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Presidential Documents

Title 3—

The President

Executive Order 13418 of December 14, 2006

Amendment to Executive Order 13317, Volunteers for Prosperity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to add combating malaria as one of the objectives of the global prosperity agenda, it is hereby ordered that section 1(a) of Executive Order 13317 of September 25, 2003, is amended by:

(a) striking ''\, and stemming the spread of HIV/AIDS.'' and inserting in lieu thereof ''\, stemming the spread of HIV/AIDS and controlling malaria.''; and

(b) striking ''\, and the Middle East Partnership Initiative.'' and inserting in lieu thereof ''\, the Middle East Partnership Initiative, and the President's Malaria Initiative.''.

THE WHITE HOUSE,
December 14, 2006.

[FR Doc. 06–9770
Filed 12–15–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–086–3]

RIN 0579–AC23

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Some of the fruits and vegetables are already eligible for importation under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. In one case, we are adding a systems approach that will provide an alternative to methyl bromide fumigation. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

EFFECTIVE DATE: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On December 22, 2005, we published in the **Federal Register** (70 FR 75967–75981, Docket No. 03–086–1) a proposal [1] to amend the regulations by listing a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We solicited comments on the proposed rule for 60 days ending on February 21, 2006.

On March 3, 2006, we published in the **Federal Register** (71 FR 10924, Docket No. 03–086–2) a notice in which we reopened the comment period for our proposed rule until March 10, 2006. We received 11 comments by that date. The comments were from representatives of State and foreign governments, industry organizations, importers and exporters, distributors, farmers, and individuals. Seven of these commenters wrote to support the proposed provisions regarding citrus from New Zealand, and another commenter wrote to support the proposed provisions regarding the importation of tomatoes from Chile. The remaining commenters raised specific issues which are discussed below.

General Comments

In our proposal, we stated that citrus fruit from the Bahamas would be allowed importation into the United States provided that each shipment was accompanied by a phytosanitary certificate stating that the fruit originated from an area of the Bahamas that is free from citrus canker disease, *Xanthomonas citri* (Hasse) Dowson. We also stated that the island of Abaco is the only island in the Bahamas where citrus canker is known to exist. One commenter stated that the existence of citrus canker should be based on periodic and systematic surveys and the importation of citrus fruit from the Bahamas ultimately should meet the same standards developed by the U.S. Department of Agriculture for the movement of domestic fruit from Florida.

The Bahamas is currently conducting ongoing surveillance for citrus canker and there have been no other reports of the disease. With regard to requiring Bahamian citrus to meet the same standards as domestic fruit moved from Florida, we presume the commenter is referring to the restrictions on the interstate movement of citrus from areas quarantined for citrus canker. The current domestic citrus canker regulations in 7 CFR part 301 allow fruit from citrus canker quarantined areas in Florida to move interstate provided they are not destined for a commercial citrus-producing area. This rule will allow citrus from the Bahamas to enter the United States only if it is grown in an area where citrus canker does not exist. Under those circumstances, we believe it is unnecessary to limit the movement of Bahamian citrus fruit to non-citrus-producing States.

In our proposal, we proposed to amend § 319.56–2t by removing the common names provided for *Cichorium* spp. articles (*e.g.*, endive, chicory, and radicchio) from several Central and South American countries and replacing those common name entries with the more general term ''cichorium.'' This was proposed in order to make our regulations more clear and consistent and to allow additional varieties of *Cichorium* entry from those countries. In our proposed regulatory text, we listed leaves, stems, and roots as the enterable plant parts for cichorium from the listed Central and South American countries. One commenter stated that chicory root poses different pest problems than stems and leaves and should be addressed separately.

As stated in the proposed rule, we prepared a pest risk assessment which examined the risks posed by roots, stems, and leaves of all *Cichorium* spp. from Central America and South America and found that no pests would follow the pathway. Therefore, we believe that the general requirements listed in § 319.56–6 are adequate for

[1] To view the proposed rule and comments we received, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0107, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

roots, stems, and leaves of *Cichorium* spp.

We proposed to list eggplant from Belize, Costa Rica, and Honduras in § 319.56–2t as eligible for importation into the United States, but only in commercial shipments. One commenter stated that the distinction we drew between commercial and noncommercial shipments is not clear and that the distinguishing characteristics mentioned in the proposed rule (*i.e.*, quantity of product, type of packaging, identification of grower and packinghouse, and consigning documents) are not enough to discourage determined shippers of substandard products. The commenter was concerned that distinguishing between commercial and noncommercial shipments would not offer any broad ranging pest protection to the United States.

In addition to the distinction that we drew between noncommercial and commercial shipments in the proposed rule, noncommercial shipments can also refer to articles carried in passenger baggage, while commercial shipments refer to commodities that are imported under the condition that specific phytosanitary measures were applied. We continue to believe, based on the considerations discussed in the proposed rule, that noncommercial shipments pose a greater risk of pest introduction because they were not subject to the same mitigation measures as commercial shipments and that the criteria we apply in distinguishing between commercial and noncommercial shipments are effective.

One commenter was concerned that allowing pineapples and apples from South Africa to be imported without treatment into the United States could result in the introduction of the oriental red mite (*Eutetranychus orientalis*). The commenter stated that oriental red mite occurs in South Africa and is a serious pest on more than 180 plants, both crops and ornamentals, many of which are grown in Florida.

While oriental red mite occurs in South Africa, our research indicates that neither pineapples nor apples are a preferred host of that pest. If the commenter has additional research that is contrary to this assertion, we invite him to submit it. Further, pineapples and apples have both been authorized for importation into the United States from South Africa for several years, so they were not being proposed for entry for the first time. With regard to pineapples, the regulations have indicated that pineapples from South Africa are approved for entry into all States, but our risk analysis only evaluated the risks of allowing pineapple entry into the continental United States. As explained in our proposal, we intended to correct that oversight by amending § 319.56–2t to limit their distribution to the continental United States. With regard to apples, we have been allowing apples from South Africa entry under permit with a prescribed treatment, and we were simply proposing to add them to § 319.56–2x to improve the transparency of our regulations.

Leeks From Canada

One commenter stated that the proposed import restrictions for leeks from Canada should apply only to Quebec and Ontario, because they are the only two Provinces where the leek moth is known to exist.

We would be willing to consider limiting the applicability of our import restrictions if the Canadian Food Inspection Agency submits to APHIS, field surveys or other documentation that demonstrates that Quebec and Ontario are the only areas within Canada where the leek moth exists and describes the measures that are being used to prevent the spread of the pest within Canada.

One commenter stated that ornamental *Allium* represent a negligible host for the leek moth and should not be subject to the proposed mitigation measures.

Ornamental *Allium* products are not covered under the fruits and vegetables regulations and therefore would not be subject to the mitigation measures in this rule.

One commenter stated that some *Allium* products are being produced in Mexico, imported into Canada, and then re-exported to the United States. The commenter stated that those products of non-Canadian origin should not be impacted by the new regulations.

It would be difficult to determine if a commodity had originated in Mexico if it is re-exported from Canada because it would be unlikely that the original packaging would be preserved. Further, it would be difficult to ensure and verify that there was no commingling between *Allium* spp. of Canadian and Mexican origin. If the packaging of *Allium* products from Mexico (or another country eligible to export such products to the United States) remains intact and the shipment is accompanied by a re-export certificate, then we would not require a phytosanitary certificate for the shipment. Under any other circumstances, *Allium* spp. whole plants or above ground parts imported in the United States from Canada will be subject to the restrictions set forth in this final rule.

One commenter stated that the proposed mitigation measures for the leek moth should not apply to vacuum-packed *Allium* spp. because vacuum packing is a mitigation measure itself.

The commenter did not provide, nor do we have, any research regarding the efficacy of vacuum packing as a mitigation measure for leek moth. Therefore, we will not add an exemption for vacuum-packed *Allium* spp. in this final rule.

We proposed to amend § 319.56–2t allow grapes from Argentina to be imported into the United States if they are grown in a fruit-fly free area. For grapes that are grown outside a fruit-fly free area, we also proposed to amend § 319.56–2x to add grapes from Argentina to the list of fruits and vegetables that may be imported into the United States provided that they are treated in accordance with 7 CFR part 305. The regulations in part 305 prescribe cold treatment for fruit flies and methyl bromide for other pests of grapes from Argentina. The regulations in part 305 also provide that irradiation may be substituted for other approved treatments for any of the pests listed in § 305.31(a). So, while part 305 does allow irradiation to be substituted for the cold treatment and fumigation prescribed for grapes from Argentina, one commenter appeared to believe that irradiation was the sole treatment we were prescribing, which is not the case, and presented several questions about irradiation. While we believe it would be unlikely that irradiation would be used for grapes from Argentina, a summary of the commenter's questions and our responses are presented below.

The commenter asked specific questions about research on how the quality of grapes was affected by irradiation and whether or not such research has been conducted over a time period that approximates shipping time to match what the end consumer would find in stores.

Those questions are commercial considerations and are not relevant to the regulatory process. As cautioned in § 305.31(n) of the regulations, irradiation is approved to assure quarantine security against listed pests, but the facility operator and shipper are responsible for determination of tolerance.

The commenter also asked about whether we have conducted any research on the efficacy of irradiation on table grapes.

The required irradiation doses are specific to plant pests, rather than the commodities they are associated with.

Specific characteristics of the fruits or vegetables being treated, which may need to be considered in developing other phytosanitary treatments, are irrelevant to the effectiveness of irradiation as long as the required minimum dose is absorbed.

The commenter also asked if there has been any work done to determine the cumulative risk factors of allowing fruit and vegetables from multiple countries into the United States under various protocols and if so, what is the risk.

We receive requests to authorize the importation of specific fruits or vegetables from specific countries, so it is in that context (*i.e.*, case-by-case, not cumulative) that we evaluate risks and make decisions.

The commenter asked if irradiation would take place pre-shipment or post, under what conditions, and if USDA would be approving irradiation facilities and inspecting the fruit.

As provided in § 305.31, irradiation may take place either in the United States or outside of the United States prior to shipment. In either case, the operator of an irradiation facility must sign a compliance agreement with the Administrator and all irradiation facilities must be certified by the Administrator. When the treatment occurs outside the United States, the plant protection organization of the country where irradiation is to take place must enter into a facility preclearance workplan and a framework equivalency work plan with APHIS. The equivalency workplan is a document in which both APHIS and the foreign plant protection organizations specify the following information for their respective countries:

- Citations for any requirements that apply to the importation of irradiated articles;
- The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated articles into that country; and
- Any other conditions that must be met to allow the importation of irradiated articles into that country.

The commenter asked what level of inspection would take place.

There is no pre-set level of inspection for grapes or any other article. The level of inspection applied will vary from commodity to commodity and shipment to shipment. Inspectors take into account factors such as pest conditions in the exporting region, the types of pests and past interceptions associated with the article, whether and what type of treatment has been applied, the type of packaging (bulk or loose), the bill of lading and number of containers by each shipper, and specific targeting activities based on continuing analysis of pest conditions worldwide.

The commenter asked if fruit flies do not die under irradiation but are rendered sterile, what is the protocol for determining whether the irradiation has been effective pre-shipment.

Irradiation is considered effective if flies are killed or if they are rendered unable to reproduce or emerge from the host as an adult. Based on research conducted by the USDA's Agricultural Research Service (ARS), we have determined the necessary irradiation doses, which vary from pest to pest, to achieve that result. We will ensure that the commodity received the prescribed dose through dosimetry systems at the facility and certification of the treatment.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of certain fruits and vegetables from certain countries while continuing to protect against the introduction of plant pests into the United States. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relieved restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We are amending the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables are already being imported under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, we will require that some of the fruits and vegetables be treated or meet other special conditions. We are also eliminating or modifying existing treatment requirements for specified commodities and making other miscellaneous changes. These actions will improve the transparency of our regulations while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

Impact on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. Data on the number and size of U.S. producers of the various commodities addressed in this rule are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small entities.

As previously stated, many of the commodities listed in this document may currently enter the United States under permit. Therefore, we do not expect the amount of many commodities submitted for importation to increase beyond current levels. Additionally, in many cases, importation of certain commodities is necessary given that the commodities are not grown extensively in the United States (e.g., chicory, kiwis, and mangoes). In other instances, importation augments domestic supplies that are not sufficient to meet consumer demand (*e.g.*, apples, garlic, and onions).

Grapes and Cichorium From Argentina

Grapes from Argentina are already admissible under permit into the United

States. The United States imports an average of 490,000 tons of grapes (7 percent of its domestic supply) per year to satisfy its domestic demand for consumption.[2] However, less than 1 percent of these imports originates in Argentina. The growing season for grapes in Argentina is opposite of that in the United States, thereby complementing rather than competing with U.S. grape production. Therefore, even if we assume that Argentina greatly increases its exports of grapes to the United States, it is more likely to displace other countries' share of U.S. imports than to affect the level of U.S. consumption of domestic grapes. The economic impact on the level of U.S. grape consumption and production resulting from this change is expected to be small.

With respect to cichorium, no official production data are available in either the United States or Argentina. Therefore, we assume that both the United States and Argentina are small commercial producers of cichorium. Between 2000 and 2003, U.S. imports of fresh cichorium averaged 3.8 thousand tons of a non-witloof variety and 2.5 thousand tons of a witloof variety; none of these imports originated in Argentina.[3] Between 2000 and 2003, Argentina's exports of cichorium to the world as a whole averaged 7 metric tons annually. Even if all of these exports were directed to the United States, they would only represent 0.11 percent of U.S. demand for imported cichorium. The economic impact resulting from this change is not expected to be substantial.

Allium spp. From Canada

Alliaceous vegetables (i.e., onions, shallots, leeks, and garlic) from Canada can be imported into the United States under the general permit in § 319.56–2(c) for articles from Canada. Between 2000 and 2003, Canada supplied 19 percent of annual U.S. imports of shallots and onions, 3 percent of U.S. imports of leeks, and 0.62 percent of U.S. imports of garlic on average.[4] U.S. imports amount to less than 10 percent of U.S. production of shallots and onions and less than 15 percent of U.S. garlic production. This rule will add, as a condition of entry, that each shipment of alliaceous vegetables consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate containing an additional declaration from the Canadian NPPO that the shipment is free of *Acrolepiopsis assectella*. We do not expect exporters to incur any additional expenses as a result of this requirement. Therefore, U.S. importers/consumers of these commodities will not see an increase in the cost of alliaceous vegetables from Canada. Even if exporters of alliaceous vegetables from Canada were to experience an increase in exporting cost because of the phytosanitary requirement and pass this on to U.S. importers/consumers, the benefits of keeping the leek moth out of the United States would outweigh such an increase in cost. As a result, the economic impact on the U.S. level of demand for consumption and/or production of alliaceous vegetables is not expected to be significant.

Cichorium, Lemons, and Tomatoes (Under a Systems Approach) From Chile

Lemons from Chile are already being imported into the United States under permit; between 2000 and 2003, 4 percent of annual U.S. imports of lemons and limes originated in Chile.[5] We have no reason to expect that listing lemons from Chile in the regulations will result in an increase in exports. Even if we assume that Chile increases its exports of lemons into the United States, it is more likely to displace other countries' share for U.S. imports of them than to affect the level of U.S. consumption of domestic lemons. The economic impact resulting from this change is not expected to be substantial.

Tomatoes from Chile are already being imported into the United States if fumigated with methyl bromide. This rule will provide tomato producers with an alternative to methyl bromide fumigation by providing for a systems approach. APHIS continues to strive to meet the objectives of the Montreal Protocol by providing alternatives to methyl bromide fumigation treatment for fruit and vegetable producers. As registered producers in Chile already comply with most of the production practices that will be required under the systems approach, the requirements will not likely result in any additional economic burden to tomato producers. In addition, registered producers who remain in compliance with the program throughout the shipping season will save money on costly fumigation treatments. Between 2000 and 2003, 0.02 percent of U.S. annual imports of tomatoes originated in Chile.[6] The total amount of tomatoes from Chile exported to the world between 2000 and 2003 (all varieties) was on average only 2,209 tons or 0.38 percent of U.S. imports. This is Chile's maximum capacity of tomato exports and is not expected to increase in the short term. This small amount of imports, whether grown under the systems approach or treated with methyl bromide, is unlikely to affect the level of U.S. consumption of domestic tomatoes. The economic impact resulting from this change is not expected to be substantial.

With respect to cichorium, there are no available data on U.S. or Chilean production. The United States imports approximately 6,000 tons of cichorium per year. Cichorium is already being imported from Chile under permit, and Chile is a major source of U.S. cichorium imports, accounting for approximately 32 percent on average. Because the United States is such a small producer of cichorium, it is unlikely that this rule will significantly alter this situation. In fact, the addition of cichorium into the U.S. market from other countries such as Chile will be a benefit to U.S. consumers. The economic impact on the level of U.S. consumption of cichorium, lemons, and tomatoes as a result of these changes is expected to be small.

New Zealand Spinach From Israel

According to USDA's Foreign Agricultural Service (FAS), in 2000, the United States imported 1.5 metric tons of New Zealand spinach from Israel (0.02 percent of U.S. imports of New Zealand spinach in 2000). However, APHIS' Plant Protection and Quarantine (PPQ) program has no record of these imports and New Zealand spinach from Israel has not been admissible into the United States.[7] Israel is a small

[2] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. *Trade Data:* Harmonized Tariff Schedule for trade data.

[3] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. *Trade Data:* Harmonized Tariff Schedule (HS: 070529 non-witloof variety of chicory, and 070521 fresh chicory of witloof variety).

[4] FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. *Trade Data:* Harmonized Tariff Schedule for trade data.

[5] Source of Production Data: *http://apps.fao.org/faostat/agriculture/*. Production data for lemons include limes. Source of Trade Data: USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

[6] Source of Production Data: *http://apps.fao.org/faostat/agriculture/*. Source of Trade Data: USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

[7] The United States imported spinach from Israel for the first time in year 2000, but did not import any Israeli spinach in 2001, 2002, or 2003. Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit— 070970) spinach fresh or chilled. Source of production data: *http://apps.fao.org/faostat/agriculture/*.

producer of spinach (all varieties), producing, on average, an amount equivalent to a quarter of total U.S. spinach imports annually. The amount imported in 2000 corresponds to 50 percent of Israel's exports. Even if we assume that Israel will double its exports into the United States, it could not supply more than 0.04 percent of U.S. demand for imports of spinach. The economic effects of this change on the level of U.S. consumption and/or production of spinach are not expected to be significant.

Kiwi From Italy

Kiwi fruits from Italy can already be imported into the United States under permit. The United States is a small kiwi producer that imports almost twice as much as it produces to satisfy its domestic demand.[8] Italy supplies approximately 16 percent of U.S. imported kiwi fruits, and it is unlikely that this will change as a result of this rule. Even if Italy increased its exports of kiwi to the United States, it would most likely displace another countries' share because the United States is such a small producer of kiwi. The economic impact resulting from this change on the level of U.S. consumption is not expected to be substantial.

Citrus From New Zealand

Although FAS statistics indicate that between 2001 and 2003, New Zealand supplied, on average, 0.006 percent of U.S. imports of oranges and lemons,[9] APHIS' PPQ has no records of these imports and citrus fruit from New Zealand has not been admissible into the United States. New Zealand is a small producer/exporter of citrus, and the country's exports were equivalent to less than 1 percent of U.S. imports of citrus on average. Its total citrus production is less than 8 percent of U.S. imports of citrus as a whole. Because the United States will import such a small percentage of New Zealand citrus, even if we assume that New Zealand greatly increases its exports to the United States, it is unlikely to have a substantial economic impact.

Mangoes From the Philippines

The United States currently imports a very small amount of mangoes (18 tons per year on average) from the Philippines.[10] Because the Philippines is a significant producer of mangoes, allowing mangoes to be imported into Hawaii and Guam from additional production areas in the Philippines could result in mango exports from the Philippines capturing a larger share of those two markets. U.S. mango production is less than 1 percent of the amount the United States needs to satisfy its domestic consumption. Between 2001 and 2002, the United States imported approximately 100 times the amount of its domestic mango production, with most imports coming from Mexico. Thus, allowing imports from more islands in the Philippines would be a benefit to U.S. consumers in Guam and Hawaii. The economic impact of this change on the level of U.S. consumption or its domestic production of mangoes is not expected to be significant.

Apples and Grapes From South Africa

Apples and grapes from South Africa can already be imported into the United States under permit. South Africa supplies 3 percent of U.S. imports of apples and a little less than 2 percent of U.S. imports of grapes.[11] With respect to grapes, South African exports alone cannot satisfy U.S. demand for domestic consumption. Even if South Africa directs all of its exports of grapes (880,590 tons) into the United States, it would be only enough to supply 22 percent of U.S. annual demand. The economic impact of this change on the level of U.S. consumption and/or domestic production of apples and/or grapes is not expected to be significant.

Cichorium From Central and South America

There are no official data available for cichorium, either on production or trade, in the following countries: Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, French Guiana, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Thus, we assume that these countries are very small producers of cichorium and that they are either not currently exporting cichorium or are exporting only small amounts. For these reasons, we cannot determine what the economic effects of this rule will be, but they are not expected to be significant.

Summary

U.S. importation of the commodities included in this rule is not expected to have a significant economic impact on U.S. small entities. The different production season of the Southern Hemisphere, where many of the fruits and vegetables included in this rule are produced, helps maintain a steady supply of fresh produce, complementing rather than competing with U.S. production of these commodities. For those commodities that are not principal U.S. products, the additional supply will help satisfy growing demand for these specialty crops. For these reasons, we believe that any costs due to increased competition that may be incurred by domestic entities will be minimal, and that those minimal costs will be outweighed by the benefits associated with this rule, which include improving the transparency of our regulations and providing the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

[8] Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office.

[9] Total citrus trade data here includes the following categories of fruits: Oranges (HS–6: 080510), mandarins (HS–6: 080520), lemons (HS–6: 080530), and grapefruits (HS–6: 080540).

[10] Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: *http://apps.fao.org/faostat/agriculture/*.

[11] Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: *http://apps.fao.org/faostat/agriculture/*.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0280.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–1 is amended by adding, in alphabetical order, a definition for *national plant protection organization (NPPO)* to read as follows:

§ 319.56–1 Definitions.

* * * * *

National plant protection organization (NPPO). Official service established by a government to discharge the functions specified by the International Plant Protection Convention.

* * * * *

■ 3. In § 319.56–2, paragraph (c) and the OMB citation at the end of the section are revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(c) *General permit for fruits and vegetables grown in Canada.* Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; provided, that:

(1) Consignments of *Allium* spp. consisting of the whole plant or above ground parts must be accompanied by a phytosanitary certificate issued by the NPPO of Canada with an additional declaration stating that the articles are free from *Acrolepipsis assectella* (Zeller).

(2) Potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37–2 of this part.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0280)

■ 4. Section 319.56–2t is amended as follows:

■ a. In the table in paragraph (a), by:

■ i. Revising the following entries to read as set forth below: Under Belize, for rambutan; under Bermuda, for longan; under Costa Rica, for rambutan; under El Salvador, for loroco and rambutan; under Grenada, for litchi and rambutan; under Guatemala, for eggplant and rambutan; under Honduras, for rambutan; under Mexico, for banana and rambutan; under Nicaragua, for loroco and rambutan; under Panama, for eggplant and rambutan; under Peru, for Swiss chard; under Sierra Leone, for cassava; and under South Africa, for pineapple.

