have the capability to allow licensees to report the notification information required by the import/export final rule. The System will provide this capability in a later deployment.

Comment J.12: One commenter stated that the NRC should expand its use of electronic systems for data reporting to include reporting required by the security orders to help reduce duplicative reporting. The commenter also advocated use of one central database for all notifications. Other commenters stated that NRC needs to perform a comprehensive review of all the various Orders and regulations that have been issued and proposed over the last two years to address any inconsistencies and duplication. One commenter stated that licensees are required to provide increased controls/security measures for the receipt, transfer and movement of sources, and therefore, the rule is repetitive.

Response: NRC disagrees that the rule is repetitive with the increased controls/security measures for the receipt transfer and movement of sources. The increased controls/security measures do not require transaction reporting to NRC and the NRC is not aware of any duplication in the measures and this rule. NRC is not aware of any inconsistencies related to this rulemaking and the various Orders, increased controls or security measures. The other comments are beyond the scope of this rulemaking.

Comment J.13: One commenter asked how the NRC is going to assure that all licensees enter data as required. The commenter asked what would be done if the recipient does not enter data and the initial shipper subsequently receives information that the source has decayed below the reporting threshold.

Response: Data entry for the National Source Tracking System is subject to inspection. If licensees are not reporting data as required, NRC and the Agreement States can take enforcement action. The system will have built-in features that will trigger an alarm for mis-matched transactions. The system will not catch situations in which both sides of the transaction have failed to report; however, these transactions should be captured and corrected during the annual reconciliation process. In addition, licensees reporting to the National Source Tracking System are subject to requirements in NRC regulations (for example, 10 CFR 30.9) that information provided to the NRC shall be complete and accurate in all material respects.

K. System Aspects

Comment K.1: One commenter suggested that the National Source Tracking System should be operated as a separate and independent system under the current Nuclear Materials Management and Safeguards System (NMMSS). The commenter stated that this would result in significantly lower costs for system development and operation, improved quality of the information, and less burden on licensees.

Response: This comment is beyond the scope of this rulemaking. This rulemaking establishes the reporting requirements for the National Source Tracking System. The actual database development and operation is not conducted through rulemaking; the NRC will obtain the system through a formal procurement process. Section L addresses the use of NMMSS for byproduct source tracking.

Comment K.2: A Federal agency requested that the NRC work jointly with it on a data sharing format to allow them and other agencies to use National Source Tracking System data. The commenter stated that agencies across the Federal government should have the opportunity to leverage the data collected by extracting other information useful to the American public, thereby representing potential benefits to government agencies and the American public.

Response: An Interagency Coordinating Committee was formed to address these and other issues. Other agencies will be allowed access to the data on a need to know basis. NRC, in conjunction with the Interagency Coordinating Committee, will develop a procedure for handling requests for data access.

Comment K.3: One commenter requested information on how the database information would be safeguarded from computer hackers. The commenter stated that if a terrorist gained access to the database, they would have access to a listing of all the large sources. Therefore, the commenter believes that a national database

actually reduces national safety instead of improving it.

Response: NRC shares the commenter's concern about computer security. The National Source Tracking System will receive security accreditation before it can be used. The security information for the system will not be made publicly available.

Comment K.4: One commenter suggested that the source tracking notification system should include an automatic e-mail notification when a sender designates a specific licensee in a transfer entry as this would allow rapid identification of errors in the system at the time of transfer.

Response: The source tracking system will have some automatic notification features that will be designed to reduce errors.

Comment K.5: Three commenters noted that NRC should have interactions with the users of the system prior to the demonstration workshops that are planned. In addition, commenters stated that NRC should establish a users group composed of a cross-section of members of the affected community to develop the formats, input means, and reports that will be available through the system. The commenter stated that this will assure that the system is user-friendly while still meeting NRC's needs. One commenter stated that representatives of industry must be part of the design team and that this will provide an opportunity to review the specifications for the system to understand how the Web interface will operate and what kind of 'machine readable' data format will be used. Another commenter noted that NRC needs to pay attention to the human side of the database to avoid chaos with the data collection.

Response: NRC plans to have interactions with stakeholders during development of the format for the electronic batch files. The names of those licensees that have expressed interest in participating will be provided to NRC staff involved in system development. The NRC will consider the suggestion that industry representatives participate on the design team.

Comment K.6: One commenter stated that as written the rule would be extremely burdensome for both licensees and regulators. The commenter stated that NRC does not fully understand the undertaking of this rule. The commenter encouraged NRC to work with the industry in the implementation of the rule and the development of the Web-based system.