■ ii. Removing the following entries: Under Argentina, for endive; under Bolivia, for Belgian endive; under Ecuador, for radicchio; under Honduras, for chicory; under Nicaragua, for radicchio; under Panama, for Belgian endive, chicory, and endive; under Peru, for radicchio; and under Republic of Korea, for chard.

■ iii. Adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for cichorium and grape; under Belize, for cichorium and eggplant; under Bolivia, for cichorium; under Chile, for cichorium; under Colombia, for cichorium; under Costa Rica, for cichorium and eggplant; under Ecuador, for cichorium; under El Salvador, for cichorium; under French Guinea, for cichorium; under Guatemala, for cichorium; under Honduras, for cichorium and eggplant; under Israel, for New Zealand spinach; under New Zealand, for citrus; under Nicaragua, for cichorium; under Panama, for cichorium; under Peru, for cichorium; under Republic of Korea, for Swiss chard; and under Suriname, for cichorium.

■ iv. Adding entries for Bahamas, Brazil, French Guiana, Guyana, Paraguay, Uruguay, and Venezuela to read as set forth below.

■ b. In paragraph (b), by adding new paragraphs (b)(2)(v), (b)(5)(vi), (b)(5)(vii), and (b)(6)(v) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
Argentina				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
	Grape	*Vitis* spp	Fruit	(b)(1)(ii).
*	*	*	*	*
Bahamas	Citrus	*Citrus* spp	Fruit	(b)(5)(vi), (b)(6)(v).
*	*	*	*	*
Belize				

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
Bermuda				
*	* *	*	* *	*
	Longan	*Dimocarpus longan*	Fruit or cluster.	
*	* *	*	* *	*
Bolivia	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Brazil	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Chile				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Colombia	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Costa Rica				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
Ecuador				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
El Salvador				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
	Loroco	*Fernaldia* spp	Flower and leaf.	
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or clusters	(b)(2)(i), (b)(5)(iii).
*	* *	*	* *	*
French Guiana	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	* *	*	* *	*
Grenada				
*	* *	*	* *	*
	Litchi	*Litchi chinensis*	Fruit or cluster.	
*	* *	*	* *	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster.	
*	* *	*	* *	*
Guatemala				
*	* *	*	* *	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
*	*	*	*	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	*	*	*	*
Guyana	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
Honduras				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaf, stems, and roots.	
*	*	*	*	*
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	*	*	*	*
Israel				
*	*	*	*	*
	New Zealand spinach	*Tetragonia tetragonioides*	Leaves..	
*	*	*	*	*
Mexico				
*	*	*	*	*
	Banana	*Musa* spp	Flower and leaf.	
*	*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	*	*	*	*
New Zealand				
*	*	*	*	*
	Citrus	*Citrus* spp	Fruit	(b)(3), (b)(5)(vii).
*	*	*	*	*
Nicaragua	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
	Loroco	*Fernaldia* spp	Flower and leaf.	
*	*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	*	*	*	*
Panama				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
	Eggplant	*Solanum melongena*	Fruit	(b)(3).
*	*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit or cluster	(b)(2)(i), (b)(5)(iii).
*	*	*	*	*
Paraguay	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Peru				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
	Swiss chard	*Beta vulgaris* subsp. *cicla*	Leaf and stem.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restriction(s) (see paragraph (b) of this section)
*	*	*	*	*
Republic of Korea				
*	*	*	*	*
	Swiss chard	*Beta vulgaris* subsp. *cicla*	Leaf and stem.	
*	*	*	*	*
Sierra Leone	Cassava	*Manihot esculenta*	Leaf and root	
*	*	*	*	*
South Africa				
*	*	*	*	*
	Pineapple	*Ananas* spp	Fruit	(b)(2)(v).
*	*	*	*	*
Suriname				
*	*	*	*	*
	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*
Uruguay	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
Venezuela	Cichorium	*Cichorium* spp	Leaves, stems, and roots.	
*	*	*	*	*

(b) * * *

(2) * * *

(v) Prohibited entry into Puerto Rico, Virgin Islands, Northern Mariana Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ''For distribution in the continental United States only.''

* * * * *

(5) * * *

(vi) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is from an area where citrus canker (*Xanthomonas citri* (Hasse) Dowson) is not known to occur.

(vii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin and with an additional declaration stating that the fruit is free from *Cnephasia jactatana*, *Coscinoptycha improbana*, *Ctenopseustis obliquana*, *Epiphyas postvittana*, *Pezothrips kellyanus*, and *Planotortrix excessana*; must undergo a port of entry inspection with a biometric sampling of 100 percent of 30 boxes selected randomly from each shipment; and the randomly selected boxes must be examined for hitchhiking pests.

(6) * * *

(v) Grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), and tangelo (*Citrus reticulata*) only.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0236, 0579–0264, and 0579–0280)

■ 5. In § 319.56–2x, the table in paragraph (a) is amended as follows:

■ a. By revising the following entries to read as set forth below: Under China, for litchi and longan; under India, for litchi; under Israel, for litchi; and under Taiwan, for litchi.

■ b. By removing, under El Salvador, the entry for garden bean and by adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for grape; under Chile, for lemons; and under El Salvador, for green bean.

■ c. By adding, in alphabetical order, entries for Italy and the Republic of South Africa to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina			
*	*	*	*
	Grape	*Vitis* spp	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
*	*	*	*
Chile	Lemon	Citrus limon	Fruit.
*	*	*	*
China	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL.'')
	Longan	*Dimocarpus longan*	Fruit or cluster

Country/locality	Common name	Botanical name	Plant part(s)
*	* *	*	* * *
El Salvador	Green bean	*Phaseolus vulgaris*	Pod or shelled.
*	* *	*	* * *
India	Litchi	*Litchi chinensis*	Fruit or cluster (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL.'')
Israel			
*	* *	*	* * *
	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL.'')
*	* *	*	* * *
Italy	Kiwi	*Actinidia deliciosa*	Fruit.
*	* *	*	* * *
Republic of South Africa	Apple	*Malus domestica*	Fruit.
	Grape	*Vitis* spp	Fruit.
*	* *	*	* * *
Taiwan			
*	* *	*	* * *
	Litchi	*Litchi chinensis*	Fruit or cluster. (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL.'')
*	* *	*	* * *

* * * * *

■ 6. Section 319.56–2dd is amended as follows:

■ a. By revising the introductory text of paragraph (d) to read as set forth below.

■ b. By redesignating paragraphs (d)(1), (d)(2), and (d)(3) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), respectively, and by adding new introductory text of paragraph (d)(1) to read as set forth below.

■ c. In newly redesignated paragraph (d)(1)(iii), in the first sentence, by adding the words ''with treatment in accordance with this paragraph (d)(1)'' after the word ''Chile''.

■ d. By adding a new paragraph (d)(2) to read as set forth below.

■ e. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States with treatment in accordance with paragraph (d)(1) of this section or if produced in accordance with the systems approach described in paragraph (d)(2) of this section.

(1) *With treatment.* * * *

(2) *Systems approach.* The tomatoes may be imported without fumigation for *Tuta absoluta*, *Rhagoletis tomatis*, and Mediterranean fruit fly (Medfly, *Ceratitis capitata*) if they meet the following conditions:

(i) The tomatoes must be grown in approved production sites that are registered with SAG. Initial approval of the production sites will be completed jointly by SAG and APHIS. SAG will visit and inspect the production sites monthly, starting 2 months before harvest and continue until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(iii) The tomatoes must originate from a Medfly free area (see § 319.56–2(j)) of Chile or an area where Medfly trapping occurs. Production sites in areas where Medfly is known to occur must contain traps for both Medfly and *Rhagoletis tomatis* in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Production sites in all other areas do not require trapping for Medfly. The trapping protocol for the detection of Medfly in infested areas is as follows:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse.

(B) Medfly traps with trimedlure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap/10 ha and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near a greenhouse. Traps must be set for at least 2 months before export and trapping and continue to the end of the harvest season.

(C) Medfly prevalence levels in the surrounding areas must be 0.7 Medflies per trap per week or lower. If levels exceed this before harvest, the production site will be prohibited from shipping under the systems approach. If the levels exceed this after the 2 months prior to harvest, the production site would be prohibited from shipping under the systems approach until APHIS and the NPPO of Chile agree that the pest risk has been mitigated.

(iv) Registered production sites must contain traps for *Rhagoletis tomatis* in

accordance with the following provisions:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse. Traps inside greenhouses will use the same bait for Medfly and *Rhagoletis tomatis* because the bait used for *R. tomatis* is sufficient for attracting both types of fruit fly within the confines of a greenhouse; therefore, it is unnecessary to repeat this trapping protocol in production sites in areas where Medfly is known to occur.

(B) McPhail traps with an approved protein bait must be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha surrounding the production site. At least one of the traps must be near a greenhouse. Traps must be set for at least 2 months before export until the end of the harvest season and must be checked at least every 7 days. In areas where Medfly trapping is required, traps located outside of greenhouses must contain different baits for Medfly and *Rhagoletis tomatis*. There is only one approved bait for *R. tomatis* and the bait is not strong enough to lure Medfly when used outside greenhouses; therefore, separate traps must be used for each type of fruit fly present in the area surrounding the greenhouses.

(C) If within 30 days of harvest a single *Rhagoletis tomatis* is captured inside the greenhouse or in a consignment or if two *R. tomatis* are captured or detected in the buffer zone, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(v) Registered production sites must conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). If within 30 days of harvest, two *Tuta absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site would be suspended until APHIS and SAG determine that risk mitigation is achieved.

(vi) SAG will ensure that populations of *Liriomyza huidobrensis* inside greenhouses are well managed by doing inspections during the monthly visits specifically for *L. huidobrensis* mines in the leaves and for visible external pupae or adults. If *L. huidobrensis* is found to be generally infesting the production site, shipments from the production site would be suspended until APHIS and SAG agree that risk mitigation is achieved.

(vii) All traps must be placed at least 2 months prior to harvest and be maintained throughout the harvest season and be monitored and serviced weekly.

(viii) SAG must maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatis* or *Tuta absoluta* captures for 1 year for APHIS review. SAG must maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS must be notified when a production site is removed from or added to the program.

(ix) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin for transit to the United States. These safeguards must remain intact until arrival in the United States.

(x) During the time the packinghouse is in use for exporting fruit to the United States, the packinghouse may only accept fruit from registered approved production sites.

(xi) SAG is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by SAG with an additional declaration, ''These tomatoes were grown in an approved production site in Chile.'' The shipping box must be labeled with the identity of the production site.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, 0579–0280, and 0579–0286)

■ 7. Section 319.56–2ii is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. In paragraph (d), by adding a new sentence at the end of the paragraph to read as set forth below.

■ c. By revising paragraph (e) to read as set forth below.

■ d. By adding an OMB citation at the end of the section to read as set forth below.

§ 319.56–2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

* * * * *

(a) Mangoes grown on the island of Guimaras, which the Administrator has determined meet the criteria set forth in § 319.56–2(e)(4) and § 319.56–2(f) with regard to the mango seed weevil (*Sternochetus mangiferae*), are eligible for importation into all areas of the United States. Mangoes from all other areas of the Philippines except Palawan are eligible for importation into Hawaii and Guam only. Mangoes from Palawan are not eligible for importation into the United States.

* * * * *

(d) * * * Shipments originating from approved areas other than Guimaras must be labeled ''For distribution in Guam and Hawaii only.''

(e) *Phytosanitary certificate*. Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section. Phytosanitary certificates accompanying shipments of mangoes originating from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0172 and 0579–0280)

Done in Washington, DC, this 12th day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–21496 Filed 12–15–06; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 313

RIN 3064–AD12

Procedures for Corporate Debt Collection

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending 12 CFR part 313, Procedures for Corporate Debt Collection, to include delinquent criminal restitution debt within the debt covered by part 313.

DATES: *Effective Date:* This rule is effective on December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Rex Taylor, (703) 562–2453, or Catherine A. Ribnick, (202) 898–3728, of the Legal Division, or Richard Romero, (202) 898–8652, of the Division of Resolutions and Receiverships.

SUPPLEMENTARY INFORMATION:

1. Background

The Debt Collection Improvement Act of 1996 (DCIA) requires federal agencies to collect debts owed to the United States in accordance with regulations that either adopt, or at least are consistent with, standards prescribed by the Department of Justice (DOJ) and Department of the Treasury (Treasury). 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. (see 31 CFR 900–904). The purpose of the DCIA is to enhance the efficiency and effectiveness of the federal government's efforts to collect debt owed to the United States. A principal feature of the DCIA was the creation of the Treasury Offset Program (TOP), a government-wide database of delinquent debtors that offsets (reduces) federal payments to recipients who also owe delinquent debt to the United States and that remits the offset amount to the creditor agency. The FDIC is the creditor agency for delinquent restitution debts owed to the FDIC. The recommended amendments do not affect the FDIC's existing authority under part 313 to collect certain debts owed to the FDIC in its corporate capacity.

In 2002, the FDIC in compliance with the DCIA promulgated 12 CFR part 313 governing the collection of certain debt owed to the FDIC in its corporate capacity by federal employees, including FDIC employees, and certain third parties. Part 313 in its present form ''applies only to [certain] debts owed to and payments made by the FDIC acting in its corporate capacity; that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA) or where a request for an offset is received by the FDIC from another federal agency.'' (See 12 CFR 313.1(c)). Part 313 also explicitly states that it ''does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities.'' (Id.)

Under part 313, when the Director of the Division of Administration (DOA) or the Director of the Division of Finance (DOF) determines that it is appropriate to initiate procedures to collect corporate debt of the type authorized by part 313, the Director must conform to the procedural standards for collecting such debts set forth in part 313. These standards generally prescribe the following steps in the debt collection process: Prompt demand for payment of the debt; upon the debtor's demand for a final agency determination, verification of the existence and amount of the debt; standards for collecting debts in installment payments; the assessment of interest, penalties, and administrative costs on delinquent debts; standards for the compromise of overdue debt; standards to be followed in determining whether to suspend or terminate collection action; the required referral of delinquent debts to FMS for collection; the reporting of debts to consumer reporting agencies and the use of credit reports; and the sale of delinquent debts. The Director also must follow the procedures for the specific type of offset remedy to be utilized, which are provided by the following subparts of part 313: Subpart B (administrative offset), subpart C (salary offset), subpart D (administrative wage garnishment), subpart E (tax refund offset), subpart F (Civil Service retirement and disability fund offset), and subpart G (mandatory centralized administrative offset).

The criminal restitution orders that the FDIC holds in almost all instances are initially acquired by the FDIC in its receivership capacity. Over time, the FDIC as receiver has transferred a substantial number of individual restitution orders to the FDIC in its corporate capacity, with the result that today criminal restitution debt is held by the FDIC in both its receivership and corporate capacities. Because part 313 as currently drafted excludes all of the FDIC's receivership and liquidation functions (among other functions) from its scope, it must be amended for the FDIC to have the authority to collect criminal restitution debt through TOP.

The legal authority for the proposed amendments is found in the DCIA itself. The DCIA's definition of ''debt'' includes criminal restitution debt owed to federal agencies including the FDIC. Thus, section 3701(b)(1)(D) of the DCIA defines ''claim'' or ''debt'' to include:

(D) Any amount the United States is authorized by statute to collect for the benefit of any person.

Criminal restitution debt owed to the FDIC falls squarely within this definition, regardless of whether that debt is owed to the FDIC in its receivership capacity or its corporate capacity.

The United States Department of Justice is primarily responsible for collecting unpaid federal criminal restitution debt. The Mandatory Victims Restitution Act (MVRA) of 1996, 18 U.S.C. 3556 & 3663 seq., which makes imposition of restitution a mandatory component of sentencing for many federal crimes, including banking crimes, expressly provides in section 3664(m) that the United States has the authority to enforce all federal criminal restitution orders in all cases. Moreover, the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 et seq., originally enacted in 1990, is the primary statutory authority that DOJ uses to collect criminal restitution orders on behalf of the victims identified in those orders, which include the FDIC in the case of restitution orders held by the FDIC. The FDCPA also explicitly defines ''debt'' to include ''an amount that is owing to the United States on account of * * * restitution.'' 28 U.S.C. 3002(3)(B). United States Attorney's Offices throughout the United States use the MVRA and FDCPA to collect and enforce criminal restitution debt on behalf of the FDIC and other victims including other federal agencies. If DOJ does not enforce an individual order, the victim named in the order may seek to enforce it instead.

II. Discussion of the Amendments to Part 313

The amendments would modify part 313 in three ways:

1. A number of individual sections of part 313 are amended to provide that part 313 applies to criminal restitution debt owed to the FDIC in either its corporate or receivership capacity in addition to the already-covered corporate debts currently identified in § 313.1.

2. Section 313.4 is amended to provide that the FDIC Board delegates to the Director of the Division of Resolutions and Receiverships (DRR) authority to refer delinquent criminal restitution debt to FMS.

3. A new section 313.125 is added to subpart E, the Tax Refund Offset regulations, to clarify that duplicate notice to a debtor is not required if notice and an opportunity for review were previously provided to the same debtor. This provision is identical to the existing § 313.28 found in the Administrative Offset regulations in subpart B. While § 313.28 arguably already applies to subpart E (because tax refund offset is generally considered to be a form of ''administrative'' offset), the new § 313.125 is added to eliminate any

uncertainty in the FDIC's regulations on this point.

III. Administrative Procedure Act

Neither advance notice of proposed rulemaking nor an opportunity to comment on the amendments to part 313 is required under the Administrative Procedure Act (APA), because these amendments relate solely to agency procedure and practice. 5 U.S.C. 553(b)(3)(A).

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the FDIC hereby certifies that the amendments to part 313 do not have a significant economic impact on a substantial number of small business entities. As amended, part 313 applies primarily to federal agencies and to a limited number of individuals and/or business entities. 5 U.S.C. 605(b).

V. Paperwork Reduction Act

This rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, because it does not contain any new information collection requirements.

VI. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that part 313 as amended will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the APA at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 313

Claims, Government employees, Wages.

■ For the reasons set forth in the preamble, the FDIC hereby amends part 313 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 313—PROCEDURES FOR COLLECTION OF CORPORATE DEBT AND CRIMINAL RESTITUTION DEBT

■ 1. The authority citation for part 313 is revised to read as follows:

Authority: 12 U.S.C. 1819(a); 5 U.S.C. 5514; Pub. L. 104–143; 110 Stat. 1321 (31 U.S.C. 3701, 3711, 3716).

■ 2. Revise § 313.1(c) to read as follows:

§ 313.1 Scope.

* * * * *

(c) This part applies only to:

(1) Debts owed to and payments made by the FDIC acting in its corporate capacity, that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA), or where a request for an offset is received by the FDIC from another federal agency; and

(2) Criminal restitution debt owed to the FDIC in either its corporate capacity or its receivership capacity.

(3) With the exception of criminal restitution debt noted in paragraph (c)(2) of this section, this part does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts and/or claims pursuant to 12 U.S.C. 1819(a) and 1820(a).

* * * * *

■ 3. In § 313.3 revise paragraphs (d), (h), and (j); redesignate paragraphs (n) through (v) as paragraphs (o) through (w), respectively; add a new paragraph (n); and revise the newly designated paragraph (r) to read as follows:

§ 313.3 Definitions.

* * * * *

(d) Certification means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, to FMS for offset or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that required procedural protections have been afforded the debtor. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

* * * * *

(h) *Debt* means an amount owed to the United States from loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, restitution, fines and forfeitures, and all other similar sources. For purposes of this part, a debt owed to the FDIC constitutes a debt owed to the United States.

* * * * *

(j) *Director* means the Director of the Division of Finance (DOF), the Director of the Division of Administration (DOA), or the Director of the Division of Resolutions and Receiverships (DRR), as applicable, or the applicable Director's delegate.

* * * * *

(n) *Division of Resolutions and Receiverships (DRR)* means the Division of Resolutions and Receiverships of the FDIC.

* * * * *

(r) *Notice of Intent to Offset or Notice of Intent* means a written notice from a creditor agency to an employee, organization, entity, or restitution debtor that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

* * * * *

■ 4. Revise the introductory paragraph in § 313.4 to read as follows:

§ 313.4 Delegations of authority.

Authority to conduct the following activities to collect debt, other than criminal restitution debt, on behalf of the FDIC in its corporate capacity is delegated to the Director of DOA or Director of DOF, as applicable; and authority to collect criminal restitution debt on behalf of the FDIC in either its receivership or corporate capacity is delegated to the Director of DRR; or to the applicable Director's delegate; to:

* * * * *

■ 5. Redesignate § 313.125 through 313.127 as § 313.126 through 313.128 and add a new § 313.125 to read as follows:

§ 313.125 No requirement for duplicate notice.

Where the director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and review opportunities prior to initiating tax refund offset.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of December, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–21470 Filed 12–15–06; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM06–10–000]

New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in a final rule that the Federal Energy Regulatory Commission (Commission) published in the **Federal Register** on November 1, 2006. That action amended the Commission's regulations governing small power production and cogeneration in response to section 1253 of the Energy Policy Act of 2005.

DATES: These corrections are effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT: Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, at (202) 502–8561.

SUPPLEMENTARY INFORMATION: In FR Document 06–8928, published November 1, 2006 (71 FR 64342), make the following corrections:

■ On page 64372, column 2, in § 292.303(c)(1), in the last sentence, after ''interconnection'' add ''costs''. The sentence is corrected to read: ''The obligation to pay for any interconnection costs shall be determined in accordance with § 292.306.

■ On page 64372, column 2, in ''§ 292.303(d), in the first sentence, after ''purchase energy'', remove ''and'' and add in its place ''or''. Sentence is corrected to read : ''If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit energy or capacity to any other electric utility''.

■ On page 64373, column 1, in § 292.309(f)(2), in the last sentence after ''facility ouput or'' add the word ''capacity''. Sentence is corrected to read: ''The qualifying facility may show that it is located in an area where persistent transmission constraints in effect cause the qualifying facility not to have access to markets outside a persistently congested area to sell the qualifying facility output or capacity''.

■ On page 64374, second column, in § 292.312(b), after, ''an existing qualifying cogeneration'' remove ''qualifying''. The sentence is corrected to read: ''After August 8, 2005, an electric utility shall not be required to enter into a new contract or obligation to sell electric energy to a qualifying small power production facility, an existing qualifying cogeneration facility, or a new qualifying cogeneration facility if the Commission has found that;''

Magalie R. Salas,

Secretary.

[FR Doc. E6–21433 Filed 12–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 5646]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule amends guidance to consular offices for the waiver of personal appearance of applicants for nonimmigrant visas contained at 22 CFR 41.102, to conform to the requirements of Section 222(h) of the Immigration and Nationality Act, as added by section 5301 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The final rule replaces the interim rule published in the **Federal Register** on July 7, 2003 and reflects legislation enacted subsequent to that rule.