Response: Although the rule does pose additional burden on licensees and NRC, the burden is not extreme. The source tracking system is an important national initiative that justifies the burden and is in fact required by statute (the Energy Policy Act of 2005). NRC has a clear understanding of the implications of this rule for both industry and NRC. (See also response to K.5.)

Comment K.7: One commenter suggested that NRC should be required to provide a unique tracking number for each source in the tracking system.

Response: The National Source Tracking System uses a combination of the manufacturer, model number, and manufacturer assigned serial number to identify the sources. The system will assign a unique number for each source entered in the system.

L. Miscellaneous

Comment L.1: One commenter requested clarification on whether the proposed rule covers transactions involving devices returned to the manufacturer for long term disposal.

Response: The rule covers all Category 1 and Category 2 sources in the possession of NRC licensees, regardless of whether they are being actively used or are in long term storage. The rule covers the source within the device and not the device itself.

Comment L.2: A commenter stated that they could not find the basis for the limits (thresholds) in the IAEA Code of Conduct. The commenter stated that the values seemed random or arbitrary, specifically the limits for americium, Th–229, and Ir–192. The commenter further questioned the addition of several short-lived radionuclides (Ir–192, Se–75, and Yb–169) and stated that tracking these materials was neither prudent nor practical.

Response: As stated in the Statements of Consideration for the proposed rule, IAEA–TECDOC–1344 entitled ''Categorization of Radioactive Sources'' provides the underlying methodology for the development of the Code of Conduct thresholds. TECDOC–1344 is now RS–G–1.9. The categorization system is based on the potential for sources to cause deterministic effects and uses the 'D' values as normalizing factors. The 'D' values are radionuclide-specific activity levels for the purposes of emergency planning and response. The same methodology was used for all of the radionuclides.

Comment L.3: The commenter stated that regulations that focus on the transportation of Category 1 and Category 2 sources would be more appropriate.

Response: Transportation requirements are beyond the scope of this rulemaking.

Comment L.4: One commenter objected to the National Source Tracking System automatically delisting and no longer tracking sources at the point at which they decay below Category 2 levels. The commenter noted that many licensees may believe that their management responsibilities also cease when the source decays below the Category 2 threshold, which could result in more Category 3 sources ending up in the scrap or the recycling streams.

Response: Licensees are responsible for the safety and security of all radioactive material in their possession, regardless of activity level. Both NRC and the Agreement States have inspection programs to ensure that licensees operate within the bounds of their licenses. The National Source Tracking System only includes information on Category 1 and Category 2 sources. Once a source decays below the Category 2 threshold, the source is no longer a Category 2 source and the reporting requirements no longer apply. However, historical data on the source is not automatically deleted and will be retained by the system.

Comment L.5: Commenters noted that the Security Orders require notification of the end user of a shipment of a Category 2 source and verification of the arrival of the source, therefore, a mechanism is already in place that says the transition took place.

Response: It is correct that notification and verification requirements have been imposed on some licensees possessing Category 1 and/or Category 2 sources. However, the information is not reported to the NRC. Without the tracking system, the NRC would not have information on what sources a licensee actually possesses.

Comment L.6: One commenter noted that there are some differences between how other countries are implementing similar regulations. The commenter stated that the European Union has the High-Activity Sealed Source (HASS) directive, which has different quantities that need to be reported. The Commenter indicated that the NRC needs to look at this closely.

Response: From an international perspective, it may be desirable for all countries to implement regulations in a similar manner; however, the National Source Tracking System is a domestic tracking system. That said, the NRC does try to keep abreast of what other countries are doing. The European Union (EU) directive only applies to

transfers within the bounds of the EU countries.

Comment L.7: One commenter noted that some of the countries from which they obtain material will not be providing them the specific serial numbers for the sources in advance. The commenter states that it will be difficult to track the material before it is in their possession.

Response: This final rule does not require licensees to report any information on sources that are imported until the sources are received at the licensee's facility. The import/export rule (70 FR 37985; July 1, 2005) does require importers to provide NRC notification of imports. The notification requirements do include the serial number of the source, if available.

Comment L.8: One commenter suggested that a possession threshold amount be established that, if exceeded, would trigger tracking requirements in order to avoid an undue burden on community medical facilities that only possess very small quantities of the lower activity sources.