DATES: This rule is effective on December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221, e-mail (*robertsonce3@state.gov*).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Section 5301 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) added a new Section 222(h) to the Immigration and Nationality Act (INA). Section 222(h) sets out detailed statutory requirements for personal interviews of non-immigrant visa applicants in the INA for the first time. Previously, INA Section 222(e) left the question of personal appearance of nonimmigrant visa applicants to be defined by regulation. The Department's interim rule published on July 7, 2003 (68 FR 40168) defined the requirements for personal appearance. This final rule replaces the previous interim rule to reflect the requirements of IRTPA and the new INA Section 222(h). Most of new Section 222(h) can be implemented through the Department's existing personal appearance regulations and current requirements for fingerprint collection, but a few changes in the regulations are needed to conform fully to the new interview requirements. The most significant change is that a consular officer must now interview persons in the same age ranges as persons covered by the biometric collection requirement. In addition to the existing list of situations in which an interview may not be waived, the personal interview requirement may not be waived for NIV applicants from third countries and applicants who have been previously refused visas or found ineligible for visas, where that ineligibility was not overcome.

Are there any exceptions to these new requirements?

Section 5301 of IRTPA provides for some exceptions from the new interview requirements. In addition, as the President noted in the signing statement for IRTPA, the interview requirement is viewed ''as advisory'' with respect to foreign diplomats or foreign officials, because it otherwise would impermissibly burden the President's constitutional authority to conduct foreign relations. Therefore, the regulations continue to permit exemptions from the interview requirements of persons in A–1, A–2, C–2, C–3, G–1, G–2, G–3 G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO 6 classifications, and applicants for diplomatic or officials visas as described in 22 CFR 41.26 and 41.27.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553 (a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not require analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas, Students.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 shall continue to read:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801. Additional authority is derived from Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104–208, 110 Stat. 3546.

■ 2. Amend § 41.102 as follows:
■ A. Revise paragraph (b),
■ B. Amend paragraph (c) by adding the phrase ''Except as provided in paragraph (d) of this section'' to the beginning of the second sentence.
■ C. Redesignate paragraph (d) as (e) and add a new paragraph (d).

The new and revised text reads as follows:

§ 41.102 Personal appearance of applicant

* * * * *

(b) *Waivers of personal appearance by consular officers.* Except as provided in paragraph (d) of this section or as otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:

(1) Is a child under 14 years of age;

(2) Is a person over 79 years of age;

(3) Is within a class of nonimmigrants classifiable under the visa symbols A–1, A–2, C–2, C–3 (except attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 and who is seeking a visa in such classification;

(4) Is an applicant for a diplomatic or official visa as described in §§ 41.26 or 41.27 of this chapter, respectively;

(5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant biometric visa in the same classification at the consular post of the applicant's usual residence, and for whom the consular officer has no indication of visa ineligibility or of noncompliance with U.S. immigration laws and regulations; or

(6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances.

* * * * *

(d) *Cases in which personal appearance may not be waived.* A consular officer or the Deputy Assistant Secretary of State may not waive personal appearance for:

(1) Any NIV applicant who is not a national or resident of the country in which he or she is applying, unless the applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.

(2) Any NIV applicant who was previously refused a visa, is listed in CLASS, or who otherwise requires a Security Advisory Opinion, unless:

(i) The visa was refused temporarily and the refusal was subsequently overcome;

(ii) The alien was found inadmissible, but the inadmissibility was waived; or

(iii) The applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.

(3) Any NIV applicant who is from a country designated by the Secretary of State as a state sponsor of terrorism, regardless of age, or in a group designated by the Secretary of State under section 222(h)(2)(F) of the Immigration and Nationality Act, unless the applicant is eligible for a waiver under paragraphs (b)(3) or (b)(4) of this section.

* * * * *

Dated: November 30, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E6–21492 Filed 12–15–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–052]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around construction vessels and mooring lines under the West Span of the Tacoma Narrows Bridge during the deck erection phase of construction. This safety zone will be in effect regardless of whether construction vessels are present or not. This zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south. The Coast Guard is taking this action to safeguard the public from possible collision with the vessels or their mooring lines, chains, or cables. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–052 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Making the rule effective after 30 days of publication in the **Federal Register** would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the waters under the West Span, in a box bounded by the points: 47–16.44′ N, 122–33.35′ W; 47–16.34′ N, 122–33.04′ W; 47–16.1′ N, 122–33.33′ W; 47–16.21′ N, 122–33.63′ W, in order to safeguard people and property from hazards associated with the presence of construction vessels and equipment in that area. These safety hazards include, but are not limited to, hazards to navigation, collisions with mooring cables, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

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

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of the Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007, a temporary § 165.T13–039 is added to read as follows:

§ 165.T13–039 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Vessels and Equipment Under and in Immediate Vicinity of West Span.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within a box bounded by the points: 47–16.44′ N, 122–33.35′ W; 47–16.34′ N, 122–33.04′ W; 47–16.1′ N, 122–33.33′ W; and 47–16.21′ N, 122–33.63′ W [Datum: NAD 1983]. This zone approximately encompasses all waters from the Gig Harbor shoreline to just east of the west bridge caissons, extending 1500 feet north and south.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. This safety zone will be in effect whether vessels are present or not.

(c) *Applicable dates.* This section applies from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

Dated: November 15, 2006.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E6–21459 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–054]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project, Bridge Deck Lifting Beams

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the lifting beams of the cranes being used to lift deck sections into place on the New Tacoma Narrows Bridge. The zone will encompass all waters within 500 feet of the area directly below the lifting beams for the duration of the lowering, hookup, raising, and securing evolutions, and will only apply to the beams on the cranes that are in use. The beams being used for the day's evolutions will be clearly marked on each end with a white flashing light. The Coast Guard is taking this action to safeguard the public from the hazards associated with navigating in the vicinity of moving construction equipment and heavy loads. These hazards may include risk of collision with the lifting beams and risks associated with falling loads, should there be an equipment failure. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–054 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Making the rule effective after 30 days of publication in the **Federal Register** would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the waters within 500 feet of the lifting beams being used to raise deck sections into place, in order to safeguard people and property from hazards associated with navigating in the vicinity of moving construction equipment. These safety hazards include, but are not limited to, hazards to navigation, collisions with the beams, and equipment failures resulting in falling loads. The Coast Guard, through this action, intends to promote the safety of personnel and vessels in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

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

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of the Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007, a temporary § 165.T13–041 is added to read as follows:

§ 165.T13–041 Safety Zone: New Tacoma Narrows Bridge Construction Project, Bridge Deck Lifting Beams.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within 500 feet of the area directly below the bridge deck lifting beams attached to the New Tacoma Narrows Bridge, when they are in use. The bridge deck lifting beams being used will be clearly marked on each end with a white flashing light.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Applicable dates.* This section applies from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

Dated: November 15, 2006.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E6–21457 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–053]

IN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project, Construction Barge ''MARMACK 12''

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the Barge ''MARMACK 12'', Official Number 1024657, while it is being used for the New Tacoma Narrows Bridge Construction Project. The zone will extend 500 feet in all directions from the barge, and will be in effect at all times during the duration of this rule. This zone is only in effect while the barge is on the navigable waters of the United States, in the Tacoma Narrows. The Coast Guard is taking this action to safeguard the public from possible collision with the barge and the deck sections it is carrying, and from hazards associated with navigating in the vicinity of the barge during construction operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–06–053 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Making the rule effective after 30 days of publication in the **Federal Register** would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the waters within 500 feet of the construction barge ''MARMACK'', in order to safeguard people and property from hazards associated with navigating in the vicinity of moving construction equipment. These safety hazards include, but are not limited to, hazards to navigation, collisions with the barge or its cargo, and disturbance of the load on the barge, which could fall or shift, injuring anyone in the vicinity. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

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

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of the Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its small area, and the limited duration of the impacts to navigation caused by the zone. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 temporary 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 temporary 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 State, local, or tribal government, in the aggregate, or the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007, a temporary § 165.T13–040 is added to read as follows:

§ 165.T13–040 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Barge ''MARMACK 12''.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within 500 feet of the construction barge ''MARMACK 12'', official number 1024657.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Applicable dates.* This section applies from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

Dated: November 15, 2006.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E6–21456 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM47

Extension of the Presumptive Period for Compensation for Gulf War Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations regarding compensation for

disabilities resulting from undiagnosed illnesses suffered by veterans who served in the Persian Gulf War. This amendment is necessary to extend the presumptive period for qualifying chronic disabilities resulting from undiagnosed illnesses that must become manifest to a compensable degree in order that entitlement for compensation be established. The intended effect of this amendment is to provide consistency in VA adjudication policy and preserve certain rights afforded to Persian Gulf War veterans and ensure fairness for current and future Persian Gulf War veterans.

DATES: *Effective Date:* This interim final rule is effective December 18, 2006. Comments must be received by VA on or before February 16, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM47—Extension of the Presumptive Period for Compensation for Gulf War Veterans.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Rhonda F. Ford, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION:

I. Establishing a Presumptive Period

In response to the needs and concerns of veterans of the Persian Gulf War (Gulf War), Congress enacted the Persian Gulf War Veterans' Benefits Act, title I of the Veterans' Benefits Improvements Act of 1994, Public Law 103–446, which was codified in relevant part in title 38, United States Code, section 1117. This law provided authority to the Secretary of Veterans Affairs (Secretary) to compensate Gulf War veterans with a chronic disability resulting from an undiagnosed illness that became manifest either during service on active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a 10 percent degree or more during a presumptive period determined by the Secretary.

Public Law 103–446 directed the Secretary to prescribe by regulation the period of time (presumptive period) following service in the Southwest Asia theater of operations determined to be appropriate for the manifestation of an illness warranting payment of compensation. It further directed that the Secretary's determination of a presumptive period be made only following a review of any credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established and taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

II. Background

To implement 38 U.S.C. 1117, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations. This regulation established the framework necessary for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act. See 60 FR 6660, February 3, 1995. As part of that rulemaking, VA established a 2-year, post-Gulf War service presumptive period based primarily on the historical treatment of disabilities for which manifestation periods have been established and pertinent facts known regarding service in the Southwest Asia theater of operations during the Persian Gulf War. VA determined that there was little or no scientific or medical evidence, at that time, useful in determining an appropriate presumptive period for undiagnosed illnesses.

Due to the continuing lack of medical and scientific evidence about the nature and cause of the illnesses suffered by Gulf War veterans and consensus concerning the inadequacy of the 2-year presumptive period for undiagnosed illnesses, the Secretary determined the presumptive period should be extended to include illnesses manifest to a 10 percent degree not later than December 31, 2001. On April 29, 1997, VA published a final rule amending 38 CFR 3.317 to implement this decision. See 62 FR 23138.

In 1998, Congress enacted Public Law 105–277 requiring VA to collaborate with the National Academy of Sciences (NAS) to review and evaluate available scientific evidence regarding associations between illnesses and exposure to hazards of Gulf War service. Section 1603(i)(3) of Public Law 105–277 required NAS to issue reports, which are produced by the Institute of Medicine's (IOM) Committee on Gulf War and Health, every 2 years to review scientific research on Gulf War toxic exposures.

In 2001, the Secretary extended the presumptive period for undiagnosed illnesses suffered by Persian Gulf War veterans from December 31, 2001, to December 31, 2006, based upon ongoing research that would require review by the Secretary. VA published an interim final rule amending 38 CFR 3.317 to extend the presumptive period to December 31, 2006 (an additional 5 years). See 66 FR 56614, November 9, 2001.

In December 2001, section 202(a) of Public Law 107–103 amended 38 U.S.C. 1117 by revising the term ''chronic disability'' to include the following (or any combination of the following): (a) An undiagnosed illness; (b) a medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms; or (c) any diagnosed illness that the Secretary determines warrants a presumption of service connection. The revised term, ''qualifying chronic disability,'' has broadened the scope of those health outcomes the Secretary may include under the presumption of service connection. Under 38 U.S.C. 1117, a qualifying chronic disability must still occur during service on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more during the presumptive period prescribed following such service. Accordingly, VA amended 38 CFR 3.317 to reflect these changes. See 68 FR 34539, June 10, 2003.

III. Current Research

The NAS' Committee on Gulf War and Health has several meetings planned during 2006 in support of current research projects. One such research project is Physiologic, Psychologic, and Psychosocial Effects of Deployment Related Stress. The objective of this project is to comprehensively review, evaluate, and summarize the scientific and medical literature for peer review regarding the association between stress and long-term adverse health effects in the Gulf War.

The NAS study is not limited to veterans of the Persian Gulf War deployments of the early 1990s but also includes veterans of current conflicts, such as Operation Iraqi Freedom, occurring in part, within the Southwest Asia theater of operations.

In addition to the above-referenced report, we anticipate that the NAS will prepare other reports relevant to Gulf War veterans' health, including reports required by Public Law 105–277 to be prepared every 2 years through October 1, 2010. These research projects have the potential of bringing much needed information to the Secretary regarding the establishment of a new, more definitive, presumptive period for Gulf War veterans with qualifying chronic disabilities. These NAS research projects have begun and are currently ongoing.

Presently, VA continues to receive claims for qualifying chronic disabilities. In 2005 for example, VA received 2,241 new claims with diagnostic codes that would be affected by this final rule, and we continue to receive such claims during 2006.

Conclusion

Currently, military operations in the Southwest Asia theater of operations continue, including Operation Iraqi Freedom. No end date for the Gulf War has been established by Congress or the President. See 38 U.S.C. 101(33). Because scientific uncertainty remains as to the cause of illnesses suffered by Persian Gulf War veterans and current IOM research studies are incomplete, limiting entitlement to benefits payable under 38 U.S.C. 1117 due to the expiration of the presumptive period in 38 CFR 3.317 is premature. If extension of the current presumptive period is not implemented, servicemembers conducting military operations in the Southwest Asia theater of operations after December 31, 2006, could be substantially disadvantaged compared to servicemembers who previously served in the same theater of operations.

Therefore, VA is extending the presumptive period in 38 CFR 3.317 for qualifying chronic disabilities that become manifest to a degree of 10 percent or more through December 31, 2011 (a period of 5 years), to ensure those benefits established by Congress are fairly administered.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(3)(B), to publish this rule without prior opportunity for public comment. In light of the fast approaching expiration date of the current presumptive period of December 31, 2006, the Secretary finds delay for the purpose of soliciting public comment impracticable, and because expiration of this rule would prohibit VA's delivery of important benefits to some veterans of the Gulf War and Operation Iraqi Freedom, further delay would be contrary to public interest. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary will consider and address comments that are received on or before February 16, 2007.

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, legal, and policy implications of this Interim final rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans, Vietnam.

Approved: September 26, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

§ 3.317 [Amended]

■ 2. In § 3.317, paragraph (a)(1)(i) is amended by removing ''December 31, 2006'' and adding, in its place, ''December 31, 2011''.

[FR Doc. E6–21531 Filed 12–15–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM12

Transfer of Montgomery GI Bill-Active Duty Entitlement to Dependents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule amends Department of Veterans Affairs (VA) regulations to implement VA's authority under the National Defense Authorization Act for Fiscal Year 2002 and the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to provide educational assistance to dependents eligible for transferred Montgomery GI Bill-Active Duty (MGIB) entitlement. The legislation authorized the Department of Defense (DoD) to offer individuals in the Armed Forces, who have critical military skills, the option to transfer up to 18 months of their MGIB entitlement to their dependents as a reenlistment incentive. In addition, the rule implements a provision in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which increased the maximum amount of benefits payable under DoD's college fund program.

DATES: *Effective Date:* This final rule is effective December 18, 2006.

Applicability Dates. VA will apply the amendments in this final rule in accordance with the effective dates specified by Congress for the statutory changes. Therefore, the transfer of entitlement provisions of this rule will apply to individuals, who are eligible, on or after December 28, 2001, the date of enactment of the National Defense Authorization Act for Fiscal Year 2002. The provisions of this rule addressing the maximum monthly amount payable under DoD's college fund program will apply to individuals, who are eligible, on or after October 1, 1998, the date of enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. VA will apply the increased maximum college fund amount to individuals first entering the Armed Forces after September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson (225C), Education Advisor, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–273–7294.

SUPPLEMENTARY INFORMATION: This document amends VA's regulations set forth in 38 CFR part 21 concerning the MGIB program to implement provisions permitting the transfer of MGIB entitlement to dependents and to reflect the maximum amount of additional educational assistance payable under DoD's college fund program.

I. Transfer of MGIB Entitlement

Section 654 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), added section 3020 to title 38, United States Code, authorizing DoD to permit certain individuals to transfer some of their MGIB entitlement to their dependents. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) amended 38 U.S.C. 3020 to clarify the rate of payment of educational assistance allowance to dependents in receipt of transferred entitlement. VA is amending its regulations to implement the provisions in 38 U.S.C. 3020 as described in this final-rule notice. Section 3020 authorizes the Secretary of each service department, or the Secretary of Defense with respect to the Coast Guard or the Secretary of Homeland Security when the Coast Guard is not operating as a service in the Navy, at such Secretary's sole discretion, to permit a servicemember, who is entitled to MGIB, to transfer up to 18 months of his or her MGIB entitlement to his or her eligible dependents. The statute further provides the—

- Eligibility criteria for both the individual transferring the entitlement and the dependent;
- Limits on months of entitlement that may be transferred;
- Administrative provisions (including designations, revocations, and modifications of transferred entitlement); and
- Special provisions in the event of an overpayment of educational assistance allowance.

These statutory changes are being incorporated in VA's existing regulations governing the MGIB program by adding new 38 CFR 21.7080.

Since 38 U.S.C. 3020(h) provides that a dependent transferee has the same MGIB entitlement as the transferor, new 38 CFR 21.7080(a) lists the regulations in 38 CFR part 21 that apply to individuals in receipt of transferred entitlement.

As it is at the discretion of the Secretary concerned to approve transfer entitlement, and not every servicemember will be permitted to do so, VA must have some evidence of the approval prior to payment of benefits. Thus, § 21.7080(b) provides that VA will accept a copy of the reenlistment contract attachment (DD Form 2366–2) that DoD issues to individuals granted the transferability option or any other comparable document issued and signed by an appropriate service department official.

Section 3020 of title 38, United States Code, permits the transfer of entitlement to an approved servicemember's child or children. A stepchild meets the definition of child for VA purposes if the stepchild is a member of the veteran's household (38 U.S.C. 101(4); 38 CFR 3.57). Section 21.7080(c)(4) provides that a stepchild, who is a member of the servicemember's household or who has maintained normal family ties while temporarily absent from the household, is an eligible transferee.

Section 3032(a)(1) of title 38, United States Code, places limitations on educational assistance for individuals who are on active duty. However, section 3020(h)(3)(A) specifically provides that these limitations do not apply to eligible dependents. Nonetheless, VA is not allowing an individual, who is eligible for the Selected Reserve ''kicker,'' to transfer the ''kicker'' to his or her dependent because there are no provisions in title 10, United States Code, that authorize such a transfer. The Selected Reserve kicker is an amount of money that DoD authorizes for certain Selected Reserve members under the authority of 10 U.S.C. 16131(i)(2) and is a benefit provided in addition to the amount otherwise payable under 38 U.S.C. 3015. Based on the lack of statutory authority in title 10, we will not include the transferor's ''Selected Reserve kicker'' when determining the amount payable to a dependent under 38 CFR 21.7080(k). However, if the dependent is eligible for a Selected Reserve kicker based on his or her own Selected Reserve service, we will increase the MGIB educational assistance transferred to the dependent by the amount of the

kicker in accordance with 10 U.S.C. 16131(i)(2).

In 38 CFR 21.7080(l), we state that a dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty. This restriction implements 38 U.S.C. 3002(3), which provides that an authorized program of education for MGIB purposes includes on-the-job training or apprenticeship programs only for those individuals who are *not* on active duty.

Section 21.7080(n) addresses the maximum months of entitlement and concurrent receipt of educational assistance for a dependent, who is eligible for MGIB through his or her own military service and through transferred entitlement. Section 3033 of title 38, United States Code, does not bar an individual's receipt of MGIB benefits based on his or her own military service concurrently with educational assistance payable via transferred entitlement. We note that 38 U.S.C. 3695 limits the period of assistance (months of entitlement) when an individual is entitled to educational assistance under two or more programs. However, this limitation does not apply when the individual is entitled to MGIB educational assistance through transferred entitlement and MGIB educational assistance based on the individual's own military service because the benefits are provided under one program (38 U.S.C. chapter 30).

Section 3020(h)(4) of title 38, United States Code, provides that the death of the transferor will not affect the tranferee's entitlement. Section 21.7050(h)(2) and (i)(2) provide that the ending date of eligibility for dependents of a transferor, who dies on active duty without specifying an eligibility termination date, is 10 years from the date of the transferor's death. This is consistent with the generally applicable eligibility period of 10 years following the date of discharge or release from active duty. Regardless, a dependent child's eligibility will end at age 26 in accordance with 38 U.S.C. 3020(h)(5), even if the 10-year period has not expired.

II. Increased Maximum Amount of DoD College Fund ''Kicker''

Effective October 1, 1998, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) amended 38 U.S.C. 3015 to increase the maximum amount payable under DoD's college fund program for certain individuals, who first become members of the Armed Forces after September 30, 1998. The Secretary concerned determines the amount of the college fund payment to these individuals. VA is updating its regulations, 38 CFR 21.7136, to include this increase.

In updating § 21.7136, VA is also correcting an earlier technical oversight that failed to set forth the maximum amount payable under the DoD college fund program. This oversight has not harmed those eligible for the increased college fund because VA, regardless of the regulatory error, has been paying educational assistance that includes the maximum college fund when appropriate and as authorized by DoD. For clarity, VA is further amending 38 CFR 21.7137(b) to provide that if there is no cost for a course, educational assistance is not payable. Section 3032(a) of title 38, United States Code, provides that the amount of educational assistance payable to an active duty servicemember or an individual training at less than ½-time is the lesser of the rate otherwise payable or the cost of the tuition and fees. Consequently, if there is no cost, nothing is payable.

We are also amending 38 CFR 21.7137 to remove paragraph (d). Public Law 105–261 amended 38 U.S.C. 3015(d) to authorize the service departments to increase the basic MGIB educational assistance allowance to $950 per month for certain individuals, who first became members of the Armed Forces on or after October 1, 1998. Currently only those individuals, who meet the requirements of 38 U.S.C. 3011(a)(1)(B) or (C), or 3012(a)(1)(B) or (C), are eligible for the enhanced educational assistance rates set forth in current § 21.7137. Such rates may be awarded at the discretion of the Secretary of the service department concerned. However, these individuals, who meet the requirements of 38 U.S.C. 3011(a)(1)(B) or (C), or 3012(a)(1)(B) or (C), first became members of the Armed Forces *before* July 1, 1985, and thus do not qualify for the additional amount provided in 38 U.S.C. 3015(d), as amended by Public Law 105–261. Prior to the enactment of Public Law 105–261, the law did not proscribe these additional payments to certain individuals, who had prior service or who entered the Armed Forces before October 1, 1998. Nonetheless, the service departments did not offer the additional payments to individuals who entered the Armed Forces before July 1, 1985. VA is removing paragraph (d) of § 21.7137 because the statutory amendment only applies to service on or after October 1, 1998, and because the service departments never provided the additional payment to any individual who entered service before that date.

III. Clerical Changes, Revisions for Clarity or Simplification of Application

We are amending 38 CFR 21.7131(h) and 38 CFR 21.7135(p)(1) to remove cross references to former 38 CFR 21.7139(e), (f), and (g).

We are amending 38 CFR 21.7135(a)(2) by adding the words ''his or her'' before ''program of education.''

We are amending 38 CFR 21.7138(c)(1) to provide the correct cross-reference to § 21.7136.

We are amending 38 CFR 21.7139(b) and (c) by combining them into new § 21.7137(b) for purposes of simplification. In addition, we are amending several cross references in § 21.7139 because of revisions in §§ 21.7136 and 21.7137.