Response: A threshold possession limit does not work for an item-level tracking system. Sources would move in and out of the system depending on how much a particular licensee possessed at a site. A threshold that applies to all licensees is the appropriate method for tracking these sources and is how the National Source Tracking System will operate.

Comment L.9: Two commenters stated that aggregation should not be considered and thresholds for source tracking should be based solely upon the Category 1 and Category 2 limits for each source. The commenter noted that including sources because a licensee possesses a total number of sources that could exceed some arbitrary threshold would generate a great deal of confusion and not add to the security or control of materials. Total limits for sources in possession by licensees should be regulated by their individual licenses and not by the National Source Tracking System. Another commenter stated that clarification is needed to make it clear that the tracking system is for unique Category 1 or 2 sources and that a licensee's possession limit is not impacted by the rule.

Response: NRC agrees with these comments. The proposed rule and this final rule do not contain reporting requirements based on aggregation of sources and the NRC has no plans to include such requirements on aggregation for the tracking system in the future. A specific threshold has been established and all sources at or above the threshold must be reported, regardless of a licensee's total possession. The threshold currently is Category 2. The National Source Tracking System does not affect possession limits.

Comment L.10: Four commenters asked for clarification on decay and how decay of sources is handled as they go through the system and fall below the Category 2 threshold for tracking. Commenters requested information on how the tracking system will reconcile the transition. One commenter stated that reclassification of a source from Category 1 to Category 2 due to decay should be recorded in the system. Three commenters stated that the system should automatically generate a notice when a source moves from a Category 1 to a Category 2 and when it decays below Category 2.

Response: Decay of sources will automatically be calculated by the system based on the reported manufacture date or reported activity date. Once a source has decayed below the Category 2 threshold, it is no longer considered a nationally tracked source. A licensee will no longer be required to report transactions involving what is now considered a Category 3 source. The source status will be automatically changed from an active source to a decayed source, and the information on that source will be retained by the system. The licensee will be automatically notified that transactions on the source no longer need to be reported because the source has decayed below the threshold. The system will reclassify a source from Category 1 to Category 2 when it has decayed below the Category 1 threshold. However, no notifications are necessary because the reporting requirements are the same for Category 1 and Category 2 sources.

Comment L.11: One commenter requested clarification on whether licensees will be required to reconstruct the inventory each year for the annual reconciliation and verification.

Response: No, the NRC does not expect licensees to conduct a physical inventory as part of the reconciliation process. The expectation is that the inventory listing in the database will be compared to the inventory listing for the site and the licensee will either report that the database listing is correct or submit corrections as needed.

Comment L.12: Three commenters noted that the tracking system will need to accommodate data entries for sources that are imported into this country which were manufactured and exported before the rule went into effect.

Response: The reporting of the initial inventory for each licensee should account for all Category 1 and Category 2 sources in a licensee's possession. The origin of the source does not matter. NRC does not expect licensees to reconstruct a source's history. If a source is imported back to the United States, the source will be added to the system at that time.

Comment L.13: One commenter stated that source transfers (including permanent transfers) between the same company but under different licenses should not be reported.

Response: NRC disagrees with the commenter. Permanent transfers of sources do need to be reported. Transfers between temporary job sites do not need to be reported.

Comment L.14: One commenter supported the assignment of unique serial numbers. The commenter stated that assignment of unique serial numbers is critical to ensure that the sources are properly managed throughout their use and at the end of their useful life.

Response: No response is necessary.

Comment L.15: One commenter stated that NRC should clarify whether the unity rule applies to an individual source with multiple radionuclides.

Response: The unity rule does not apply to sources under the National Source Tracking System. Reporting is based on the activity level of the individual radionuclides in a source with multiple radionuclides. The sum of the fractions of each radionuclide does not need to be applied to the source.

Comment L.16: Three commenters asked for clarification on how NRC plans to handle changes in serial numbers that occur when a source is installed into a source holder. The commenters noted that sources used in the oil and gas industry have serial numbers that are assigned by the manufacturer. However, after the source is permanently installed into a protective pressure vessel, the source holder is given a different serial number consistent with the end-user's nomenclature. The source is then tracked by the source holder serial number. The commenters recommended that the national source registry allow for these serial number changes in the life of a source. One of the commenters stated that NRC should be clear on the specific serial number that is tracked throughout the entire lifetime of a source.

Response: The National Source Tracking System tracks a source using the manufacturer's assigned serial number in combination with the manufacturer and model number. An optional reporting element is a device serial number. On the paper form, the device number can be added to the

comment field. A licensee will be able to search (on-line) its own data by device number as well as the source number.

Comment L.17: One commenter stated that the rule should address any potential SGI conflicts when sources are shipped as part of a Radioactive Material Quantities of Concern (RAMQC) shipment.

Response: The NRC has reviewed the RAMQC requirements and has not identified any conflicts.

IV. Section by Section Analysis of Substantive Changes

Section 20.1003 Definitions

A definition of nationally tracked sources is added to the regulations.

Section 20.2207 Reports of Transactions Involving Nationally Tracked Sources

A new section is added to the regulations to require licensees to report to the National Source Tracking System transactions involving nationally tracked sources. Paragraph (a) requires the reporting of the manufacture of a nationally tracked source. Paragraph (b) requires the reporting of all transfers of nationally tracked sources to another authorized facility. Paragraph (c) requires the reporting of all receipts of a nationally tracked source. The final rule includes a new transaction for reporting disassembly of a nationally tracked source, this new requirement is in paragraph (d). Paragraph (e) requires the reporting of the disposal of any nationally tracked source. Each of these paragraphs requires the licensee to report specific information for the transaction, including source information such as the manufacturer, model, serial number, radioactive material, activity and activity date. The licensee must also provide the facility name, license number, name of the individual that prepared the report, and the transaction date. The final rule also requires reporting the address of the reporting licensee. If the transaction involves the use of the Uniform Low-Level Radioactive Waste Manifest, the licensee needs to report the waste manifest number and the container identification for the container with the source.

Paragraph (f) requires licensees to report these transactions to the National Source Tracking System by the close of the next business day. The regulations allow the licensee to report the transactions either on-line, electronically using a computer-readable format, by facsimile, by mail, or by telephone.

Paragraph (g) requires each licensee to correct any error in a previously filed report or file a new report for a missed transaction within 5 business days of the discovery of the error or missed transaction. Each licensee is also required to reconcile and verify the information in the National Source Tracking System during the month of January each year. This process involves comparing the inventory information contained in the National Source Tracking System to the actual inventory possessed by the licensee. The amendment requires any discrepancies to be resolved by filing the reports identified by paragraphs (a) through (e) described above. The final rule clarifies that once the reconciliation is complete, licensees must submit confirmation that the data in the National Source Tracking System is correct. The reconciliation month has been changed from June to January in the final rule.

Paragraph (h) requires a licensee to report its initial inventory of Category 1 nationally tracked sources by November 15, 2007, and the inventory of Category 2 nationally tracked sources by November 30, 2007. These dates have been changed from the proposed rule. Source information such as the manufacturer, model, serial number, radioactive material, activity and activity date must be included. The licensee also needs to provide the facility name, license number, address, and name of the individual that prepared the report.

Appendix E Nationally Tracked Source Thresholds

A new Appendix is added to part 20 that provides the thresholds for nationally tracked sources at the Category 1 and Category 2 levels. Radium-226 has been added to the Appendix and Pu-236, Pu-239, and Pu-240 have been deleted from the Appendix. The Terabecquerel (TBq) values listed in Appendix E are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only and are rounded after conversion. The curie values are not intended to be the regulatory standard.

Section 32.2 Definitions

A definition of nationally tracked sources is added to the regulations.

Section 32.201 Serialization of Nationally Tracked Sources

A new section is added that requires manufacturers of nationally tracked sources to assign a unique serial number to each nationally tracked source that is manufactured after the effective date of the rule.

Part 150

The changes proposed for part 150 are not included in the final rule. The proposed rule changes to part 150 were intended for Agreement State licensees. With the change in basis for the rule from promotion of the common defense and security to protection of the public health and safety, Agreement State licensees no longer come under part 150 for the National Source Tracking System. Agreement States are required to issue legally binding requirements for their licensees. This could be done through promulgating a comparable rule, issuing orders, or adding or revising individual license conditions. The final rule is an immediate mandatory matter of compatibility. The Agreement States must issue the legally binding requirements such that the compliance dates for the final rule and the legally binding requirements are the same. This will ensure that both NRC and Agreement State licensees all begin reporting at the same time. The Agreement States will be responsible for implementation for their licensees, including inspection and enforcement.

V. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR parts 20 and 32 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), § 20.2207, the final rule is classified as Compatibility Category ''B.'' The NRC program elements in this category are those that apply to activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of NRC. Agreement State and NRC licensees would report their transactions to the National Source Tracking System. The database would be maintained by NRC.