Administrative Procedure Act

Changes to 38 CFR part 21 are being published without regard to the notice-and-comment and delayed-effective-date provisions of 5 U.S.C. 553 because they conform VA's existing rules to statutory amendments. Accordingly, these changes involve procedural and interpretive rules exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b) and (d).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy

implications of this final rule have been examined and it has been determined that it is a significant regulatory action under the Executive Order because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Paperwork Reduction Act

The filing requirements in new 38 CFR 21.7080(b), (e), (g), and (h) are not considered collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–321) because they apply to less than 10 persons within any 12-month period.

The filings information referenced in § 21.7080(b) is a one-time submission to establish that the transferor was approved by a service department to participate in the transferability program. The collection in § 21.7080(e) is generally a one-time collection.

The filings information referenced in paragraphs (g) and (h) of § 21.7080 apply to modifications and revocations of the transferor's designation of transfer. Although early in the program, VA has not received any modification or revocation requests.

Due to the small universe of servicemembers approved to transfer entitlement and the low volume of dependents who have requested educational assistance via transferred entitlement since the program began, and the varying ages of the transferor's children, VA does not anticipate collecting information from 10 or more persons in any year under any of the above mentioned paragraphs of § 21.7080.

Unfunded Mandates

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

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number and title for the program affected by this final rule is 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 8, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21, subpart K, as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 2. Amend § 21.7020 to revise paragraph (b)(9)(i) and to add paragraphs (b)(58) and (b)(59) immediately following the authority citation at the end of paragraph (b)(57), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(9) * * *

(i) A spouse as defined in § 3.50(a) of this chapter,

* * * * *

(58) *Transferor.* The term *transferor* means an individual, who is—

(i) Entitled to educational assistance under the Montgomery GI Bill—Active Duty program based on his or her own active duty service; and

(ii) Approved by the service department to transfer a portion of his or her entitlement to his or her dependent or dependents.

(Authority: 38 U.S.C. 3020)

(59) *Transferee.* The term *transferee* means an individual to whom entitlement has been transferred.

(Authority: 38 U.S.C. 3020)

■ 3. Amend § 21.7050 to add paragraphs (h) and (i) immediately after the authority citation at the end of paragraph (g), to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(h) *Time limitation for a spouse eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(i) *Time limitation for a child eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080 is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the

period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(Authority: 38 U.S.C. 3020)

■ 4. An undesignated center heading and § 21.7080 are added to read as follows:

Transfer of Entitlement to Basic Educational Assistance to Dependents

§ 21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available.

(a) *Application of sections in subpart K to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.7020—Definitions.

(Authority: 38 U.S.C. 3020)

(2) *Claims and Applications.* Section 21.7030—Applications, claims, and time limits.

(Authority: 38 U.S.C. 3020)

(3) *Eligibility.* (i) Section 21.7050—Ending dates of eligibility, only paragraphs (h) and (i); and

(ii) Section 21.7051—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3020)

(4) *Entitlement.* (i) Section 21.7070—Entitlement;

(ii) Section 21.7075—Entitlement to tuition assistance top-up; and

(iii) Section 21.7076—Entitlement charges.

(Authority: 38 U.S.C. 3020)

(5) *Counseling.* (i) Section 21.7100—Counseling; and

(ii) Section 21.7103—Travel expenses.

(Authority: 38 U.S.C. 3020)

(6) *Programs of Education.* (i) Section 21.7110—Selection of program of education;

(ii) Section 21.7112—Programs of education combining two or more types of courses; and

(iii) Section 21.7114—Change of program.

(Authority: 38 U.S.C. 3020)

(7) *Courses.* (i) Section 21.7120—Courses included in programs of education;

(ii) Section 21.7122—Courses precluded; and

(iii) Section 21.7124—Overcharges.

(Authority: 38 U.S.C. 3020)

(8) *Payments—Educational Assistance.* (i) Section 21.7130—Educational Assistance;

(ii) Section 21.7131—Commencing dates, except for paragraphs (d), (g), (l), (m), (n), (o), and (p) of § 21.7131;

(iii) Section 21.7133—Suspension or discontinuance of payments;

(iv) Section 21.7135—Discontinuance dates, except for paragraphs (q), (s) and (u) of § 21.7135;

(v) Section 21.7139—Conditions which result in reduced rates or no payment, except for paragraph (c) of § 21.7139. VA will apply the rules in paragraph (d) of § 21.7139 to dependents, who are on active duty;

(vi) Section 21.7140—Certifications and release of payments;

(vii) Section 21.7141—Tutorial assistance;

(viii) Section 21.7142—Accelerated payments;

(ix) Section 21.7143—Nonduplication of educational assistance; and

(x) Section 21.7144—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3020)

(9) *Pursuit of courses.* (i) Section 21.7150—Pursuit;

(ii) Section 21.7151—Advance payment and accelerated payment certifications;

(iii) Section 21.7152—Certification of enrollment;

(iv) Section 21.7153—Progress and conduct;

(v) Section 21.7154—Pursuit and absences;

(vi) Section 21.7156—Other required reports;

(vii) Section 21.7158—False, late, or missing reports; and

(viii) Section 21.7159—Reporting fee.

(Authority: 38 U.S.C. 3020)

(10) *Course Assessment.* (i) Section 21.7170—Course measurement; and

(ii) Section 21.7172—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3020)

(11) *State approving agencies.* Section 21.7200—State approving agencies.

(Authority: 38 U.S.C. 3020)

(12) *Approval of courses.* (i) Section 21.7220—Course approval; and

(ii) Section 21.7222—Courses and enrollments which may not be approved.

(Authority: 38 U.S.C. 3020)

(13) *Administrative.* (i) Section 21.7301—Delegations of authority;

(ii) Section 21.7302—Finality of decisions;

(iii) Section 21.7303—Revision of decisions;

(iv) Section 21.7305—Conflicting interests;

(v) Section 21.7307—Examination of records;

(vi) Section 21.7310—Civil rights; and

(vii) Section 21.7320—Procedural protection; reduction following loss of dependent.

(Authority: 38 U.S.C. 3020)

(b) *Proof of transfer of entitlement option.* An individual transferring entitlement, or the dependent to whom entitlement is transferred, must submit to VA—

(1) A copy of DD Form 2366–2, entitled ''Montgomery GI Bill Act of 1984 (MGIB) Transferability Program''; or

(2) Any other document issued and signed by the transferor's service department that shows the transferor is authorized to transfer entitlement.

(Authority: 38 U.S.C. 3020)

(c) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to—

(i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (c)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter.

(3) A child must meet the definition of child in § 3.57 of this chapter. The transferor must make the required designation shown in § 21.7080(e)(1) before the child attains age 23.

(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter and is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3020)

(d) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her service department to transfer entitlement may do so at any time after such approval up until the transferor's ending date of eligibility as determined under § 21.7050.

(Authority: 38 U.S.C. 3020)

(e) *Designating dependents, designating the amount to transfer, and period of transfer.* (1) An individual transferring entitlement under this section must—

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on a copy of DD Form 2366–2, Montgomery GI Bill Act of 1984 Transferability Program, or on any document signed by the transferor that shows the information required in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(f) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of—

(i) Eighteen months of his or her entitlement; or

(ii) The amount of entitlement he or she has available.

(2) Subject to the limitations in paragraph (f)(1) of this section, the transferor may transfer up to the maximum amount of transferable entitlement—

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3020)

(g) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the service department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3020)

(h) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (e) of this section at any time. Any modification made will apply only to any unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the service department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3020)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by the dependents.

(Authority: 38 U.S.C. 3020)

(j) *Secondary school diploma (or equivalency certificate).* Children, who have attained age 18, and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3020)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.7136 or § 21.7137 (and the rules in § 21.7138 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent the monthly rate of educational assistance that would be payable to the transferor except that VA will—

(1) Exclude the transferor's kicker for service in the Selected Reserve(§§ 21.7136(g) and 21.7137(e)) if the transferor is eligible for such kicker;

(2) Include the dependent's Selected Reserve kicker, if the dependent is eligible for a kicker from the Selected Reserve based on the dependent's own Selected Reserve service; and

(3) Disregard the fact that either the transferor or the dependent is on (or both are on) active duty and pay the veteran rate rather than the rate applicable to individuals on active duty.

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3020(h))

(l) *Restriction on payment of educational assistance to a dependent pursuing an on-the-job training or apprenticeship program while transferor is on active duty.* A dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty.

(Authority: 38 U.S.C. 3002(3), 3020(h))

(m) *Transferor fails to complete required service contract that afforded participation in the transferability program.* (1) The dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of active duty service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the active duty service due to—

(i) His or her death;

(ii) A service-connected disability;

(iii) A medical condition which preexisted such service on active duty and which the Secretary of VA determines is not service-connected;

(iv) A hardship; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct, but that did interfere with the individual's performance of duty, as determined by the Secretary of each service department.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraphs (m)(1)(i) through (v) of this section.

(Authority: 38 U.S.C. 3020, 38 U.S.C. 3011(a)(1)(A)(ii))

(n) Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 30 based on his or her own active duty service. Dependents eligible for payment of educational assistance through transferred entitlement and who are eligible for payment under 38 U.S.C. chapter 30 based on their own active service—

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course.

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 30 as long as the only educational assistance paid is under 38 U.S.C. chapter 30. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 30), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3020, 3033, 3034(a), 3695)

■ 5. Amend § 21.7131 to revise paragraph (h) introductory text and to add new paragraphs (r) and (s) immediately after the authority citation at the end of paragraph (q), to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(h) *Individuals in a penal institution.* If a veteran or a servicemember is paid a reduced rate of educational assistance under § 21.7139 (c) and (d) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

* * * * *

(r) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3020)

(s) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.50(a) of this chapter;

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3020)

■ 6. Amend § 21.7135 to revise paragraphs (a)(2), (p)(1), and (r) and to add new paragraphs (dd) through (ii) immediately after the authority citation at the end of paragraph (cc), to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(a) * * *

(2) In all other cases if the veteran or servicemember dies while pursuing his or her program of education, the discontinuance date of educational assistance shall be the last date of attendance.

* * * * *

(p) * * * (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7139 (c) and (d).

* * * * *

(r) *Record-purpose charge against entitlement under 38 U.S.C. chapter 34 equals entitlement that remained on December 31, 1989.* An individual, who is receiving basic educational assistance at the rates stated in § 21.7137(a), will have his or her award reduced to the rates found in § 21.7136(a) effective the date the total of the individual's record-purpose charges against his or her entitlement under 38 U.S.C. chapter 34 equals the entitlement to that benefit which the individual had on December 31, 1989.

(Authority: 38 U.S.C. 30159(c); Pub. L. 98–525)

* * * * *

(dd) *Dependent exhausts transferred entitlement.* The discontinuance date of an award of educational assistance to a dependent, who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3020)

(ee) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of entitlement, the dependent's date of discontinuance is the effective date of the revocation of transfer as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(ff) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement to educational assistance; and

(2) The service department discharges the transferor for a reason other than one of the reasons stated in § 21.7080(m)(1).

(Authority: 38 U.S.C. 3020)

(gg) *Spouse eligible for transferred entitlement and transferor divorce.* If a spouse eligible for transferred entitlement and the transferor divorce, the spouse's discontinuance date is the date of the divorce.

(Authority: 38 U.S.C. 101(31), 103, 3020)

(hh) *Child eligible for transferred entitlement marries.* If a child eligible for transferred entitlement marries, the date of discontinuance is the date the child marries.

(Authority: 38 U.S.C. 101(4), 3020)

(ii) *Stepchild eligible for transferred entitlement no longer member of transferor's household.* If a stepchild eligible for transferred entitlement ceases to be a member of the transferor's household, the date of discontinuance is the date the stepchild was no longer a member of the transferor's household. See § 21.7080(c)(4).

(Authority: 38 U.S.C. 101(4), 3020)

■ 7. Section 21.7136 is amended by:

■ a. Revising paragraphs (d)(1) and (d)(2) introductory texts;

■ b. Redesignating paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) as paragraphs (d)(4), (d)(5), (d)(7), and (d)(8), respectively.

■ c. Adding new paragraphs (d)(3) and (d)(6).

■ d. Revising newly designated paragraph (d)(5) introductory text.

■ e. Revising paragraphs (e)(1) and (e)(2), and removing paragraph (e)(3).

■ f. Revising paragraphs (g)(1) introductory text, (g)(1)(i) and (g)(2)(ii).

■ g. Revising paragraphs (h)(1) introductory text, (h)(2)(i) through (iii), and (h)(3).

The revisions and additions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(d) * * *

(1) For individuals, who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training) it may not exceed:

* * * * *

(2) For individuals, who become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998 (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:

* * * * *

(3) For individuals, who first become members of the Armed Forces after September 30, 1998, (other than those pursuing apprenticeship or other on-job training), it may not exceed:

(i) $950.00 per month for full-time training,

(ii) $712.50 per month for three-quarter-time training,

(iii) $475.00 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) $237.50 per month for one-quarter-time training or less.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(5) For individuals, who first become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998, and, who are pursuing an apprenticeship or other on-job training, it may not exceed:

* * * * *

(6) For individuals, who first become members of the Armed Forces after September 30, 1998, and who are pursuing apprenticeship or other on-job training, it may not exceed:

(v) $712.50 per month during the first 6 months of training,

(vi) $522.50 per month during the second 6 months of training, or

(vii) $332.50 per month during the remaining months of training.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(e) * * *

(1) The monthly rate stated in either paragraph (b) or (c) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (d) or (f) of this section, or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

(Authority: 38 U.S.C. 3015, 3032)

* * * * *

(g) *Increase (''kicker'') in basic educational assistance rates payable for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase (''kicker'') is payable to an individual, who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for education under §§ 21.7042(a), 21.7045, or 21.7080; and

* * * * *

(2) * * *

(ii) May set the amount of the increase (''kicker'') payable, for an individual pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

* * * * *

(h) * * *

(1) VA will increase the monthly rate provided in paragraphs (b)(1) through (b)(4) and (c)(1) through (c)(4) of this section by:

* * * * *

(2) * * *

(i) During the first 6 months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by $3.75 for every $20 the individual contributed;

(ii) During the second 6 months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by $2.75 for every $20 the individual contributed; and

(iii) During the remaining months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraphs (b)(5) through (b)(8) and (c)(5) through (c)(8) of this section by $1.75 for every $20 the individual contributed.

(3) VA will increase the monthly rate provided in paragraphs (b)(9) or (c)(9) of this section by $5 for every $20 the veteran has contributed.

(Authority: 38 U.S.C. 3015(g))

■ 8. Section 21.7137 is amended by:

■ a. Revising paragraph (b) introductory text and paragraph (b)(2).

■ b. Removing paragraph (d).

■ c. Redesignating paragraph (e), (f), and (g) as (d), (e), and (f), respectively.

■ d. Revising newly designated paragraphs (d)(1) introductory text and (d)(1)(i).

The revisions read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

* * * * *

(b) * * * Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

* * * * *

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

* * * * *

(d) *Increase (''kicker'') in basic educational assistance rates for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraphs (a), (b), or (c) of this section, as appropriate. The increase (''kicker'') is payable to an individual who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for educational assistance under § 21.7044(a) or § 21.7080;

* * * * *

■ 9. Amend § 21.7138 to revise paragraph (c)(1) to read as follows:

§ 21.7138 Rates of supplemental educational assistance.

* * * * *

(c) * * *

(1) The monthly rate of the veteran's or servicemember's basic educational assistance determined as provided in §§ 21.7136(e) and 21.7137(b), (c) and (d) of this part.

* * * * *

■ 10. Section 21.7139 is amended by:

■ a. Removing paragraph (b).

■ b. Redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (b), (c), (d), (e), and (f) respectively.

■ c. In newly designated paragraph (b), revising the paragraph heading and introductory text.

■ d. Revising newly designated paragraphs (c)(2)(iii), (d)(3)(iii), (f)(1)(i), and (f)(1)(ii).

The revisions read as follows:

§ 21.7139 Conditions that result in reduced rates or no payment.

* * * * *

(b) *No educational assistance for some incarcerated veterans or servicemembers.* VA will pay no educational assistance to a veteran or servicemember, who—

* * * * *

(c) * * *

(2) * * *

(iii) The monthly rate found in § 21.7136(e) or § 21.7137(c), as appropriate.

* * * * *

(d) * * *

(3) * * *

(iii) The monthly rate determined by § 21.7136(e) or § 21.7137(b), as appropriate, plus the monthly rate stated in § 21.7138(c) if the veteran is entitled to supplemental educational assistance.

* * * * *

(f) * * *

(1) * * *

(i) The rates specified in §§ 21.7136(b)(5) through (b)(8), (c)(5) through (c)(8), (d)(4) through (d)(6), (f)(4) and (h)(2) and 21.7137(a)(5) through (a)(8); and

(ii) Any increase (''kicker'') set by the Secretary of the service department concerned as described in §§ 21.7136(g) and 21.7137(d).

* * * * *

[FR Doc. E6–21525 Filed 12–15–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2005, on page 584, § 173.302a is corrected by reinstating the second sentence of paragraph (d) to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

* * * * *

(d) * * * The maximum filling density of the diborane may not exceed 7 percent.* * *

* * * * *

[FR Doc. 06–55531 Filed 12–15–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6332–38; I.D. 110806D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; extension of temporary area and gear restrictions.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces the extension of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions will continue to apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,809 nm^2 (6,204 km^2), east of Portland, Maine, for an additional 15 days. The purpose of this action is to provide immediate protection to an aggregation of Northern right whales (right whales).

DATES: This notice extends the restricted period from 0001 hours December 18, 2006, through 2400 hours January 1, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40°00′ N. lat. to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to

identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 5, 2006, an aerial survey reported a sighting of 13 right whales in the proximity 43°29′ N. lat. and 68°27′ W. long. This position lies east of Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination is based on the following factors, including but not limited to: The location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the options and factors noted above and on November 16, 2006, published a temporary rule in the **Federal Register** (71 FR 66688) to announce the establishment of a DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15-day period. On November 26, 2006, a subsequent survey conducted over the DAM zone indicated that 8 whales were still present in the area and the DAM zone trigger of 0.04 right whales per square nautical mile (1.85 km^2) continued to be met. NMFS reviewed the options and factors noted above and on December 4, 2006, published a temporary rule in the **Federal Register** (71 FR 70319) to extend the DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15-day period. On December 11, 2006, another survey conducted over the DAM zone indicated that 18 whales remain within the area, again indicating the DAM zone trigger of 0.04 right whales per square nautical mile (1.85 km^2) continues to be met. Therefore, in order to further protect the right whales in this DAM zone, pursuant to 50 CFR 229.32(g)(3)(v), NMFS is exercising its authority to extend the restrictions on lobster trap and anchored gillnet gear for an additional 15-day period.

The DAM zone is bound by the following coordinates:

43°52′ N., 68°56′ W. (NW Corner)
43°52′ N., 67°58′ W.
43°09′ N., 67°58′ W.
43°09′ N., 68°56′ W.
43°52′ N., 68°56′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours, December 20, 2006, through 2400 hours January 1, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the Federal Register processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal States. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Following State review of the regulations creating the DAM program, no State disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that State.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: December 13, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–9753 Filed 12–13–06; 3:25 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6331–37; I.D. 110806C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; extension of temporary area and gear restrictions.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces the extension of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions will continue to apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,549 nm^2 (5,312 km^2), south of Portland, Maine, for an additional 15 days. The purpose of this action is to provide immediate protection to an aggregation of Northern right whales (right whales).

DATES: This notice extends the restricted period from 0001 hours December 18, 2006, through 2400 hours January 1, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine

Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40°00′ N. lat. to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 5, 2006, an aerial survey reported a sighting of thirteen right whales in the proximity 43°07′ N. lat. and 70°10′ W. long. This position lies south of the Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination is based on the following factors, including but not limited to: The location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the options and factors noted above and on November 16, 2006, published a temporary rule in the **Federal Register** (71 FR 66690) to announce the establishment of a DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15-day period. On November 27, 2006, a subsequent survey conducted over the DAM zone indicated that 8 whales were still present in the area and the DAM zone trigger of 0.04 right whales per square nautical mile (1.85 km^2) continued to be met. NMFS reviewed the options and factors noted above and on December 4, 2006, published a temporary rule in the **Federal Register** (71 FR 70321) to extend the DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15-day period. On December 11, 2006, another survey conducted over the DAM zone indicated that 7 whales remain within the area, again indicating the DAM zone trigger of 0.04 right whales per square nautical mile (1.85 km2) continues to be met. Therefore, in order to further protect the right whales in this DAM zone, pursuant to 50 CFR 229.32(g)(3)(v), NMFS is exercising its authority to extend the restrictions on lobster trap and anchored gillnet gear for an additional 15-day period.

The DAM zone is bound by the following coordinates:

43°52′ N., 68°56′ W. (NW Corner)
43°52′ N., 67°58′ W.
43°09′ N., 67°58′ W.
43°09′ N., 68°56′ W.
43°52′ N., 68°56′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Western Gulf of Maine Closure Area for Northeast Multispecies found at 50 CFR 648.81(e). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters and Stellwagen Bank/Jeffreys Ledge that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area and

Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: One at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours, December 18, 2006, through 2400 hours January 1, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA Web site, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the Federal Register processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal States. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no State disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that State.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in States to be affected by actions taken pursuant to the DAM program. Federalism issues raised by State officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: December 13, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–9754 Filed 12–13–06; 3:25 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 71, No. 242

Monday, December 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24846; Directorate Identifier 2006–NE–21–AD]

RIN 2120–AA64

Airworthiness Directives; Microturbo Saphir 20 Models 095 Auxiliary Power Units (APU)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 17, 2007.

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 proposed 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: Tracy Murphy, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate; 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7172; fax 781–238–7170.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This 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 proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24846; Directorate Identifier 2006–NE–21–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

The Direction Generale De l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued Airworthiness Directive F–2005–146, dated August 17, 2005 (Euoropean Aviation Safety Agency Reference No. 2005–6137, dated August 9, 2005) (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments. The occurrence that the high-energy fragments would be uncontained is considered a potentially dangerous situation which requires imperative corrective action. The purpose of the modification, which has been made mandatory, is to limit gas generator speed during an acceleration towards overspeed by installation of a modified Electronic Control Unit (ECU) and Drain Valve. In addition, the modification also renders the exhaust gas temperature (EGT) control function compliant with the certificated specifications. In operation, if EGT exceeds the certificated limit value, turbine blade shedding could occur.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Microturbo has issued Alert Service Bulletin No. 095–49A11, Edition 2, dated October 7, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed 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 proposing 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 also have proposed 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 proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,400 or $1,800 per product.

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 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 this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

2006–XX–XX Microturbo: Docket No. FAA–2006–24846; Directorate Identifier 2006–NE–21–AD.

Comments Due Date

(a) We must receive comments by January 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Microturbo Saphir 20 Models 095 Auxiliary Power Units (APU) installed on, but not limited to, Eurocopter AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters.

Reason

(d) Direction Generale De l'Aviation Civile Airworthiness Directive F–2005–146, dated August 17, 2005, states:

It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments. The occurrence that the high-energy fragments would be uncontained is considered a potentially dangerous situation which requires imperative corrective action. The purpose of the modification, which has been made mandatory, is to limit gas generator speed during an acceleration towards overspeed by installation of a modified Electronic Control Unit (ECU) and Drain Valve. In addition, the modification also renders the exhaust gas temperature (EGT) control function compliant with the certificated specifications. In operation, if EGT exceeds the certificated limit value, turbine blade shedding could occur.

Actions and Compliance

(e) Unless already done, do the following actions except as stated in paragraph (f) below.

(1) Within 60 days after the effective date of this AD, replace the existing ECU and drain valve.

(2) Follow paragraph 2. of Accomplishment Instructions of Microturbo Alert Service Bulletin (ASB) No. 095–49A11, Edition 2, dated October 7, 2005, to do these actions.

FAA AD Differences

(f) This AD differs from the mandatory continuing airworthiness information (MCAI) and/ or service information as follows:

(1) The MCAI issued by an airworthiness authority of another country refers to Microturbo ASB No. 095–49A11, dated July 27, 2005.

(2) This AD refers to Edition 2 of that ASB, dated October 7, 2005, which contains revised torque values.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Boston Aircraft Certification Office, FAA, 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: None.

Related Information

(h) For service information identified in this AD, contact Microturbo SA; Technical Publications Department; 8 Chemin du pont de Rupe, BP 62089; 31019 Toulouse Cedex 2, France; telephone 33 0 5 61 37 55 00; fax 33 0 5 61 70 74 45.

(i) France AD No. F–2005–146, dated August 17, 2005, also pertains to the subject of this AD.

(j) Contact Tracy Murphy, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7172; fax (781) 238–7170, for more information about this AD.

Issued in Burlington, Massachusetts, on December 12, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–21487 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26396; Airspace Docket No. 06–AAL–40]

Proposed Revision of Class E Airspace; Red Dog, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Red Dog, AK. Two new Area Navigation (RNAV) Required Navigation Performance (RNP) Special Instrument Approach Procedures (SIAPs) and an RNAV RNP Special Departure Procedure (DP) are being developed for the Red Dog Airport. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Red Dog Airport, AK.

DATES: Comments must be received on or before February 1, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–26396/ Airspace Docket No. 06–AAL–40, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26396/Airspace Docket No. 06–AAL–40.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Red Dog Airport, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Red Dog Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new Special RNAV RNP instrument approaches and one Special RNAV RNP departure procedure for the Red Dog Airport. These procedures will be only flown by Alaska Airlines. The new approaches are (1) The Area Navigation (RNAV) Required Navigation Performance (RNP) Runway (RWY) 05 and (2) the RNAV RNP RWY 20. The departure procedure is the IHOPO ONE RNAV RNP Departure. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Red Dog Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the Special instrument procedures at the Red Dog Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E

airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Red Dog Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Red Dog, AK [Revised]

Red Dog Airport, AK
(Lat. 68°01′53″ N., long. 162°54′11″ W.)
Noatak NDB/DME, AK
(Lat. 67°34′19″ N., long. 162°58′26″ W.)
Selawik VOR/DME, AK
(Lat. 66°36′00″ N., long. 159°59′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Red Dog Airport, AK; and that airspace extending upward from 1,200 ft. above the surface within a 14-mile radius of the Red Dog Airport, AK, and within 5 miles either side of a line from the Selawik VOR/DME, AK, to lat. 67°38′06″ N., long. 162°21′42″ W., to lat. 67°54′30″ N., long. 163°00′00″ W., and within 5 miles either side of a line from the Noatak NDB/DME, AK, to lat. 67°50′20″ N., long. 163°19′16″ W., and within a 5-mile radius of lat. 67°50′20″ N., long. 163°19′16″ W.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21517 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0502; FRL–8257–8]

Approval and Promulgation of Air Quality Implementation; North Dakota; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions adopted by North Dakota on February 1, 2005 to Chapter 33–15–15 of the North Dakota Administrative Code (Prevention of Significant Deterioration of Air Quality) that incorporate EPA's December 31, 2002 NSR Reforms. North Dakota submitted the request for approval of these rule revisions into the State Implementation Plan (SIP) on February 10, 2005. North Dakota has a federally-approved Prevention of Significant Deterioration (PSD) program for new and modified sources impacting attainment areas in the State. North Dakota is in attainment for all pollutants, and does not have a SIP-approved non-attainment permit program.

On December 31, 2002, EPA published revisions to the Federal Prevention of Significant Deterioration (PSD) and non-attainment NSR regulations (67 FR 80186). These revisions are commonly referred to as ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations (68 FR 63021). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on challenges to the December 2002 NSR Reform revisions (*State of New York* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the ''reasonable possibility'' standard for when a source must keep certain project-related records.

North Dakota is seeking approval at this time for its PSD regulations to implement the NSR Reform provisions that have not been vacated by the June 24, 2005, court decision.

DATES: Comments must be received on or before January 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0502, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: long.richard@epa.gov and daly.carl@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.

• *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0502. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202, (303) 312–6416, *daly.carl@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *North Dakota* mean the State of North Dakota, unless the context indicates otherwise.

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I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Is Being Addressed In This Document?

EPA is proposing to approve North Dakota's revisions to their Air Pollution Control Rules Chapter 33–15–15 (Prevention of Significant Deterioration of Air Quality), submitted by North Dakota on February 10, 2005, that relate to the PSD construction permit programs of the State of North Dakota. These revisions to Chapter 33–15–15 were adopted by the North Dakota Department of Health on February 1, 2005. North Dakota's Regulations for a PSD program for attainment areas were federally-approved and made a part of the SIP on November 2, 1979 (44 FR 63103).

On December 31, 2002, EPA published revisions to the Federal PSD and non-attainment NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as the ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002 rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that

rulemaking no later than January 2, 2006 (67 FR 80240). With the February 10, 2005 submittal, North Dakota requested approval of program revisions into the State Implementation Plan (SIP) that satisfy this requirement.

On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations by including a definition of ''replacement unit'' and by clarifying that the plantwide applicability limitation (PAL) baseline calculation procedures for newly constructed units do not apply to modified units (68 FR 63021).

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on challenges to the December 2002 NSR Reform revisions (*State of New York et al.* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005)). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the recordkeeping provision at 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a ''reasonable possibility'' that the project could result in a significant emissions increase.

In an August 30, 2005 letter to EPA, North Dakota requested that EPA not take action on the clean unit and PCP provisions of the State rule and on the term ''reasonable possibility'' as they were incorporated by reference into the North Dakota Air Pollution Control Rules Chapter 33–15–15. North Dakota requested no action on these provisions because of the June 24, 2005 United States Court of Appeals for the District of Columbia Circuit's decision. North Dakota has since withdrawn their request for no action on the term ''reasonable possibility.'' North Dakota has also supplemented its February 10, 2005 request in a November 2, 2005 submission that provided corrections to several typographical errors in Chapter 33–15–15. All of these documents are available for review as part of the Docket for this action.

III. What Are The Changes That EPA Is Approving?

EPA is proposing to approve a revision to North Dakota's SIP that would incorporate by reference the Federal requirements found at 40 CFR 52.21 into the State's PSD program. The current revision to the North Dakota Air Pollution Control Rules Chapter 33–15–15, which EPA is now proposing to approve into the SIP, incorporates by reference the provisions of 40 CFR 52.21 paragraphs (a)(2) through (f), (h) through (r), and (v) through (bb) as they existed on October 1, 2003 with the exceptions noted below. North Dakota did not incorporate by reference those sections of the Federal rules that do not apply to state activities or are reserved for the Administrator of the EPA, such as the ''delegation of authority'' section found at 40 CFR 52.21(u) and the ''plan disapproval'' section found in 40 CFR 52.21(a)(1). North Dakota retained existing SIP language for ''reclassification'' at 33–15–15–02. The reclassification provision at 40 CFR 52.21(g) was not revised by the December 2002 NSR Reform rule, so it is acceptable that North Dakota's existing SIP-approved reclassification provision remains in the SIP.

In an August 30, 2005 letter to EPA, North Dakota requested that EPA not take action on the Clean Unit and Pollution Control Project provisions and on the term ''reasonable possibility'' as they were incorporated by reference into Chapter 33–15–15. However, North Dakota has since withdrawn its request for no action on the term ''reasonable possibility'' used in § 52.21(r)(6). Therefore, EPA is not taking action at this time on the following provisions in Chapter 33–15–15: 40 CFR 52.21(x), 52.21(y), 52.21(z), 52.21(a)(2)(iv)(e), the second sentence of 52.21(a)(2)(iv)(f), 52.21(a)(2)(vi), 52.21(b)(2)(iii)(h), 52.21(b)(3)(iii)(b), 52.21(b)(3)(vi)(d), 52.21(b)(32), and 52.21(b)(42).

The phrase ''reasonable possibility'' used in the Federal rule at 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a ''reasonable possibility'' of a significant emissions increase. EPA has not yet responded to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. The North Dakota rule contains recordkeeping requirements that are identical to the remanded Federal rule. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of North Dakota's rules. At this time, however, North Dakota's recordkeeping provisions are as stringent as the Federal requirements, and are therefore, approvable.

The following provisions in 40 CFR 52.21 have been revised in North Dakota Air Quality Rules Chapter 33–15–15 to either add language that is currently contained in the North Dakota SIP or to add new language to North Dakota's PSD program: 40 CFR 52.21(b)(3)(iii)(a), 52.21(b)(14), 52.21(b)(15), 52.21(b)(22), 52.21(b)(29), 52.21(b)(30), 52.21(b)(43), 52.21(b)(48)(ii), 52.21(b)(51), 52.21(b)(53), 52.21(b)(54), 52.21(d), 52.21(e), 52.21(h), 52.21(i), 52.21(k)(1), 52.21(l)(1), 52.21(m)(3), 52.21(o)(1), 52.21(p), 52.21(p)(6), 52.21(p)(7), 52.21(p)(8), 52.21(q), 52.21(r)(2), 52.21(v)(1), 52.21(v)(2)(iv)(a), 52.21(w)(1), and 52.21(aa)(15). EPA's review of these revisions is contained in a Technical Support Document (TSD) for this action. The TSD is available for review as part of the Docket for this action.

The North Dakota ''incorporation by reference'' properly clarified the circumstances in which the term ''Administrator,'' found throughout the Federal rules, was to remain the EPA Administrator, and when it was intended to refer to the ''North Dakota Department of Health,'' instead.

As noted above, on November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that added a definition of ''replacement unit'' and clarified that the plantwide applicability limitation (PAL) baseline calculation procedures for newly-constructed units do not apply to modified units. Since North Dakota has incorporated by reference the regulations in 40 CFR 52.21 ''as they exist on October 1, 2003'' (North Dakota provision 33–15–15–01.2), these clarifications are not proposed for approval at this time. EPA has communicated to North Dakota that, at its earliest convenience, the State should revise provision 33–15–15–01.2 (Scope) to specify that 40 CFR 52.21 as amended and promulgated on July 1, 2004, or later, is incorporated by reference in order for these clarifications to become part of the SIP.

The requirements included in North Dakota's PSD program, as specified in Chapter 33–15–15, are substantively the same as the Federal provisions, due to North Dakota's incorporation of the Federal rules by reference. The revisions North Dakota made to 40 CFR 52.21 noted above were reviewed by EPA and found to be as stringent, or more stringent, than the Federal rules. EPA has, therefore, determined that the proposed revisions are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the North Dakota SIP.

IV. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to North Dakota Air Pollution Control Rules, Chapter 33–15–15, Prevention of Significant Deterioration of Air Quality. Per North Dakota's request, EPA is taking no action on Clean Unit

Exemptions (40 CFR 52.21(x) and (y)) and Pollution Control Projects (40 CFR 52.21(z)).

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 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,'' as that term is defined in Executive Order 13211, 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 proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action 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 proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This proposed 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'' under Executive Order 12866.

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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 1, 2006.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E6–21502 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0926; FRL–8257–6]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two actions related to excess emissions provisions that were previously approved by EPA into the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan. These proposed actions include approval of a State request for rescission of certain provisions related to excess emissions and correction of an error made by the Agency in approving another provision also related to excess emissions. We are proposing to correct the error by disapproving the previously approved provision and thereby deleting the provision from the plan. The proposed approval of the rescission request is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. EPA is proposing these actions under the Clean Air Act authority to correct errors in approving, and obligation to take action on, State submittals of revisions to state implementation plans. The intended effect is to correct a past error in approving a particular provision into the plan and to allow for the rescission of closely-related provisions. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Any comments must arrive by *January 17, 2007.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0926, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Which Provisions Are Covered by This Proposal?

This document provides notice of EPA's proposed actions on the following State rules approved by EPA under section 110 of the Clean Air Act (CAA or ''Act'') and thereby made a part of the applicable state implementation plan (SIP) for the State of Nevada.

Rule No.	Title or text	Submittal date	Most recent approval date and FR cite
NAC 445.677	Excess emissions: Scheduled maintenance; testing; malfunctions.	10/26/82	03/27/84 at 49 FR 11626.
NAQR Article 2.5.4	''Breakdown or upset, determined by the Director to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations''.	10/31/75	01/09/78 at 43 FR 1341.

II. What Is the Background for This Proposal?

In January 1972, in response to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original SIP to EPA for approval. EPA approved certain portions of the original SIP and disapproved other portions under section 110(a) of the CAA. See 37 FR 10842 (May 31, 1972) and 40 CFR 52.1470(b). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions, referred to as Federal implementation plan (FIP) provisions, under section 110(c) of the Act. See, *e.g.*, EPA's final rule at 38 FR 7270 (February 25, 1974) in which EPA established provisions for review of new or modified indirect sources.

This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in title 40, chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules as sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B of title 40 of the NRS.

The original SIP, approved by EPA in May 1972, included NAQR article 2.5 (''Scheduled Maintenance, Testing, and Breakdown or Upset''), which contained what are referred to as ''excess emissions'' or ''malfunction'' provisions. Herein, we use the term ''excess emissions,'' and in this context, ''excess emissions'' means emissions of an air pollutant in excess of an emission standard. NAQR article 2.5, as approved by EPA in May 1972, reads:

2.5 *Scheduled Maintenance, Testing, and Breakdown or Upset:*

2.5.1 Scheduled maintenance, testing approved by the control officer, or repairs which may result in emission of air contaminants prohibited by these regulations shall be performed during a time designated by the control officer as being favorable for atmospheric ventilation.

2.5.2 The control officer shall be notified in writing on the time and expected duration at least 24 hours in advance of any scheduled maintenance which may result in emission of air contaminants prohibited by these regulations.

2.5.3 The control officer shall be notified within 24 hours after any breakdown or upset.

2.5.4 Breakdown or upset, determined by the control officer to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations.

The State of Nevada amended NAQR article 2.5, and submitted the amended versions to EPA, at various times during the 1970's and early 1980's. In January 1978, EPA approved amended versions of subsections 2.5.1, 2.5.2, and 2.5.4 that had been submitted on October 31, 1975 (see 43 FR 1341, January 9, 1978 and 40 CFR 52.1470(c)(11)) and, later that year, approved an amended version of subsection 2.5.3 that had been submitted on December 10, 1976 (see 43 FR 36932, August 21, 1978 and 40 CFR 52.1470(c)(12)). The amendments to article 2.5 approved in 1978 involved minor changes, such as the replacement of the term ''control officer'' with the term ''Director'' and the specification of a phone number for notifying the Director of the occurrence of breakdown or upset conditions.

In 1982, the State of Nevada amended, re-codified, and submitted NAQR article 2.5 as NAC 445.667 (''Excess emissions: scheduled maintenance; testing; malfunctions'') and NAC 445.668 (''Excess emissions: Determination of fault''). NAC 445.667 reflected minor revisions to the reporting requirements of former NAQR article 2.5 (*i.e.*, subsections 2.5.1, 2.5.2, and 2.5.3) but also included a new paragraph requiring owners and operators to provide within 15 days after any malfunction, breakdown, upset, startup or human

error ''sufficient information'' to enable the director to determine the seriousness of the excess emissions and specifying what constituted ''sufficient information''. In 1984, we approved NAC 445.667 and thereby effectively replaced all of NAQR article 2.5 in the applicable Nevada SIP except for subsection 2.5.4. See 49 FR 11626 (March 27, 1984). In contrast to NAC 445.667, EPA took no action to approve or disapprove NAC 445.668, the re-codified version of NAQR article 2.5.4. Thus, the excess emissions provisions in the applicable SIP currently include NAC 445.667, as approved in March 1984, and NAQR 2.5.4, as approved in January 1978.

In a SIP revision submittal dated January 12, 2006, the Governor's designee for SIP matters, the Nevada Division of Environmental Protection (NDEP), requested rescission of many rules from the applicable SIP, including NAC 445.667.[1] As discussed below, we are proposing to approve this request because of its connection to NAQR article 2.5.4, which we approved in error into the SIP, and for which we are now proposing disapproval.

NDEP has not requested rescission of NAQR article 2.5.4 from the applicable SIP. We propose, however, as discussed below, to initiate action herein to disapprove this previously-approved provision under CAA section 110(k)(6), which expressly provides EPA with authority to correct errors in prior SIP approvals, and thereby delete NAQR article 2.5.4 from the applicable SIP. In doing so, we find that approval of NAQR article 2.5.4 into the SIP in 1972, and then again in amended form, in 1978, was an error because NAQR article 2.5.4, which exempts certain occurrences of excess emissions from the potential for enforcement at the discretion of NDEP, is not consistent with attainment and maintenance of the national ambient air quality standards (NAAQS) nor with the regulatory framework of the Act, which gives EPA and citizens independent authority to enforce emissions limitations and other requirements approved into the SIP.

[1] The January 12, 2006 SIP submittal superseded in part an earlier SIP submittal dated February 16, 2005. The January 12, 2006 SIP submittal was not a complete re-submittal of the earlier submittal in that it did not include the documentation of public notice and hearing for new or amended rules adopted prior to 2005. CAA section 110(l) requires reasonable notice and public hearing prior to adoption of SIP revisions by States for subsequent submittal to EPA for approval or disapproval under CAA section 110(k)(3).

III. How Are We Eealuating These Provisions?

Under CAA sections 110(k)(2) and (3), EPA is obligated to approve or disapprove (in whole or in separable part) submittals by States of SIPs and SIP revisions found or deemed to be complete, and under CAA section 110(k)(6), EPA has the authority to correct errors made by the Agency in approving such SIPs and SIP revisions. EPA has reviewed the State's request for rescission of certain excess emissions provisions and considered the removal of another excess emissions provision for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a) and 40 CFR part 51 (particularly, subpart K ''Source Surveillance'') and also for compliance with CAA requirements for SIP revisions in CAA section 110(l) and 193.[2] We have also applied the principles set forth in the following EPA policy memoranda (collectively, ''excess emissions policy memoranda''):

- ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, dated September 28, 1982;
- ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, dated February 15, 1983;
- ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, EPA Assistant Administrator for Air and Radiation, dated September 20, 1999; and
- ''Re-Issuance of Clarification—State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' from Eric Schaeffer, Director, Office of Regulatory Enforcement and John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 5, 2001.

[2] CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193 prohibits modifications in control requirements that were in effect before the Clean Air Act Amendments of 1990 in any nonattainment area unless the modification insures equivalent or greater emission reductions of the nonattainment pollutant.

IV. What Are Our Proposed Actions on These Provisions?

A. NAC 445.667

NAC 445.667 establishes reporting requirements under two circumstances involving the potential or the occurrence of excess emissions. First, NAC 445.667 requires advance notice to the Director of any scheduled maintenance or repairs that may result in excess emissions. Second, NAC 445.667 requires the Director to be notified within certain prescribed periods of any excess emissions that occur after any malfunction of process or pollution control equipment or during startup of such equipment.

Upon review of CAA section 110(a)(2) and 40 CFR part 51, subpart K (''Source Surveillance''), we find that the episodic reporting of excess emissions required under NAC 445.667 generally supports enforceability of the SIP and protection of the NAAQS. However, a review of the text of the excess emissions provisions themselves and the regulatory history of the State's submittals and EPA actions (or inaction as the case may be) on NAQR article 2.5, NAC 445.667, and NAC 445.668 convinces us that NAC 445.667 should not be separated from NAQR article 2.5.4 for the purposes of SIP actions under CAA section 110(k)(3) and related error corrections under CAA section 110(k)(6). Note, for example, that NAC 445.667 and NAC 445.668 were originally codified as subsections within a single rule, NAQR article 2.5, ''Scheduled Maintenance, Testing, and Breakdown or Upset.''

CAA section 110(k)(3) provides for full or partial approvals and disapprovals of SIP submittals. We consider ''separable'' portions of SIP submittals to be eligible for separate action under CAA section 110(k)(3). By ''separable,'' EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated. See EPA memorandum from John Calcagni, Office of Air Quality Planning and Standards, entitled ''Processing of State Implementation Plan (SIP) Submittals,'' dated July 9, 1992. In the context of an error correction under CAA section 110(k)(6), we apply the principle of being separable to avoid a result in which the approved rule(s) in the SIP becomes more stringent than the State anticipated upon our removal of another rule or portion of that rule. In this case, we believe that the State intended the two excess emissions rules, i.e., reporting provisions of NAC 445.667 and the determination of fault provisions of NAQR article 2.5.4, to be considered together as a single

regulatory scheme whereby owners and operators can avoid enforcement proceedings triggered by excess emissions due to malfunctions if they follow the related reporting requirements and take the necessary remedial steps. In other words, we believe the State did not intend the excess emissions reporting requirements for malfunctions to exist independently in the SIP from the related determination of fault provisions.

Given the connection between NAQR article 2.5.4 and NAC 445.667, therefore, and because we erred in approving (and are proposing disapproval of) the former, as discussed below, we propose to approve the State's request for rescission of the latter. Neither the January 12, 2006 SIP revision submittal nor the February 16, 2005 SIP revision submittal (that the latter submittal replaced in part) included public participation documentation for this requested rescission, thus, our proposed approval of the rescission of NAC 445.667 from the SIP is contingent upon receipt of public notice and hearing documentation from the State of Nevada. Such documentation is required under CAA section 110(l) for all SIP revisions.

We note that approval of the rescission request for NAC 445.667 would have no effect on excess emissions reporting requirements that apply to stationary sources under other SIP rules, under 40 CFR part 60 (''Standards of performance for new stationary sources''), or 40 CFR parts 61 (''National emission standards for hazardous air pollutants'') and 63 (''National emission standards for hazardous air pollutants for source categories'').

B. NAQR Article 2.5.4

NAQR article 2.5.4 allows the Director (which, in this context, refers to NDEP) to exempt from enforcement certain excess emissions due to malfunction. NDEP's discretion in this regard is limited to conditions that NDEP determines to be unavoidable and not the result of careless or marginal operations but can be used to exempt such excess emissions from any source under NDEP jurisdiction regardless of the source's potential to cause or contribute to violations of the NAAQS. NAQR article 2.5.4 does not limit the duration of the exemption nor include any provisions that serve to protect ambient air quality during the exemption period for the purpose of avoiding violations of the NAAQS.

EPA's long-standing position is that provisions such as NAQR article 2.5.4 are not consistent with the fundamental purpose of a SIP, which as set forth in CAA section 110(a)(1) is to provide for implementation, maintenance, and enforcement of the NAAQS. See 42 FR 21472 (April 27, 1997), 42 FR 58171 (November 8, 1977), and EPA's excess emissions policy memoranda.[3] We view all excursions above SIP emission limits as violations because the purpose of SIP limits are to protect the NAAQS, and thus, any emissions above such limits may cause or contribute to violations of the NAAQS.