VII. Voluntary Consensus Standards

The National Technology Transfer 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 final rule, the NRC requires licensees that possess, manufacture, transfer, receive, disassemble, or dispose of nationally tracked sources to report the information relating to such transactions to the National Source Tracking System. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii) for the changes to parts 20 and 32. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0014, 3150–0001, and 3150–0202.

The burden to the public for the information collections in NRC Form 748 is estimated to average 10 minutes per response plus an annualized one-time burden of 80 hours per recordkeeper, the burden for the information collections in 10 CFR part 20 is estimated to average 1 hour per response plus an annualize one-time burden of 8 hours per recordkeeper, and the burden for the information collections in 10 CFR part 32 is estimated to average 45 hours per recordkeeper. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0014, 3150–0001, and 3150–0202), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The largest burden would likely fall on the manufacturers and distributors of nationally tracked sources because they will have the most transactions to report. The NRC believes that by allowing batch loading of information using a computer-readable format, the burden on the high transaction licensees is reduced. The present value of the costs of the National Source Tracking System to the NRC is estimated to be $29.4 million and to industry is estimated to be $3.9 million in 2006 dollars using a 3 percent discount rate. These estimated costs include the cost of development of the system and operation and maintenance through the year 2016.

The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Merri Horn, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities.

On the basis of information available to the Commission when the proposed rule was published, the Commission certified that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The Commission invited any small entity that determined that it is likely to bear a disproportionate economic impact because of its size to notify the Commission.

The Commission did not receive any comments on the impact to small entities. The final rule affects about 350 NRC licensees and an additional 1,000 Agreement State licensees. Examples of affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, and radiographers, some of which may qualify as small business entities as defined by 10 CFR 2.810. However, the final rule is not expected to have a significant economic impact on these licensees.

The total time required by a licensee to complete each National Source Tracking Transaction report is estimated to be approximately 15 minutes, depending on the number of sources involved in the transaction and the method of reporting. This is time needed to complete the report. No research or compilation is necessary as all information is transcribed from bills of lading, in-house records kept for other purposes, sales agreements, etc. Each licensee would also spend on average 1 hour on the annual reconciliation. The total annual burden to perform the proposed reporting is approximately 11,604 hours. Based on the regulatory analysis conducted for this action, the costs of the amendments for affected licensees are estimated to be $3.9 million total or on average about $2,889 per affected licensee. The NRC believes that the selected alternative reflected in the amendment is the least burdensome, most flexible alternative that would accomplish the NRC's regulatory objective.

XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final 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.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials,

Radiation protection, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20 and 32.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 2. In § 20.1003, a new definition *Nationally tracked source* is added in alphabetical order to read as follows:

§ 20.1003 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of this part. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

* * * * *

■ 3. In § 20.1009 paragraph (b) is revised and paragraph (c)(6) is added to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2005, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and appendix G to this part.

(c) * * *

(6) In § 20.2207, NRC Form 748 is approved under control number 3150–0202.

■ 4. Section 20.2207 is added under Subpart M to read as follows:

§ 20.2207 Reports of transactions involving nationally tracked sources.

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in paragraphs (a) through (e) of this section for each type of transaction.

(a) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of the source;

(4) The radioactive material in the source;

(5) The initial source strength in becquerels (curies) at the time of manufacture; and

(6) The manufacture date of the source.

(b) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name and license number of the recipient facility and the shipping address;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The shipping date;

(9) The estimated arrival date; and

(10) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(c) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name, address, and license number of the person that provided the source;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The date of receipt; and

(9) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(d) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(4) The radioactive material in the source;

(5) The initial or current source strength in becquerels (curies);

(6) The date for which the source strength is reported;

(7) The disassemble date of the source.

(e) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The waste manifest number;

(4) The container identification with the nationally tracked source.

(5) The date of disposal; and

(6) The method of disposal.

(f) The reports discussed in paragraphs (a) through (e) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The

reports must be submitted to the National Source Tracking System by using:

(1) The on-line National Source Tracking System;

(2) Electronically using a computer-readable format;

(3) By facsimile;

(4) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(5) By telephone with followup by facsimile or mail.

(g) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (a) through (e) of this section. By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(h) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified by paragraph (f)(1) through (f)(4) of this section. The initial inventory report must include the following information:

(1) The name, address, and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(4) The radioactive material in the sealed source;

(5) The initial or current source strength in becquerels (curies); and

(6) The date for which the source strength is reported.