Moreover, SIPs must include enforceable emission limitations (see CAA section 110(a)(2)(A)), and Congress intended such limitations to be continuous in nature. See the definition of ''emission limitation'' in CAA section 302(k).[4] Allowing the Director to exempt from enforcement incidents during which emissions exceed the underlying emissions limitation means that none of the emission limitations in the SIP otherwise subject to enforcement under State law and the Clean Air Act are truly continuous in nature but rather may be discontinued for indefinite periods by the Director.

Lastly, by leaving enforcement of the underlying emission limitation in the sole hands of the Director of the State air pollution agency without explicit limits to his/her discretion, NAQR article 2.5.4 conflicts with the regulatory structure of the Clean Air Act, which is intended to provide for independent enforcement by EPA and citizens of emissions limitations and other requirements approved by EPA into SIPs. See, generally, CAA sections 113 (''Federal enforcement'') and 304 (''Citizen suits''). The purpose of SIPs to protect the NAAQS, the continuous nature of emissions limitations, and the independent authorities for EPA and citizen represent core elements of the Clean Air Act from as far back as the Clean Air Amendments of 1970. Thus, our approvals of NAQR article 2.5.4 as part of the Nevada SIP on May 31, 1972 (37 FR 10842), and then again, in amended form, on January 9, 1978 (43 FR 1341) were clearly in error.

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) We clearly erred in failing to consider or in inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

In this instance, we have found clear error in our 1972 and 1978 approvals of NAQR article 2.5.4 as a part of the Nevada SIP because at the time of our 1972 and 1978 actions approving this rule, the Clean Air Act required SIPs to implement, maintain, and enforce the NAAQS through continuous emissions limitations and provided for a regulatory scheme whereby EPA and citizens have enforcement authority separate from that of the State; whereas, NAQR article 2.5.4 provides for discontinuance of emission limitations under certain conditions without regard to protection of the NAAQS. Further, by determining that excess emissions are not a violation of the SIP, the Director can at his discretion cut off EPA or citizen enforcement of the underlying emissions limitation thereby confounding the regulatory scheme promulgated by Congress in the Clean Air Act. We also find that continued presence of NAQR article 2.5.4 in the applicable Nevada SIP undermines enforceability of the SIP and is potentially harmful to the environment.

Therefore, under CAA section 110(k)(6), we are proposing to correct our errors in approving NAQR article 2.5.4 as part of the Nevada SIP on May 31, 1972 (37 FR 10842) and on January 9, 1978 (43 FR 1341) by disapproving the previously approved versions of the rule and thereby deleting the rule from the applicable SIP. If finalized as

[3] EPA's interpretation of section 110 in the context of State excess emissions provisions has been upheld by the United State Court of Appeals for the Sixth Circuit in *Michigan Mfrs. Ass'n* v. *Browner*, 230 F.3d 181 (6th Cir. 2000).

[4] Under CAA section 302(k), the terms ''emission limitation'' and ''emission standard'' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.

proposed, we will codify the error correction by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.[5]

V. Proposed Actions, Public Comment and Final Actions

Under section 110(k)(3) of the CAA, EPA is proposing approval of a request by the State of Nevada for rescission of NAC 445.667 (''Excess emissions: Scheduled maintenance; testing; malfunctions'') from the applicable SIP because of the connection between NAC 445.667 and NAQR article 2.5.4, which we approved in error and for which we are proposing disapproval.

EPA is also proposing, under section 110(k)(6) of the CAA, to correct errors made by the Agency in approving NAQR article 2.5.4 in 1972 and again in 1978 as part of the applicable SIP by disapproving the previously approved versions of the rule and thereby deleting NAQR article 2.5.4 from the applicable SIP. We are proposing this correction because the subject rule provides an exemption from enforcement at the State's discretion for certain excess emissions and is thereby inconsistent with the fundamental purpose of the SIP, which is to provide for implementation, maintenance, and enforcement of the NAAQS, inconsistent with Congressional intent for continuous emission limits, and inconsistent with the regulatory structure of the Clean Air Act which provides for independent enforcement authority by EPA and citizens.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final rule that will rescind NAC 445.667, and that will delete NAQR article 2.5.4, from the applicable Nevada SIP, and to codify the latter action by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.

[5] We note that our proposed action herein of disapproving a previously approved excess emissions rule is consistent with actions we have taken on similar excess emissions provisions in other portions of the Nevada SIP and in other SIPs. For example, in 1981, we disapproved section 12, an excess emissions rule adopted by Clark County (that we had previously approved as part of the Clark County portion of the Nevada SIP) on similar grounds as described herein. See 46 FR 43141 (August 27, 1981) and 69 FR 54006 (September 7, 2004). In 1978, we disapproved similar excess emissions rules adopted by 22 different air pollution control districts in the State of California and, in some instances, reversed previous approvals of prior versions of those rules. See 43 FR 33915 (August 2, 1978).

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to delete previously approved state rules that, viewed collectively, fail to meet Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed 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 proposes to rescind or delete 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 (Public Law 104–4).

This proposed 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 proposed 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 proposes to delete previously approved state rules that, viewed collectively, fail to implement a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 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. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 8, 2006.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E6–21500 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8258–1]

Federal Implementation Plan Under the Clean Air Act for Certain Trust Lands of the Forest County Potawatomi Community Reservation if Designated as a PSD Class I Area; State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1995, and July 10, 1997, EPA proposed to approve a request by the Forest County Potawatomi Community (FCP Community) to redesignate certain trust lands within its reservation as Class I with respect to the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) construction permit program. In these proposals, EPA did not explicitly state the mechanism it would use if it granted the redesignation request nor did the Agency include a draft of its codification. In this action, EPA is proposing that it will promulgate a Federal Implementation Plan (FIP) if it approves FCP Community's request and

this action proposes potential codification language. This FIP will be implemented by EPA unless or until it is replaced by a Tribal Implementation Plan (TIP).

DATES: *Comments.* Comments must be received on or before January 17, 2007.

Public Hearing. The EPA intends to hold two public hearings on this proposed action, one on the Forest County Potawatomi Reservation and one in the nearby community. The dates, times, and location of these public hearings will be announced shortly in a separate **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2004–WI–0002 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Attention Docket ID No. EPA–R05–OAR–2004–WI–0002, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail Code 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–R05–OAR–2004–WI–0002. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2004–WI–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Constantine Blathras, Air and Radiation Division, U.S. EPA, Region 5 (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, telephone number: (312) 886–6071, facsimile number: (312) 886–5824, electronic mail address: *blathras.constantine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action if finally promulgated will apply to applicants to the Prevention of Significant Deterioration (PSD) construction permit program on Class I trust lands of the Forest County Potawatomi Community (FCP Community).

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Also, send an additional copy clearly marked as above not only to the Air docket but to: Roberto Morales, c/o OAQPS Document Control Officer, (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–R05–OAR–2004–WI–0002.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available electronically in *www.regulations.gov,* electronic copies of the docket are also available at the following repositories: Crandon Public Library, Attention: Tina Inger, Director, 110 West Polk Street, Crandon, Wisconsin 54520; Rhinelander District Library, Attention: Kris Adams Wendt, Director, 106 North Stevens Street Rhinelander, Wisconsin 54501; and the Forest County Potawatomi

Natural Resource Department, Attention: Daniele Dusold, Wensaut Lane, Crandon, Wisconsin 54520.

D. How Can I Find Information About a Possible Public Hearing?

The EPA intends to hold two public hearings on this action, one on the Forest County Potawatomi Reservation and one off-reservation. The dates, times, and location of these public hearings will be announced shortly in a separate **Federal Register** notice. Persons interested in attending the public hearing should contact Mr. J. Elmer Bortzer, Air and Radiation Division, U.S. EPA, Region 5 (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, telephone number: (312) 886–1430, facsimile number: (312) 886–5824, e-mail address: *bortzer.jay@epa.gov* to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes.

E. Overview of the Rule

The information presented in this preamble is organized as follows:

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
C. Where Can I Get a Copy of This Document and Other Related Information?
D. How Can I Find Information About a Possible Hearing?
E. Overview of Rule
II. Purpose
III. Background
A. The FCP Community Request for Redesignation to Class I. Brief Summary of Past Comments
B. The CAA's PSD Program in Indian Country
IV. Tribal Implementation Plans and Federal Implementation Plans
V. The Federal Implementation Plan for the FCP Community's Class I Area
A. Current Codification of the PSD Program in Wisconsin and the FCP Community Lands
B. Proposed Codification for an FCP Community Class I Redesignation
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
J. National Technology Transfer Advancement Act
VII. Statutory Authority

II. Purpose

In this action, EPA is proposing to codify the Class I resignations in a Federal Implementation Plan (FIP) if the Agency approves the FCP Communty's redesignation request; this notice also proposes potential codification language. The EPA solicits comments on today's proposal as to whether a FIP is the appropriate mechanism with which to codify the FCP Community's redesignation of their lands to Class I, if approved, the proposed codification, and any related procedural issues. Although EPA strongly encourages commenters to focus on these issues, comments on other aspects of the redesignation request will also be accepted. Interested parties should submit comments as detailed in the **ADDRESSES** section of this proposed rule.

III. Background

A. The FCP Community Request for Redesignation to Class I

On February 14, 1995, the FCP Community submitted a formal request to EPA to redesignate certain trust lands within their reservation to Class I under the CAA PSD construction permit program. On June 29, 1995 (60 FR 33779), and July 10, 1997 (62 FR 37007), EPA proposed to approve the request. In addition, in 1997 EPA also held public hearings on the redesignation request.

Both Wisconsin and Michigan objected to the proposed redesignation and requested dispute resolution under Section 164(e) of the CAA. To resolve the dispute with the State of Wisconsin, the FCP Community and Wisconsin entered into a Memorandum of Agreement (FCP Community-Wisconsin MOA) for implementation of the proposed Class I area in Wisconsin. For those provisions of the agreement, and any other aspects of the dispute resolution that will need to be made federally enforceable, EPA will codify them as appropriate should it determine to grant the redesignation request. For example, the agreement's limitation of certain increment analyses to a ten mile radius may need to be codified in federally enforceable regulations.

Specifically, the agreement between the FCP Community and Wisconsin subjects all major sources in Wisconsin located within a ten (10) mile radius of any redesignated Tribal land to performing an increment analysis and to meeting consumption requirements applicable to a class I area. Major sources located outside of ten (10) miles are subject to increment analysis and consumption requirements applicable to any redesignated Tribal land as if it were a class II area. Also under the agreement, all major sources within sixty-two (62) miles are subject to an analysis of their impact on air quality related values (AQRVs) of the redesignated Tribal lands to determine if they will have an adverse impact on these AQRVs.

The Agency believes that the Tribe and Wisconsin may enter into such an agreement. When the dispute resolution process in section 164(e) is invoked by an affected state or tribe, EPA is called upon to participate in that process and to recommend a resolution, if requested by the parties, or to finally resolve the dispute, if the parties are unable to reach agreement. However, where the parties successfully reach agreement through the dispute resolution process, EPA is inclined to read section 164(e) of the CAA to provide that EPA has no further role to play in the dispute resolution process. The EPA is not required to review or approve the terms of the agreement, and the Agency is inclined to respect agreements that obviate the need for the Administrator to make a decision resolving the matter. If the parties to the dispute reach an agreement through the 164(e) process without EPA resolution, EPA proposes not to interfere with the agreement and to rest its final decision to approve or deny the redesignation on the criteria in 164(b)(2) of the CAA.

In commenting on the proposed codification, commenters may wish to comment on the potential need to codify certain provisions of the agreement or aspects of the dispute resolution as well. The FCP Community-Wisconsin MOA, together with related materials, is available in the docket for this proposal. The FCP Community and the State of Michigan have not been able to resolve their differences. The EPA anticipates acting on the FCP Community request and remaining aspects of the dispute resolution process with the States after the close of the public comment period on today's proposal.

Brief Summary of Past Comments

During the initial comment period and public hearings, EPA received several comments on the proposed redesignation. The Agency will respond to all significant comments in the final rule resolving the redesignation request,

but includes a brief discussion and response to two of those comments.

First, several commenters argued that the request for redesignation should be denied either because the FCP Community identified certain air quality related values (''AQRVs'') after submitting their initial request or that the lands proposed for redesignation were not of sufficient size or quality to possess AQRVs. However, neither Section 164(b) of the CAA nor EPA's implementing regulations governing redesignation require a State or Tribe requesting a redesignation to demonstrate or establish that the affected lands have AQRVs, and Congress did not make AQRVs a prerequisite for redesignation of non-federal Class I areas. It is therefore unnecessary for EPA to determine what AQRVs the lands at issue might possess in order for the Agency to act on, including granting, the redesignation request. *See* 61 FR 56450, 56458–56459 (Nov. 1, 1996) (redesignation of Yavapai-Apache lands).

A second area of significant comment alleged that the areas proposed for redesignation were either too small or too dispersed to allow for effective air quality management as discussed in sections 162 and 164 of the CAA. Section 162 of the Act designates certain areas as mandatory Class I areas. The Act also provides for non-federal Class I areas, and Section 164(c) specifically states that ''Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated,'' but does not speak to what size lands might be appropriate for a redesignation to Class I. In disputes resolving area redesignation, section 164(e) requires EPA to consider (the extent to which the lands involved are of sufficient size to allow effective air quality management.'' In its decision to grant the Class I redesignation request for the Yavapai-Apache reservation, (which is similar to the FCP reservation in that it consists of a number of relatively small, discrete parcels of land), EPA examined whether it would be difficult to perform a PSD air quality modeling analysis that assessed the impacts of a proposed source in such a situation. The EPA concluded that based on existing modeling tools it would be relatively simple and practicable for a proposed source to project its impact on the Class I area parcels and evaluate the analysis. *See* 61 Fed. Reg. at 56457–56458. Consideration of the size of the redesignated lands, therefore, can be evaluated based upon the Agency's experience in the Yavapai-Apache redesignation. We solicit comment on the two issues presented above and EPA's response to them.

B. The CAA's PSD Program in Indian Country

The CAA gives EPA broad authority to protect air resources throughout the nation, including the resources on Indian reservations and other areas of Indian country. Part C of the CAA lays out the PSD construction permit program. It is based on the concept that new sources and modifications of existing sources in relatively pollution free lands, *i.e.*, lands attaining the National Ambient Air Quality Standards (NAAQS), should not be allowed to increase emissions such that ambient pollutant levels rise to the level of the NAAQS. Instead, these sources' emissions are limited such that ambient levels cannot exceed the pollutant specific increments in the CAA or EPA regulations. The CAA provides three levels of increments for each pollutant, Class I which is the most stringent, Class II, which is what most of the United States was initially designated by the CAA, and Class III, which is the least stringent. Section 164 affords states and tribes the right to request that EPA redesignate lands under their control. Historically only tribes have made such requests, and in all these cases, the tribes requested redesignation from Class II to Class I. The FCP Community, likewise, requested that EPA redesignate certain of their lands from Class II to Class I. Under the CAA, generally EPA must approve this request if all procedural requirements are met.

One of the tribes that requested redesignation from Class II to Class I before FCP Community was the Yavapai Apache Tribe, and on October 2, 1996 EPA approved the request. The State of Arizona, within which the Yavapai Apache lands were located, had raised objections to the redesignation and requested to enter into Section 164(e) dispute negotiations with the Yavapai Apache. The EPA held a meeting with the parties, but ultimately no agreement was reached. The EPA was forced to resolve the dispute, and did so by granting the redesignation request and codifying the redesignation in a FIP. 61 FR 56461 (November 1, 1996) and 61 FR 56450 (November 1, 1996). The State of Arizona continued to dispute the approval of the reservation to Class I and filed a suit before the United States Court of Appeals for the Ninth Circuit. *See, Administrator, State of Arizona* v. *EPA,* 151 F.3d 1205 (9th Cir. 1998). The Ninth Circuit's decision stated, among other things, that EPA should have codified the Class I area in a TIP rather than a FIP, and remanded the redesignation back to the EPA regional office so that EPA could follow the appropriate procedures for promulgating the Class I area as a TIP.

On February 12, 1998, however, EPA promulgated a final rule under section 301 of the CAA entitled ''Indian Tribes: Air Quality Planning and Management.'' 63 FR 7254 (Feb. 12, 1998). This rule, generally referred to as the ''Tribal Authority Rule'' or ''TAR,'' discusses those provisions of the CAA for which it is appropriate to treat Indian tribes in the same manner as states and establishes the requirements that Indian tribes must meet if they choose to seek such treatment. The EPA also concluded that certain provisions of the CAA should not be applied to tribes in exactly the same manner in which they were applied to states. One of those provisions was CAA 110(c)(1), which provides the Administrator with the authority to promulgate a FIP within 2 years of finding that a State plan is insufficient. 63 FR at 7265. EPA reasoned that tribes, unlike states, ''in general are in the early stages of developing air planning and implementation expertise'' because the specific authority for tribes to establish air programs was first expressly addressed in 1990. *Id.* at 7264–7265. Because tribes were only recent participants in the process, EPA determined it would be inappropriate to hold them to the same deadlines and Federal oversight as the states. *Id.* at 7265.

The EPA noted, though, that it was ''not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country.'' *Id.* The EPA concluded that the Agency could ''act to protect the air quality pursuant to its 'gap-filling' authority under the CAA as a whole'' and that ''section 301(d)(4) provides EPA with discretionary authority, in cases where it has determined that treatment of tribes as identical to states is 'inappropriate or administratively infeasible,' to provide for direct administration through other regulatory means.'' *Id.* Under that authority, EPA adopted 40 CFR 49.11, which set the standard for adoption of FIP provisions for Indian Country: ''[The Administrator] [s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of section 304(a) (*sic 301(a)*) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive

EPA approval of a submitted tribal implementation plan.'' 40 CFR 49.11(a). The intent of this provision was to recognize that tribes may not initially have the capability to implement their own delegated CAA programs and that the TAR does not relieve EPA of its general obligation under the CAA to protect air quality throughout the nation, including in Indian country. *See* 63 FR 7265.

Therefore, the TAR established two possible routes for the codification of a Class I redesignation on Tribal lands: (1) A TIP, if one has been developed by the Tribe and approved by EPA; and (2) A FIP, if a TIP did not exist and a FIP was necessary to protect air quality.

IV. Tribal Implementation Plans and Federal Implementation Plans

Consistent with the approach detailed in the TAR, U.S. EPA Region 5 sent a letter to the FCP Community requesting that the Tribe specify what mechanism they wished to use to codify the proposed redesignation to Class I. On August 4, 1999, Harold Frank, Chairman, Forest County Potawatomi Community, sent a letter to Francis X. Lyons, Regional Administrator of EPA Region 5, requesting that EPA promulgate the redesignation of the proposed Class I area parcels in a FIP. The FCP asked EPA to promulgate the Class I area redesignation into a FIP, as opposed to utilizing a TIP, because the FCP Community was continuing to build its capacity and infrastructure to run a Tribal Air Program and was not yet ready to submit its own TIP. On August 23, 1999, EPA sent a letter to the FCP Community agreeing to their request for the Class I redesignation being promulgated in a FIP, should EPA's rulemaking result in the approval of the FCP Community's request.

Until such time as the FCP Community develops a TIP and has it approved, EPA retains the authority to promulgate the redesignation approval in a FIP. Because the FCP Community's request and EPA's original proposal pre-dated the TAR, neither clearly specified the manner in which the redesignation would be codified. The EPA has, therefore, published this supplemental proposal to seek comment on the codification of the FCP Community redesignation, if approved, in a FIP.

V. The Federal Implementation Plan for the FCP Community's Class I Area

A. Current Codification of the PSD Program in Wisconsin and the FCP Community Lands

On August 7, 1980, EPA promulgated the Federal PSD Program regulations which are codified at 40 CFR 52.21, and which applied to those states that had not submitted a PSD program meeting the requirements of 40 CFR 51.166. 45 FR 52741 (August 7, 1980), as amended at 46 FR 9585 (January 29, 1981). Wisconsin was one such state, and as a result, Wisconsin initially implemented the Federal PSD program under a delegation of authority from EPA. Wisconsin subsequently submitted a PSD rule and program which EPA approved for all sources in Wisconsin except for sources located on tribal lands and other sources that require permits issued by the EPA. *See* 64 FR 28748 (May 27, 1999). The current EPA regulation addressing the PSD program in Wisconsin reads as follows:

40 CFR 52.2581. Significant deterioration of air quality.

(a)–(c) [Reserved]

(d) The requirements of sections 160 through 165 of the Act are met, except for sources seeking permits to locate in Indian country within the State of Wisconsin; and sources with permits issued by EPA prior to the effective date of the state's rules.

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

B. Proposed Codification for an FCP Community Class I Redesignation

Under the authority of section 307(d) of the Act, EPA is proposing to revise its regulation as reflected below if EPA approves the FCP Community request to designate some of its reservation as Class I. In today's action, EPA is proposing that it will promulgate the resignation in a FIP if EPA approves the FCP Community's request for redesignation of certain lands within the exterior boundaries of the Tribe's reservation. This FIP will be implemented by EPA unless or until it is replaced by a Tribal Implementation Plan (TIP). The proposed codification language follows Section VII below.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

The FCP Community prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''EPA memorandum dated October 25, 2004''. A copy of the analysis is available in the docket for this action and is briefly summarized here.

As part of its application package for Class I redesignation, the FCP Community has analyzed the potential economic impact of redesignation on the affected region (Forest County and those counties bordering Forest County). This analysis directly supports a finding that the impact of the proposed redesignation would not result in an adverse annual impact to the economy of $100 million or more.

As discussed in greater detail in the memorandum, the FCP Community analysis identifies those economic sectors with the largest employment in the area. These are industry, manufacturing and trade, which together account for 46% of the jobs in the affected area. To evaluate the effect of Class I redesignation on economic expansion and future industrial plant development in the affected area, the FCP Community prepared an independent air dispersion modeling analysis to determine the air quality impacts on the Class I area from various new projects. These included a 250-ton-per-day paper mill, three different types of power plants, and a mining project.

The modeling and screening results analyzed indicate that the proposed Class I redesignation should not have major effects on economic expansion and industrial development in the region. The redesignation could restrict the sitting of large paper mills and large coal-fired powered plants to at least 10 km from the reservation, and would limit the development of multiple projects that would have an unacceptable cumulative effect on the Class I increments, but none of these known proposed developments in the region would be adversely affected.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We are not promulgating any new paperwork requirements (*e.g.*, monitoring, reporting, recordkeeping) as part of this proposed action. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR

number 1230.17.[1] A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW, Washington, DC 20460 or by calling (202) 566–1672.

This analysis included an examination of the additional regulatory burden, per regulated unit, on those sources constructing or modifying near a Class I area, and which may be required to perform a Federal Class I area analysis to determine the effect of the proposed source on AQRV inside the Class I area, and on the consumption of increment, where the baseline has been triggered. It is important to note that not all sources located near Class I areas would have to perform such monitoring; these requirements apply only when emissions from the source have the potential to impact the Class I area.

The EPA's analysis for OMB included the additional burden placed upon the regulated community as well as on State and Federal agencies. The redesignation of FCP Community lands from Class II to Class I is wholly consistent with the analysis put forth in EPA's ICR and OMB's approval and no new paperwork requirements are being promulgated with this action.