■ 5. In part 20, new Appendix E is added to read as follows:

Appendix E to Part 20—Nationally Tracked Source Thresholds

The Terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16
Americium-241/Be	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14
Cesium-137	100	2,700	1	27
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,200	0.8	22
Plutonium-238	60	1,600	0.6	16
Plutonium-239/Be	60	1,600	0.6	16
Polonium-210	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Radium-226	40	1,100	0.4	11
Selenium-75	200	5,400	2	54
Strontium-90	1,000	27,000	10	270
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 6. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

■ 7. In § 32.2, the paragraph designations are removed and a new definition *Nationally tracked source* is added in alphabetical order to read as follows:

§ 32.2 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E to part 20 of this Chapter. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

■ 8. In § 32.8, paragraph (b) is revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, 32.201, and 32.210.

■ 9. Section 32.201 is added under Subpart D to read as follows:

Subpart D—Specifically Licensed Items

§ 32.201 Serialization of nationally tracked sources.

Each licensee who manufactures a nationally tracked source after February 6, 2007 shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

Dated at Rockville, Maryland, this 1st day of November, 2006.

For the Nuclear Regulatory Commission.

Annette Vietti Cook,

Secretary of the Commission.

[FR Doc. E6–18713 Filed 11–7–06; 8:45 am]

BILLING CODE 7590–01–P

Reader Aids

Federal Register

Vol. 71, No. 216

Wednesday, November 8, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

64111–64438 1
64439–64630 2
64631–64880 3
64881–65034 6
65035–65364 7
65365–65710 8

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8074 64613
8075 64615
8076 64617
8077 64619
8078 64621
8079 64623
8080 64627
8081 65363

Executive Orders:
13067 (See Notice of November 1, 2006) 64629
13400 (See Notice of November 1, 2006) 64629
13402 (Amended by 13414) 65365
13412 (See Notice of November 1, 2006) 64629
13414 65365

Administrative Orders:
Notices:
Notice of November 1, 2006 64629
Presidential Determinations:
No. 2006-25 64431
No. 2006-26 of September 29, 2006 65035
No. 2006-27 of September 29, 2006 65367
No. 2007-1 64435
No. 2007-2 64437
No. 2007-3 of October 16, 2006 65369

7 CFR

800 65371
801 65371
958 65037
981 65373
1210 64439
1290 64631

Proposed Rules:
46 65426
51 64478
301 64767

9 CFR

Proposed Rules:
55 64650
81 64650

10 CFR

20 65686
32 65686
626 65376

Proposed Rules:
35 64168
51 64169

12 CFR

611 65383
612 65383
613 65383
614 65383
615 65383

14 CFR

39 ..... 64441, 64881, 64884, 65041, 65043, 65045, 65047, 65387, 65389, 65391
71 64887
93 64111

Proposed Rules:
25 64478
39 ..... 64482, 64484, 64651, 64653, 64904, 65062, 65430

17 CFR

140 64443
200 65393
240 65393

Proposed Rules:
170 64171

18 CFR

292 64342
366 ..... 65049, 65200
367 65200
368 65200
369 65200
375 65200
385 65049

Proposed Rules:
38 64655
40 64770
284 64655

21 CFR

520 65052
522 ..... 64451, 65052
558 65053

22 CFR

97 64451

23 CFR

Proposed Rules:
630 64173

24 CFR

291 ..... 64422, 65322

25 CFR

Proposed Rules:
15 64181
18 64181
150 64181

152 64181
179 64181

26 CFR

1 64458
301 64458
Proposed Rules:
1 64488
20 64488
25 64488
31 64488
53 64488
54 64488
56 64488
301 ....64496, 54501

27 CFR

9 65409
Proposed Rules:
9 ....65432, 65437

28 CFR

Proposed Rules:
524 64504
545 64505
550 64507

32 CFR

58 64631
312 64631
318 64632
323 64633

33 CFR

117 ....64113, 64888, 65412
165 ....64114, 64116, 64634
Proposed Rules:
117 65443
151 65445
165 64662

34 CFR

668 ....64378, 64402
673 64378
682 64378
685 64378
690 64402
691 64402

36 CFR

Proposed Rules:
1 65446

37 CFR

1 64636
201 64639

39 CFR

3 64647
111 ....64118, 64121

40 CFR

9 65574
52 ....64125, 64460, 64465, 64468, 64470, 64647, 64888, 64891, 65414, 65417
81 64891
141 65574
142 65574
174 64128
Proposed Rules:
52 ....64182, 64668, 64906, 65446
60 65302
63 64907
81 64906
82 64668

43 CFR

Proposed Rules:
4 64181
30 64181

44 CFR

67 ....64132, 64141, 64148
Proposed Rules:
67 ....64183, 64208, 64211, 64674

45 CFR

1624 65053
Proposed Rules:
1621 65064

47 CFR

51 65424
73 ....64150, 64152, 64153, 64154, 65425
76 64154
Proposed Rules:
27 64917
73 65447
80 65447

49 CFR

571 64473

50 CFR

17 65662
622 65061
635 64165
648 64903
665 64474
Proposed Rules:
17 65064
635 64123
648 64214
660 64216
679 64218

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 8, 2006

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions grown in Idaho and Oregon; published 11-7-06

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospace Technologies of Australia Pty Ltd.; published 10-19-06
Boeing; published 10-4-06
Empressa Brasileira de Aeronautica S.A.; published 10-4-06
McDonnell Douglas; published 10-4-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Milk marketing orders:
Appalachian and Southeast; comments due by 11-13-06; published 9-13-06 [FR 06-07497]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle—
State and area classifications; comments due by 11-14-06; published 9-15-06 [FR E6-15327]
Plant-related quarantine, domestic:
Gypsy moth; comments due by 11-13-06; published 9-12-06 [FR E6-15059]
Mediterranean fruit fly; comments due by 11-13-06; published 9-13-06 [FR E6-15213]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Federal Subsistence Regional Advisory Councils; membership qualifications; comments due by 11-13-06; published 10-12-06 [FR 06-08594]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Seismic safety; comments due by 11-15-06; published 10-16-06 [FR E6-17065]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Passenger vessels; comments due by 11-13-06; published 9-12-06 [FR E6-15062]

COMMERCE DEPARTMENT
Economic Analysis Bureau
International services survey:
BE-120; transactions in selected services; intangible assets with foreign persons; comments due by 11-14-06; published 9-15-06 [FR E6-15304]

COMMERCE DEPARTMENT
Foreign-Trade Zones Board
Applications, hearings, determinations, etc.:
Georgia
Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Commercial shark management measures; comments due by 11-13-06; published 11-1-06 [FR 06-09008]
Northeastern United States fisheries—
Atlantic herring; comments due by 11-13-06; published 9-27-06 [FR 06-08263]
Atlantic herring; correction; comments due by 11-13-06; published 10-17-06 [FR E6-17239]
Summer flounder, scup, and black sea bass; comments due by 11-17-06; published 10-27-06 [FR 06-08932]
International fisheries regulations:
West Coast States and Western Pacific fisheries—
Fraser River sockeye salmon; comments due by 11-15-06; published 10-31-06 [FR E6-18292]

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisers:
Electronic filing and notices of exemption and exclusion; comments due by 11-13-06; published 10-13-06 [FR E6-16947]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]

EDUCATION DEPARTMENT
Vocational and adult education:
National Reporting System for Adult Education; measuring educational gain; comments due by 11-17-06; published 10-18-06 [FR 06-08709]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Fuel and fuel additives—
Renewable Fuel Standard Program; comments due by 11-12-06; published 9-22-06 [FR 06-07887]
Air quality implementation plans:
Preparation, adoption, and submittal—
Prevention of significant deterioration and nonattainment new source review; debottlenecking, aggregation, and project netting; comments due by 11-13-06; published 9-14-06 [FR E6-15248]
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Maine; comments due by 11-16-06; published 10-17-06 [FR E6-17226]
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 11-13-06; published 10-11-06 [FR E6-16812]
Arizona; comments due by 11-16-06; published 10-17-06 [FR E6-17233]
New York; comments due by 11-13-06; published 10-12-06 [FR E6-16931]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Difenoconazole; comments due by 11-13-06; published 9-13-06 [FR E6-15090]
Endosulfan, etc.; comments due by 11-14-06; published 9-15-06 [FR E6-15258]
Epoxiconazole; comments due by 11-13-06; published 9-13-06 [FR E6-14994]
Eucalyptus oil; comments due by 11-13-06; published 9-13-06 [FR E6-14995]

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Maritime communications; Automatic Identification Systems; channels designation for exclusive use, etc.; comments due by 11-13-06; published 10-12-06 [FR E6-16832]
Radio services; special:
Private land mobile services—
Upper 700 MHz guard band licenses; operational, technical, and spectrum requirements; comments due by 11-13-06; published 11-6-06 [FR 06-09102]