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

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

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of this proposed action on small entities, small entity is 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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. This action does not require a regulatory flexibility analysis because it will not have a significant economic impact on a substantial number of small entities.

The EPA believes that the reclassification of the proposed area to Class I will impose virtually no additional requirements on small entities, regardless of whether they are minor sources or major sources. For small entities that are also minor sources, since at the present time the baseline concentrations for this area have not been triggered and none of the Class I increments have yet been consumed, minor emission sources are unaffected by PSD requirements. Should the Class I increments be completely consumed in the future, it is possible that some pollution control requirements would fall to minor sources. However, any such future pollution control requirements imposed on off-reservation sources would be under the jurisdiction of the states, not EPA. Therefore, EPA is not in a present or future position to directly regulate small entities and therefore is not required to conduct an RFA analysis.

For small entities that are major sources, the impact is not expected to be substantial. As demonstrated in section VI.A. above, the requirements for demonstrating compliance with the NAAQS and PSD increments for major facilities in and surrounding Class I areas are similar to the requirements for major facilities in and surrounding Class II areas. Therefore, this action will not have a significant impact on a substantial number of small entities.

While EPA is not required to conduct an RFA analysis, as a matter of good public policy, the Agency has reviewed information on the impact of the redesignation provided by the FCP Community in its Technical Support Document (TSD) submitted pursuant to the tribe's request for Class I redesignation. In this document, the Tribe reviewed the potential impact of the Class I redesignation on various types of sources, concluding that impacts of the redesignation to Class I would impact only certain major stationary sources, and would impose no additional requirements on minor sources.[2]

For example, air dispersion modeling and EPA-approved screening performed for the Tribe's TSD demonstrates that a 140 MW natural gas fired combustion turbine power plant could be constructed and operated directly adjacent to the reservation without violating any of the Class I increments. Power plants of this type produce relatively high levels of nitrogen oxides (NO_X), which are their major emissions, yet despite its direct proximity to a Class I area, such a facility would impact only a small fraction (~4%) of the allowable Class I increment for NO_X. Considering that the FCP Community analysis shows that a major gas-fired power generating facility could be operated immediately next to the reservation without significant impacts, and that only very large industrial projects located within approximately 10 km of the reservation would be affected by the redesignation, it appears very unlikely that any small businesses located within 100 kilometers would produce emissions in large enough quantities to trigger the Class I restrictions.

Nevertheless, it is possible that a small business located close enough to the reservation may be a major source of criteria air pollutants. Even in that

[1] The regulations covered under this ICR govern the State and Federal programs for preconstruction review and permitting of major new and modified sources pursuant to Part C ''Prevention of Significant Deterioration'' (PSD) and Part D ''Program Requirements for Nonattainment Areas'' of the CAA. The types of information collection activities addressed in this ICR are those necessary for the preparation and submittal of construction permit applications and the issuance of final permits.

[2] The EPA has prepared an ICR analysis for the NSR program generally, finding that ''Approximately 2,200 'small business'' major sources were estimated to exist; however, only 50 small business facilities employing 500 persons or fewer were projected to be subject to NSR annually. Based on the methodology incorporated in that rulemaking Regulatory Impact Analysis, the Agency concluded that the current part 51 and 52 NSR regulations do not constitute a disproportionate burden on small entities.'' U.S. EPA, ''Information Collection Request for 40 CFR Part 51 and 52 Prevention of Significant Deterioration and Nonattainment New Source Review, October 12, 2004, at 13.''

event, the PSD requirements for Class I areas would be very unlikely to impose a significant financial burden on such a small business. If it is an existing business at the time the redesignation goes into effect, it would not be subject to the PSD permitting requirements, which apply only to new stationary sources or major modifications to existing sources.

Even if the small business in question was new to the Class I area, hence subject to PSD permitting, the redesignation would still not impose additional significant financial or regulatory burdens on the small entity. As a major source of criteria air pollutants, the small business would be subject to PSD permitting regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. Major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects.

Should the area remain Class II, the major source would still be required to perform a modeling analysis to ensure that the Class II increments are protected in order to obtain a permit. Since a modeling analysis is required in any case, the cost of adding additional receptor points, if needed, to the modeling analysis to gather the necessary data to ensure that the Class I increments will also be protected should be relatively small. Likewise, since every major stationary source proposing to locate in a PSD area, whether it has been designated as Class I or Class II, must employ ''best available control technology'' to reduce emissions, proximity to a Class I area generally would not affect the level of control required to meet BACT. In short, regardless of whether they are in a Class II or a Class I area, major sources are required to obtain an air quality permit, conduct modeling analyses, and use the best available technology to control emissions under the PSD program. Thus, as a general rule, redesignation should not inflict additional control costs on a source.

Under certain circumstances a major source may be required to achieve further decreases in emissions to reduce its impact on the air quality related values of a Class I area. Such a requirement would necessitate further regulatory action by either the FCP Community or EPA, however, and the impacts of the specific requirements can be appropriately assessed at that time. Additionally, it would be very unusual for a small business to also be a major source and a substantial number of small entities should certainly not be so affected.

Several other Indian tribes have redesignated tribal lands to Class I in other parts of the country, and their experience can provide us with some insight into the impact redesignation typically has on small entities in the vicinity. These include the Northern Cheyenne Tribe, Montana; Flathead Indian Reservation, Montana; Fort Peck Indian Reservation, Montana and the Spokane Indian Reservation, Washington, which were redesignated as Class I areas between 1977 and 1990. Thus far, there has been very little economic impact on small businesses, nearby towns, local governments or other small entities following Class I redesignation in those areas. The EPA has no reason to believe that same pattern of minimal economic impact to small businesses will not be repeated in Forest County and the surrounding counties.

Small entities that are minor sources of air pollution will not be affected at all by this action at this time. The PSD permit program does not cover minor sources and, as previously discussed, EPA does not directly regulate minor entities. The reclassification of the proposed area to Class I therefore imposes virtually no additional requirements on small entities since the baseline concentration level for Forest County has not yet been triggered and none of the PSD increments in the area have yet been consumed. The baseline concentration is the conceptual reference point or ''starting'' point for determining air quality deterioration in an area subject to the PSD program. Thus, the baseline concentration is essentially the ambient air quality existing at the time the first complete PSD application is made for a major new source affecting a PSD baseline area. Since no PSD permit application triggering a baseline date has been submitted in the Forest County area, there has not been any consumption of the PSD increments in the area. Should major and minor sources of pollution consume all of the available increment in an area at some point in the future, it is possible that some pollution control requirements would then fall to minor sources, but since roughly 75% of the land in Forest County is National Forest, and there is presently very little industrial development in the area, there is likely to be little consumption of the Class I increments for some time to come.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities that are not major sources because this action affects only major stationary sources, as defined by 40 CFR 52.21.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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 the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100

million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The redesignation would not impose significant additional financial or regulatory burdens on a new or modified source subject to the PSD permitting requirements. As a major source of criteria air pollutants, a new or modified source would be subject to PSD regulations whether the reservation had been redesignated to Class I or had remained a Class II area, as it is now. New major stationary sources proposing to locate in any PSD area, regardless of whether it is Class II or Class I, must still conduct the same type of analyses to measure the impact of their emissions on the allowable increments and use the best available control technology to reduce their emissions and minimize adverse effects. No additional permits would be required as a result of a redesignation of FCP Community reservation lands. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because, as already stated in other sections of this regulatory package, the redesignation from a Class II to a Class I area would not impose additional significant financial or regulatory burdens on sources.

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.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule merely implements an authority currently available to Indian tribes to redesignate their reservation lands under the PSD program of the CAA, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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. A summary of the concerns raised during that consultation and EPA's response to those concerns will be provided when EPA issues its final rulemaking.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The EPA has concluded that this proposed rule establishing federal standards will have tribal implications. Thus, consistent with section 3 of the Executive Order, in the process of developing this proposal, EPA consulted with FCP tribal officials to permit them to have meaningful and timely input into its development. EPA consulted with representatives of the FCP Community prior to their submission of the redesignation request. During this consultation, EPA explained the function of the CAA's redesignation provision, differences between Class I and Class II designations, and alternatives to the proposed Class I redesignation. The FCP Community chose to submit a request for redesignation to Class I on February 14, 1995. Since the FCP Community submitted its request for redesignation, EPA has kept the FCP Community informed of its process for completing the rulemaking through written correspondence, conference calls, and face to face meetings when appropriate. Records of these communications are found in the docket for this proposed action. Most recently, EPA officials held consultations with the FCP Community between May and July 2006 to discuss this proposed action and to answer the Community's questions.

Finally, because the proposed action will neither impose substantial direct compliance costs on tribal governments nor preempt Tribal law, section 5 of Executive Order 13175 is not applicable. Class I redesignation will enable the FCP Community to further their goal of exercising control over reservation resources to better protect the members of their community. Overall, EPA expects that the impact of the redesignation to Class I will be positive.

G. Executive Order 13045: Protection of Children From Environmental Health & 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.

This proposed rule is not subject to the Executive Order because EPA published a Notice of Proposed Rulemaking before April 21, 1998. Nonetheless, as a matter of EPA Policy, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Redesignation of the identified parcels of the FCP reservation to Class I status will reduce the allowable increase of various types of pollutants. The reduction of these pollutants can only be expected to better protect the health of tribal members, members of the surrounding communities, and especially children and asthmatics.

The adverse health effects of exposure to high levels of criteria air pollutants such as sulfur dioxide and fine particulate matter are well known and

well documented.[3] Sulfur dioxide, for example, is known to irritate the respiratory system. As explained in the FCP Community's TSD, exposure to high concentrations for even short periods can cause bronchial constriction and exposure to lower concentrations of sulfur dioxide for longer periods and suppresses the respiratory system's natural defenses to particles and bacteria.[4] Children and asthmatics are especially vulnerable to the adverse health effects of sulfur dioxide.[5] If the Class I redesignation is codified in a FIP, the allowable increase of sulfur dioxide after redesignation of the reservation to Class I status (on an annual arithmetic mean basis) will be one-tenth of the current Class II allowable increase, thus providing greater health protection to children from such air pollutants.

Likewise, the allowable increase in particulate matter after Class I redesignation (on an annual basis) will be approximately one-fourth of the current Class II increase. Particulate matter consists of airborne particles and aerosols ranging in size from less than 1 micrometer to more than 100 micrometers. Aside from natural sources, industrial activity can release great quantities of particulates (dust, soot, ash and other solid and liquid particles). Combustion products emitted during power generation, heating, motor vehicle use and various industrial processes are also classified as particulate matter. The vast majority (~99%) of such inhalable particulate matter is trapped in the upper respiratory tract, but the remainder enters the windpipe and the lungs, clinging to the protective mucosa. The smallest particles are deposited in the alveoli and capillaries of the lung, where they impair the exchange of oxygen and causes shortness of breath. Children, the elderly, and people with pulmonary problems and respiratory conditions (*e.g.*, emphysema, bronchitis, asthma, or heart problems) are the most susceptible to these debilitating effects.[6] Adverse health effects from particulate matter are often cumulative and progressive, worsening as particulates gradually collect in the lungs following repeated, long-term exposure.[7]

Fine particulate matter is the worst offender in that regard. Scientific studies have shown that particulate matter, especially fine particles (those particles with an aerodynamic diameter of less than 2.5 micrometers and commonly known as $PM_{2.5}$), are retained deep within the lungs.[8] Short term exposure to such fine particulate matter can cause lung irritation and may impair immune responses. Some of the material from the particles can dissolve in the lungs, causing cell damage, and the particles themselves may consist of compounds that are toxic or which form acids when combined with moisture in the lungs. Long-term lower level exposures can cause cancer and other respiratory illnesses. Reducing the allowable increase in particulate matter by roughly 75% should thus provide greater health protection from such afflictions to children on the reservation and in the surrounding communities.

In short, the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. In fact, they are expected to have a positive rather than a negative impact on children's health and the environment.

H. Executive Order 13211: Actions That Significantly Effect Energy Supply, Distribution, or Use

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

I. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that the redesignation of FCP Community lands in a FIP from Class II to Class I area should not raise any environmental justice issues since it will reduce the allowable increase of various types of pollutants. Consequently, this redesignation should result in health benefits to tribal members and members of the surrounding communities. Therefore, we believe that these regulations would not have a disproportionate adverse effect on the health or safety of minority or low income populations.

J. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

VII. Statutory Authority

The statutory authority for this proposed action is provided by sections 110, 301 and 164 of the CAA as amended (42 U.S.C. 7410, 7601, and 7474) and 40 CFR Part 52.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in this action, title 40, chapter I of the Code of Federal Regulations is proposed to be 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.*

[3] What are the Six Common Air Pollutants? (March 23, 2004) (available at *http://www.epa.gov/air/urbanair/6poll.html*)

[4] SO_2—How Sulfur Dioxide Affects the Way We Live & Breathe. U.S. EPA Office of Air Quality Planning & Standards (November 2000) (available at *http://www.epa.gov/air/urbanair/so2/index.html*)

[5] Health and Environmental Impacts of SO2 (September 30, 2003) (available at *http://www.epa.gov/air/urbanair/so2/hlth1.html*)

[6] Health and Environmental Impacts of PM (30 September 2003) (available at *http://www.epa.gov/air/urbanair/pm/hlth1.html*)

[7] PM—Chief Causes for Concern (30 September 2003) (available at *http://www.epa.gov/air/urbanair/pm/chf.html*)

[8] Information on Particulate Matter (FINE) PM. Condensed from Health and Environmental Effects of Particulate Matter; U.S. EPA Office of Air Quality Planning and Standards (July 1997). (available on *http://www.air.dnr.state.ga.us/information/pm25.html*)

2. Section 52.2581 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA, except as specified in paragraph (f) of this section.

(f) Forest County Potawatomi Community reservation lands 80 acres and over in size and located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. The individual parcels listed below all consist of a description from the Fourth Principal Meridian, with a baseline that is the Illinois-Wisconsin border:

(1) Section 14 of Township 36 north (T36N), range 13 east (R13E).

(2) Section 26 of T36N R13E.

(3) The west half (W½) of the east half (E½) of Section 27 of T36N R13E.

(4) E½ of SW¼ of Section 27 of T36N R13E.

(5) N½ of N½ of Section 34 of T36N R13E.

(6) S½ of NW¼ of Section 35 of T36N R13E.

(7) Section 36 of T36N R13E.

(8) Section 2 of T36N R13E.

(9) W½ of Section 2 of T34N R15E.

(10) Section 10 of T34N R15E.

(11) S½ of NW¼ of Section 16 of T34N R15E.

(12) N½ of SE¼ of Section 20 of T34N R15E.

(13) NW¼ of Section 28 of T34N R15E.

(14) W½ of NE¼ of Section 28 of T34N R15E.

(15) W½ of SW¼ of Section 28 of T34N R15E.

(16) W½ of NE¼ of Section 30 of T34N R15E.

(17) SW¼ of Section 2 of T34N R16E.

(18) W½ of NE¼ of Section 12 of T34N R16E.

(19) SE¼ of Section 12 of T34N R16E.

(20) E½ of SW¼ of Section 12 of T34N R16E.

(21) N½ of Section 14 of T34N R16E.

(22) SE¼ of Section 14 of T34N R16E.

(23) E½ of Section 16 of T34N R16E.

(24) NE¼ of Section 20 of T34N R16E.

(25) NE¼ of Section 24 of T34N R16E.

(26) N½ of Section 22 of T35N R16E.

(27) SE¼ of Section 22 of T35N R16E.

(28) N½ of SW¼ of Section 24 of T35N R15E.

(29) NW¼ of Section 26 of T35N R15E.

(30) E½ of Section 28 of T35N R15E.

(31) E½ of NW¼ of Section 28 of T35N R15E.

(32) SW¼ of Section 32 of T35N R15E.

(33) E½ of NW¼ of Section 32 of T35N R15E.

(34) W½ of NE¼ of Section 32 of T35N R15E.

(35) NW¼ of Section 34 of T35N R15E.

(36) N½ of SW¼ of Section 34 of T35N R15E.

(37) W½ of NE¼ of Section 34 of T35N R15E.

(38) E½ of Section 36 of T35N R15E.

(39) SW¼ of Section 36 of T35N R15E.

(40) S½ of NW¼ of Section 36 of T35N R15E.

(41) S½ of Section 24 of T35N R16E.

(42) N½ of Section 26 of T35N R16E.

(43) SW¼ of Section 26 of T35N R16E.

(44) W½ of SE¼ of Section 26 of T35N R16E.

(45) E½ of SW¼ of Section 30 of T35N R16E.

(46) W½ of SE¼ of Section 30 of T35N R16E.

(47) N½ of Section 34 of T35N R16E.

[FR Doc. E6–21523 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0795; FRL–8102–3]

RIN 2070–AJ31

2,3,5,6-Tetrachloro-2,5-Cyclohexadiene-1,4-Dione; Proposed Significant New Use of a Chemical Substance; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period for a proposed significant new use rule (SNUR) published in the **Federal Register** of May 12, 1993 (58 FR 27980) for the chemical chloranil (2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione). EPA is planning to complete this rulemaking by issuing a final rule. Given the long period of time which has passed since EPA issued the proposed rule, EPA is reopening the comment period. This will provide an opportunity for commenters to update their comments and for additional commenters to contribute to the docket before EPA develops a final rule.

DATES: Comments must be received on or before January 17, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0795, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0795. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0795. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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 docket are listed in the 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*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Bldg., located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

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

For technical information contact: Dwain Winters, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1977; e-mail address: *winters.dwain@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Action is the Agency Taking?

With this document, EPA is reopening the comment period for a proposed SNUR that would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing, for any use, of chloranil containing certain chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) in total combined amounts greater than 20 parts per billion (ppb). The chloranil CDD/CDF concentration would be calculated based on their toxicity equivalence (TEQ) to 2,3,7,8-tetrachlorodibenzo-p dioxin (2,3,7,8-TCDD). EPA originally published the proposed chloranil SNUR in the **Federal Register** of May 12, 1993 (58 FR 27980).

The 90-day notice required by the SNUR would provide EPA with the opportunity to evaluate the intended new use and associated activities, and an opportunity to protect against unreasonable risks, if any, from CDD/CDF exposure that could result from use of chloranil with higher CDD/CDF levels. Certain recordkeeping and certification requirements would also apply to manufacturers, importers, and processors of all chloranil, no matter what the level of CDD/CDF contamination. EPA indicated that it would not promulgate a final rule until after receiving data required under the dioxin furan test rule (40 CFR part 766). Reporting under the dioxin furan test rule has been completed and no chloranil dioxin levels reported were below 20 ppb TEQ.

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

Section 5(a)(2) of Toxic Substances Control Act (TSCA) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). The mechanism for reporting under this requirement is established under 40 CFR part 721, subpart A.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 12, 2006.

Wendy Cleland Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E6–21495 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2002–0073; FRL–8109–2]

RIN 2070–AB79

Proposed Test Rule for Certain Chemicals on the ATSDR/EPA CERCLA Priority List of Hazardous Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is hereby extending the comment period for a proposed rule issued on October 20, 2006 (71 FR 61926) (FRL–8081–3), to require testing for certain chemicals on the Agency for Toxic Substances and Disease Registry (ATSDR)/EPA Priority List of Hazardous Substances to March 19, 2007. This extension is being made as a result of a request by a member of the public for additional time to submit comments.

DATES: Comments must be received on or before March 19, 2007. Your request to present oral comments must be in writing and must be received by EPA on or before March 19, 2007.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of October 20, 2006.

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

For technical information contact: Robert W. Jones, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–

8161; e-mail address: *jones.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** issued on October 20, 2006 (71 FR 61926) (FRL–8081–3). In that document, EPA proposed to require testing for certain chemicals on the ATSDR/EPA Priority List of Hazardous Substances which is compiled under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and solicited proposals for enforceable consent agreements (ECAs). EPA proposed the test rule under section 4(a) of the Toxic Substances Control Act (TSCA) that would require manufacturers (including importers) and processors of four chemical substances (chloroethane, hydrogen cyanide, methylene chloride, and sodium cyanide) to conduct testing for certain health effects relating to the manufacture, distribution in commerce, processing, use, or disposal of these substances. The data that would be obtained under the testing program are intended to be used to address health effects data needs identified by ATSDR and EPA for these substances, which are among the hazardous substances most frequently found at sites listed on the CERCLA National Priorities List (NPL) and which are also hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). EPA solicited proposals for ECAs involving the conduct of physiologically based pharmacokinetics (PBPK) studies as an alternative to the testing proposed in the rule, as appropriate. Alternatively, if ECA proposals involving the conduct of PBPK studies are not received, or if received, are not considered by the Agency to be adequate, EPA may consider ECA proposals which cover some or all of the testing identified for a given chemical in this proposed rule.

EPA is hereby extending the comment period on the proposed rule, which was set to end on December 19, 2006, to March 19, 2007. This extension is being made as a result of a request by a member of the public for additional time to submit comments.

Please go to the proposed rule to review the details of the Agency's proposed action and follow the instructions provided in the proposed rule for how to comment. To view the electronic docket for this proposed rule and submit comments on-line, please go to *http://www.regulations.gov*. The docket identification number of this action is EPA–HQ–OPPT–2002–0073.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: December 12, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxics Substances.

[FR Doc. E6–21494 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 051129315–6314–02; I.D. 112505A]

RIN 0648–AU07

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS announces that it is considering and seeking public comment on the implementation of further minimum carapace length (gauge) increases, escape vent size increases, and trap reductions in the offshore American lobster fishery, consistent with recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP) and pending management actions of the Commission's American Lobster Management Board (Board). A similar announcement, published in the **Federal Register** on December 13, 2005, notified the public that NMFS was considering and requesting comment on gauge and escape vent size increases in multiple lobster conservation management areas (LCMAs). However, since the publication of that document, many LCMA-specific Commission recommendations were modified in response to information in an updated peer-reviewed stock assessment published January 2006. Subsequent Commission deliberations resulted in the Board making changes to the fishery management plan, adding and repealing measures, such that many of the newer plan elements focused primarily on LCMA 3. Some measures relevant to this action, still under Board consideration, are included within the scope of this rulemaking. Accordingly, NMFS announces that this present ANPR revises the December 13, 2005, ANPR and invites public comment on changes to the ISFMP, either formally approved by the Board or pending approval. Any repealed measures, having previously been raised in the December 13, 2005, ANPR, will remain within the scope of this present ANPR, although the Board's repeal is notable and NMFS invites comment on the Board's withdrawal of the measures.

DATES: Comments must be received by January 17, 2007.

ADDRESSES: Written comments should be sent to Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via e-mail to *Lob1106@noaa.gov*, via fax (978) 281–9117 or via the Federal e-Rulemaking portal at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281–9144, fax (978) 281–9117, e-mail peter.burns@noaa.gov.