FEDERAL HOUSING FINANCE BOARD
Privacy Act; implementation; comments due by 11-16-06; published 10-17-06 [FR E6-17298]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]
Federal Management Regulation:
Personal property disposition; comments due

by 11-17-06; published 10-18-06 [FR E6-17340]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
New York; comments due by 11-18-06; published 8-1-06 [FR E6-12278]
Pennsylvania; comments due by 11-13-06; published 9-11-06 [FR E6-14983]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Great Lakes; Coast Guard water training areas; comments due by 11-13-06; published 8-1-06 [FR E6-12332]

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:
Irrigation operation and maintenance; comments due by 11-14-06; published 7-17-06 [FR E6-11293]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Federal Subsistence Regional Advisory Councils; membership qualifications; comments due by 11-13-06; published 10-12-06 [FR 06-08594]

Endangered and threatened species:
Critical habitat designations—
Marbled murrelet; comments due by 11-13-06; published 9-12-06 [FR 06-07437]
Slickspot peppergrass; comments due by 11-13-06; published 10-23-06 [FR 06-08833]

LABOR DEPARTMENT

Employee Benefits Security Administration

Employee Retirement Income Security Act:
Participant directed individual account plans; default investment alternatives; comments due by 11-13-06; published 9-27-06 [FR 06-08282]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Occupational safety and health standards:
Hazard communication; comments due by 11-13-06; published 9-12-06 [FR 06-07584]

Shipyard employment safety and health standards:
Fire protection; comments due by 11-16-06; published 10-17-06 [FR E6-17125]

LIBRARY OF CONGRESS

Copyright Royalty Board, Library of Congress

Agency organization, administration, and procedural regulations; Title 37 CFR Chapter III; establishment; comments due by 11-13-06; published 9-11-06 [FR E6-14893]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Lobbying restrictions; changes; comments due by 11-13-06; published 9-14-06 [FR 06-07604]

INTERIOR DEPARTMENT

National Indian Gaming Commission

Indian Gaming Regulatory Act:
Electronic or electromechanical facsimile of games and electronic, computer, or other technologic aids to Class II games; definitions; comments due by 11-15-06; published 9-29-06 [FR E6-15992]

NUCLEAR REGULATORY COMMISSION

Nuclear power plants; licenses, certifications, and approvals; comments due by 11-16-06; published 10-17-06 [FR 06-08656]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 11-15-06; published 10-16-06 [FR E6-17079]

POSTAL SERVICE

Domestic Mail Manual:
Domestic mailing services; new standards; comments due by 11-13-06; published 9-27-06 [FR 06-07751]

SECURITIES AND EXCHANGE COMMISSION

Securities:
Broker-dealers; net capital rule, debt agreements and financial responsibility; comments due by 11-13-06; published 10-13-06 [FR E6-16956]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:
Official records and information; privacy and disclosure; comments due by 11-13-06; published 9-13-06 [FR E6-15101]

STATE DEPARTMENT

Intercountry Adoption Act of 2000:
Hague Convention—
Emigrating children; convention and non-convention adoptions; reporting requirements; comments due by 11-13-06; published 9-13-06 [FR 06-07526]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 11-13-06; published 10-12-06 [FR E6-16880]
Boeing; comments due by 11-13-06; published 9-12-06 [FR E6-14618]
Bombardier; comments due by 11-13-06; published 10-12-06 [FR E6-16881]
Eurocopter; comments due by 11-13-06; published 9-12-06 [FR 06-07560]
Fokker; comments due by 11-13-06; published 10-12-06 [FR E6-16894]
Pratt & Whitney Canada; comments due by 11-13-06; published 9-14-06 [FR E6-15139]
Sikorsky; comments due by 11-14-06; published 9-15-06 [FR E6-15331]

Airworthiness standards:
Special conditions—
Boeing Model 777 series airplane; comments due by 11-13-06; published 11-2-06 [FR 06-09025]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Electronic stability control systems; comments due by 11-17-06; published 9-18-06 [FR 06-07598]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Foreign corporations; interest expense deduction determination; comments due by 11-15-06; published 8-17-06 [FR E6-13409]

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. 6061/P.L. 109–367

Secure Fence Act of 2006 (Oct. 26, 2006; 120 Stat. 2638)

Last List October 19, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.