SUPPLEMENTARY INFORMATION:

Scope of This ANPR

With respect to the scope of this action, additional management measures are identified for LCMA 3 that have yet to be proposed or implemented by NMFS. These include: four additional 1/32 inch (0.08 centimeters (cm)) gauge increases that would result in a 3 1/2 inch (8.89–cm) minimum gauge size requirement for LCMA 3 by July 1, 2008; and escape vent size increases in LCMA 3 to 2 1/16 inches X 5 3/4 inches rectangular (5.24 cm X 14.61 cm) or two circular vents at 2 11/16 inches diameter (6.83 cm) by July 1, 2010. Additionally, NMFS also is considering a suite of trap reductions in LCMA 3. First, Addendum IV to Amendment 3 of the ISFMP calls for a 10–percent active trap reduction implemented over two consecutive years with a scheduled 5–percent reduction for 2007 and a 5–percent reduction in 2008. To address the need for further fishing mortality and fishing effort reductions in the offshore fishery as identified in the updated stock assessment released in 2005, the Board is developing an addendum to consider an additional 5–percent reduction in traps in LCMA 3 to be implemented as a 2.5–percent reduction each year for two consecutive years following the

initial 10–percent active trap reduction. The two 2.5–percent reductions have not been included as part of the ISFMP, but are in an addendum being drafted for review by the Board, and consequently, NMFS includes this measure for public consideration. Table 1 illustrates the LCMA 3 gauge increases, escape vent size increases and the 10–percent trap reductions currently recommended in the ISFMP for Federal implementation. Also included in the table are the two additional 2.5–percent trap reductions for LCMA 3 pending Board adoption. Although not officially part of the ISFMP, these pending trap reductions are included within the scope of this ANPR because they are relevant to the 10–percent reductions already adopted into the ISFMP and recommended for Federal implementation.

Several management measures previously included in the ISFMP and addressed in a previous NMFS ANPR, published in the **Federal Register** on December 13, 2005 (70 FR 73717) , have since been repealed by the Board based on an updated American lobster stock assessment approved in January 2006. The updated stock assessment indicated stable stock abundance for the Georges Bank and majority of the Gulf of Maine stocks. However, decreased stock abundance and recruitment due to high fishing mortality were evident in the assessment of the Southern New England stock and the statistical area 514 portion of the Gulf of Maine stock that includes Massachusetts Bay and Stellwagen Bank. Upon review of these findings, the Board determined that many of the additional gauge increases and escape vent size increases were not necessary for conservation and, with the exception for those in LCMA 3, were repealed. The repealed measures include the additional escape vent size increase for LCMA 1 (2 inches X 5 3/4 inches (5.08 cm X 14.61 cm) rectangular or 2 5/8 inches (6.67 cm) circular by 2008); in the Outer Cape Cod LCMA, four additional 1/32 inch–(0.08–cm) gauge increases up to 3 1/2 inches (8.89 cm) by July 2008 and an escape vent increase to 2 1/16 inches X 5 3/4 inches (5.24 cm X 14.61 cm) rectangular or 2 11/16 inches (6.83 cm) circular by 2008. Recommendations for delay in the LCMA 3 escape vent size increase until 2010, is included in draft Addendum XI to Amendment 3 of the ISFMP, scheduled for Board review in January 2007. NMFS invites the public to comment on the revised management scenario and extends the scope of this ANPR to include the measures subsequently withdrawn by the Board as well, given their potential impacts on the resource and industry.

TABLE 1. AMERICAN LOBSTER ISFMP GAUGE, ESCAPE VENT AND TRAP REDUCTION SCHEDULE FOR LCMA 3 AND CORRESPONDING FEDERAL ACTION (INCLUDES ONLY THE MEASURES CURRENTLY RECOMMENDED IN THE ISFMP FOR FEDERAL IMPLEMENTATION AND RELEVANT TRAP REDUCTIONS PENDING BOARD ADOPTION).

[Measurements are in inches]

LCMA	Addenda II-VIII			Current Federal Lobster Regulations		This ANPR Considers		
	gauge	vent*	trap reductions	gauge	vent*	gauge	vent*	trap reductions**
LCMA3	3 3/8 July 2004 3 13/32 July 2005 3 7/16 July 2006 3 15/32 July 2007 3 1/2 July 2008	2 X 5 3/4 rectangular or 2 5/8 circular by 2004 2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2008	5% in 2007 5% in 2008	3 3/8	2 X 5 3/4 rectangular or 2 5/8 circular	3 13/32 3 7/16 3 15/32 3 1/2 by 2008	2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2010	5% in 2007 5% in 2008 2.5% in 2009 2.5% in 2010

* All vent sizes include a rectangular and corresponding circular vent size. In all cases, each trap is required to have one rectangular vent or two circular vents at the sizes indicated. The ANPR considers a proposed action by the Board to postpone the escape vent increase for LCMA 3 until 2010.

** The two 5% trap reductions scheduled for 2007 and 2008 were established in Addendum IV; the two 2.5% reductions are being considered in this ANPR, concurrent with Board review.

Background and Description of Relevant ISFMP Actions

Addenda I through IX are part of an overall lobster fishery management regime set forth inAmendment 3 to the ISFMP. The intent of Amendment 3, approved by the Board in December 1997, is to achieve a healthy American lobster resource and to develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by all stakeholders. In short, Amendment 3 was envisioned to provide much of the framework upon which future lobster management - to be set forth in later addenda - would be based. In particular, Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members. Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Board to meet the lobster egg production and effort reduction goals of the ISFMP. NMFS has the authority under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

Addendum I to Amendment 3 focused largely on effort control measures. The Board approved Addendum I in August 1999, with NMFS promulgating compatible regulations on March 27, 2003 (68 FR 14902). This action, in part, established a limited access program in the lobster trap fishery in LCMAs 3, 4 and 5, based on historical participation and additional sliding scale trap

reductions in LCMA 3 through 2006. The Board approved Amendment 3's egg production measures as Addenda II and III in February 2001 and February 2002, respectively, and recommended that NMFS implement complementary Federal regulations. In response, NMFS published a final rule on March 14, 2006 (71 FR 13027), implementing multiple management measures, including a gauge increase and escape vent size increase in all LCMAs, except LCMA 1, to 3 3/8 inches (8.57 cm) and 2 X 5 3/4 inches (5.08 X 14.61 cm), respectively. In December 2003, the Board approved Addendum IV which, in part, included additional egg production measures. One such measure, the sliding scale trap reduction plan, was adopted to facilitate additional active trap reductions in LCMA 3 by 10 percent by imposing a 5–percent trap reduction in both 2007 and 2008. The 10–percent trap reduction is part of the suite of measures considered in this ANPR. Addenda V and VI did not include any further measures pertinent to egg production and therefore, are not included within the scope of this ANPR but are being addressed in a separate rulemaking action. Addendum VII, approved by the Board in November 2005, facilitates effort control measures and constitutes a limited access program for the lobster trap fishery in the state waters of LCMA 2, based on historical participation, with recommendations for complementary actions in the Federal waters of LCMA 2. In approving Addendum VII, the Board opted not to continue with the previously adopted schedule of minimum carapace length increases up to 3 1/2 inches (8.89 cm) in LCMA 2 (Addendum III) and voted to maintain the minimum legal carapace length (gauge) at 3 3/8 inches (8.57 cm). Following the updated stock assessment results, at a meeting in May 2006, the Board rescinded gauge increases beyond 3 3/8 inches (8.57 cm), and a complementary escape vent increase in the Outer Cape LCMA, and an escape vent increase in LCMA 1. Addendum VIII, adopted by the Board in May 2006, established new data collection requirements and adopted new biological reference points to facilitate the assessment of the lobster resource. NMFS will address the data collection issue in a separate rulemaking outside the scope of this ANPR. Addendum IX, adopted by the Board in October 2006, will impose a 10–percent conservation tax on the sale of lobster traps in LCMA 2.

Classification

This ANPR has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: December 11, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–21448 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 242

Monday, December 18, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 12, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service Agency (FSA) is amending its agricultural loan mediation regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act) and the United States Grain Standards Act of 2000 (the Grain Standards Act). The regulation provides a mechanism to States to apply for and obtain matching funds grants from USDA. The grant funds help states supplement administrative operating funds needed to administer their agricultural mediation programs. FSA will collect information by mail, phone, fax, and in person.

Need and Use of the Information: FSA will collect information to determine whether the State meets the eligibility criteria to be recipients of grant funds, and secondly, to determine if the grant is being administered as provided by the Act.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 32.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1024.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–21451 Filed 12–15–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0041]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fats and Oils

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on January 23, 2007. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Twentieth Session of the Codex Committee on Fats and Oils (CCFO) of the Codex Alimentarius Commission (Codex), which will be held in London, United Kingdom, from February 19–23, 2007. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 20th Session of CCFO and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, January 23, 2007 from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the rear of the Cafeteria, South Agriculture Building, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. Documents related to the 20th Session of the CCFO will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

The U.S. Delegate to the 20th Session of the CCFO, Dr. Dennis Keefe of FDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address (*Dennis.Keefe@fda.hhs.gov*).

Registration

There is no need to pre-register for this meeting. To gain admittance to this meeting, individuals must present a photo ID for identification. When arriving for the meeting, please enter the South Building through the Second Wing entrance on ''C'' Street SW.

For Further Information About the 20th Session of the CCFO Contact: Dr. Dennis Keefe, the U.S. Delegate to the 20th Session of the CCFO, FDA, Center for Food Safety and Applied Nutrition, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1284, Fax: (301) 436–2972. E-mail: *Dennis.Keefe@fda.hhs.gov*.

For Further Information About the Public Meeting Contact: Amjad Ali, International Issues Analyst, U.S. Codex

Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Fats and Oils was established to elaborate codes, standards and related texts for fats and oils. The Committee is hosted by the United Kingdom.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 20th Session of the Committee will be discussed during the public meeting:

- Matters Referred to the Committee from the Other Codex Bodies.
- Draft Standard for Fat Spreads and Blended Spreads: Section on Food Additives.
- Draft Amendment to the Standard for Named Vegetable Oils: Inclusion of Rice Bran Oil.
- Draft Amendment to the Standard for Named Vegetable Oils: Amendment to Total Carotenoids in Unbleached Palm Oil.
- Code of Practice for Storage and Transport of Edible Fats and Oils in Bulk: Draft List of Acceptable Previous Cargoes.
- Consideration of the Linolenic Acid Level in Section 3.9 of the Standard for Olive Oils and Olive Pomace Oils.
- Consideration of Proposals for Amendments to the Standard for Named Vegetable Oils: Palm Kernel Stearin and Palm Kernel Olein.
- Criteria for the Revision of the Standard for Named Vegetable Oils.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the January 23, 2007 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 20th Session of CCFO, Dr. Dennis Keefe (see **ADDRESSES**). Written comments should state that they relate to activities of the 20th Session of the CCFO.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on December 12, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–21371 Filed 12–15–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: This is a correction to the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006).

DATES: *Effective Date:* December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

On December 1, 2006, the Department of Commerce (''the Department'') published in the **Federal Register**, the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, for cases with December anniversary dates. In that notice the period of review listed for the following cases were incorrect. The correct periods of review are listed below.

	Period
Countervailing Duty Proceedings	
INDIA: Certain Hot-Rolled Carbon Steel Flat Products C–533–821	1/1/06–12/31/06
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products C–560–813	1/1/06–12/31/06

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21510 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–849

Cut–to-Length Carbon Steel Plate from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2006, the Department of Commerce (''Department'') published in the **Federal Register** its preliminary results in the administrative review of the antidumping duty order on cut–to-length carbon steel plate (''CTL plate'') from the People's Republic of China (''PRC'') for the period November 1, 2004, through October 31, 2005. *See Cut–to-Length Carbon Steel Plate from the People's Republic of China: Notice of Rescission, In Part, and Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45768 (August 10, 2006) (''*Preliminary Results*''). Based upon our analysis of the comments received, as well as the hearing conducted, in this review, the Department continues to find that application of adverse facts available (''AFA'') is warranted with respect to China Metallurgical Import & Export Liaoning Company (''Liaoning Company''). The Department is also rescinding the administrative review with respect to Angang New Steel Co., Ltd. and Angang Group Hong Kong Co., Limited (collectively ''Angang''), as its request for review was timely withdrawn in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–1904 or 202–482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2005, the Department published a notice of initiation of this administrative review of the antidumping order on CTL plate from the PRC for the period November 1, 2004, through October 31, 2005, covering Liaoning Company and Angang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005). On August 10, 2006, the Department published its *Preliminary Results* in this administrative review, preliminarily applying AFA to Liaoning Company and preliminarily rescinding the review of Angang. In the *Preliminary Results*, the Department also provided interested parties an opportunity to comment and request a hearing on the *Preliminary Results*. On September 11, 2006, importer Marubeni–Itochu Steel America Inc. (''MISA'') filed a notice of appearance in the proceeding, submitted a case brief and requested a hearing. On September 18, 2006, the Department received rebuttal briefs from petitioner Nucor Corporation and interested party domestic producer IPSCO Steel Inc. The Department held a public hearing on October 26, 2006. See transcript ''In the Matter of: Cut to Length Carbon Steel Plate from the Peoples Republic of China'' (October 26, 2006).

Period of Review

The period of review (''POR'') is November 1, 2004, through October 31, 2005.

Scope of the Order

The products covered by this order include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') – for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. Also excluded from this order is certain carbon cut–to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM, and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Partial Rescission of Review

In the *Preliminary Results*, the Department preliminarily rescinded the review with respect to Angang, which timely withdrew its request for administrative review within the extended time limit granted by the Department. On May 15, 2006, notwithstanding its withdrawal of its request for review, Angang filed a letter to the Department requesting that the Department issue specific liquidation instructions on one of its shipments made during the POR. Since the issuance of the *Preliminary Results*, no party has demonstrated that the review should not be rescinded with respect to Angang. Pursuant to 19 C.F.R. 351.213(d)(1), the Department ''will rescind an administrative review'' if the review request is withdrawn in a timely manner and no other party requested a review. Accordingly, as Angang's withdrawal was timely and no other party requested a review for Angang, we are rescinding this administrative review with respect to Angang.

Analysis of Comments Received

On September 11, 2006, importer MISA requested a hearing on the Department's decision not to issue liquidation instructions as requested by Angang. The issue raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded is addressed in the Issue and Decision Memorandum to David M. Spooner, Assistant Secretary for Import

Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated December 8, 2006, which is adopted herein, by reference (''Issue and Decision Memorandum''). The Issue and Decision Memorandum is on file in the Central Records Unit, room B–099 of the Herbert C. Hoover Building and may be accessed on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Issue and Decision Memorandum are identical in content.

Changes Since The Preliminary Results

Based on our analysis of the comments received, the Department has made no changes to the *Preliminary Results*.

Facts Available

In the *Preliminary Results*, the Department found that Liaoning Company did not demonstrate that it was entitled to a separate rate because the information it provided was incomplete and unreliable. For these final results, the Department continues to find that, because Liaoning Company did not demonstrate its eligibility for separate–rate status, it is part of the PRC–wide entity. In the *Preliminary Results*, the Department based the margin for the PRC–wide entity, including Liaoning Company, on total AFA based on the PRC–wide entity's failure to cooperate by not acting to the best of its ability in providing the requested information. *See Preliminary Results*, 71 FR 45768, 45770–45771 (August 10, 2006).

The Department continues to find, in accordance with section 776(a) of the Tariff Act of 1930, as amended (''Act''), that it is appropriate to continue to apply total AFA to the PRC–wide entity, including Liaoning Company, as it failed to provide the requested information. For these final results, we continue to find that as AFA, the prior PRC–wide entity rate of 128.59 percent continues to be appropriate.

A complete explanation of the selection, corroboration, and application of the AFA rate can be found in the *Preliminary Results*. *See Preliminary Results*, 71 FR 45768. The Department did not receive comments with regard to its preliminary findings for Liaoning Company as part of the PRC–wide entity. Further, no information was submitted since the *Preliminary Results* that calls into question the reliability of the Department's selection, corroboration, and application of AFA in this review. Accordingly, for the final results, we continue to apply AFA as noted above and in our *Preliminary Results*.

Final Results of Review

As a result of this review, the Department determines that the weighted–average dumping margin of 128.59 percent exists for the PRC–wide entity, which includes Liaoning Company, for the period November 1, 2004, through October 31, 2005.

Cash Deposit Requirements

The following cash–deposit requirements will be effective upon publication of these final results of administrative review for all shipments of CTL plate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed PRC and non–PRC exporters not subject to this review that have separate rates, the cash–deposit rate will continue to be the exporter–specific rate published for the most recent proceeding; (2) for all other PRC exporters, including Liaoning Company, the cash–deposit rate will be 128.59 percent (*i.e.* the PRC–wide rate); and (3) for all other non–PRC exporters, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department intends to issue assessment instructions directly to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of administrative review. Because Liaoning Company is part of the PRC–wide entity, the Department will instruct CBP to liquidate its entries of subject merchandise at 128.59 percent, the PRC–wide rate.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with ections 751(a)(1) and 777(i)(1) of the Act, as well as 19 C.F.R. 351.221(b)(4) and 19 C.F.R. 51.213(d)(4).

Dated: December 8, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–21521 Filed 12–15–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–807)

Notice of Amended Final Results and Rescission of Antidumping Duty Administrative Review in Part: Certain Steel Concrete Reinforcing Bars From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), on November 7, 2006, the Department of Commerce (the Department) published its notice of final results of antidumping duty administrative review on steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty*

Administrative Review in Part, 71 FR 65082 (Nov. 7, 2006) (*Final Results*). On November 13, 2006, we received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from Colakoglu Metalurji, A.S. (Colakoglu) and Ekinciler Demir ve Celik Sanayi A.S./ Ekinciler Dis Ticaret A.S. (Ekinciler), that the Department made ministerial errors in its final results. On November 20, 2006, we received comments from the petitioners (*i.e.*, Gerdau AmeriSteel Corporation, Commercial Metals Company, and Nucor Corporation) rebutting these allegations.

After analyzing the submissions on this topic, filed by Ekinciler, Colakoglu, and the petitioners, we have determined, in accordance with 19 CFR 351.224(e), that we made a ministerial error in our calculations performed for the final results for only one of the two respondents (*i.e.*, Ekinciler). Specifically, we intended to calculate general and administrative (G&A) expenses and financial expenses by: 1) determining the appropriate ratios; and 2) applying them to the total cost of manufacturing originally reported by Ekinciler. However, we inadvertently included certain unrecognized depreciation expenses in the total costs to which the ratios were applied, thereby overstating the G&A and financial expenses. Correcting this error resulted in a revised margin for Ekinciler. For a detailed discussion of the ministerial error noted above, the remaining ministerial error allegations, and the Department's analysis, see the December 12, 2006, memorandum to James Maeder, Director, Office 2, from the Team entitled ''Ministerial Error Allegations in the Final Results of the Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey.''

Amended Final Results of Review

After analyzing all interested parties' comments and rebuttal comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that the Department has made a ministerial error in the final results calculation for Ekinciler in this administrative review. Therefore, we are amending the final results of administrative review of rebar from Turkey for the period April 1, 2004, through March 31, 2005. As a result of correcting the ministerial error discussed above, Ekinciler's weighted–average dumping margin decreased from 8.59 to 3.16 percent. For the remaining respondents, the weighted–average dumping margins remain the same. *See Final Results*.

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided by section 751(a) of the Act: (1) for subject merchandise exported by Ekinciler the cash deposit rate will be 3.16 percent; (2) for Colakolgu the cash deposit rate will remain as established in the *Final Results*. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 12, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–21520 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 061208325–6325–01]

Announcement of Funding Opportunity for Social Science Fellowships in the National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of Funding Opportunity for Social Science Fellowships in the National Estuarine Research Reserve System.

SUMMARY: NOAA's Estuarine Reserves Division, in collaboration with NOAA's Coastal Services Center and Office of Oceanic and Atmospheric Research, Climate Program Office, are offering five fellowships for masters and doctoral students to conduct social science research within the National Estuarine Research Reserve System. Funds will be provided to support research projects that will provide information needed by reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR 921.50). The amount of each fellowship is $30,000; at least 30% of total project cost match is required by the applicant (i.e. $12,858 match for $30,000 in federal funds for a total project cost of $42,858). Minority students are encouraged to apply. For detailed descriptions of the reserves and to view the full funding opportunity, refer to the NERRS Web site at *http://www.nerrs.noaa.gov* or contact the program staff listed in this announcement.

DATES: Applicants should submit application materials through *http://www.Grants.gov* no later than 11 p.m. (EST) on February 1, 2007.

ADDRESSES: The full funding announcement is available via the grants.gov Web site at *http://www.grants.gov;* via the NERRS Web site at *http://www.nerrs.noaa.gov/fellowship;* or by contacting the program officials identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Applications preferably should be submitted electronically at *http://www.grants.gov.* If a paper application is submitted, one original and 4 copies may be submitted to Attn: Erica Seiden, NOAA's Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, Station 10542, Silver Spring, MD 20910 and received by 11 p.m. (EST) on February 1, 2007. Any proposals received outside of the above requirements will be sent back to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Erica Seiden, ERD, at 301–563–1172 or via the Internet at *erica.seiden@noaa.gov;* or Patricia Delgado, ERD, at 301–563–1147 or via the Internet at *patricia.delgado@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Summary Description

The National Estuarine Research Reserve System (NERRS) consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR 921.

Each reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. NOAA's Estuarine Reserves Division, in collaboration with NOAA's Coastal Services Center and Office of Oceanic and Atmospheric Research, Climate Program Office, are offering fellowships for masters and doctoral students to conduct social science research within the National Estuarine Research Reserve System. For detailed descriptions of the reserves and to view the full funding opportunity, refer to the NERRS Web site at *http://www.nerrs.noaa.gov* or contact the program staff listed in this announcement.

Funds will be provided to support social science research projects that will provide information needed by reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues 15 CFR 921.50. All projects must be focused on a National Estuarine Research Reserve. Proposals submitted in response to this announcement should address social, cultural, economic, or policy aspects related to one of the following topics: Community resilience (e.g., individual and community vulnerability; resistance, response, and adaptability to continuous or episodic natural and anthropogenic stressors; risk perception); Ecological restoration (e.g., human behaviors; advocacy and volunteerism; responses to social and ecological change; personal and societal value orientations); Ecosystem-based management (e.g., collaborative decision-making; motivations or preferences for resource uses or management practices; ways in which people affect or are affected by natural resource management decisions; cultural history); Landscape or seascape change (e.g., current or potential effects on or threats to the traits, patterns, or structure of a specific geographic area of the terrestrial or aquatic environment, including its biological, physical, and anthropogenic attributes; population and demographic change; coastal urbanization and habitat fragmentation); or Climate variability and change (e.g., sea level rise; extreme weather events; seasonal or interannual climate fluctuations; effects on water resources, living marine resources, agricultural productivity, delivery of ecosystem services, or public health and safety).

Funding Availability

Funding is dependent upon FY2007 appropriations. NOAA's Estuarine Reserves Division anticipates that 5 fellowships will be competitively awarded to provide funding to qualified graduate students whose research applies to the research focus areas above at the reserves specified in the full funding opportunity. Minority students are encouraged to apply. The amount of the fellowship is $30,000 for 18 months; at least 30% of total project cost match is required by the applicant (i.e. $12,858 match for $30,000 in federal funds for a total project cost of $42,858). At least one fellowship will be awarded for a proposal addressing climate variability and change.

Statutory Authority: 16 U.S.C. 1461

CFDA: 11.420, National Estuarine Research Reserve Program.

Eligibility

Applicants must be admitted to or enrolled in a full-time masters or doctoral program at a U.S. accredited university in order to be eligible to apply. Applicants should have completed a majority of their graduate course work at the beginning of their fellowship and have an approved thesis research program.

Grants are normally distributed to the graduate student's institution. Institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, international organizations, as well as state, local and Indian tribal governments. All reserve staff are ineligible to submit an application for a fellowship under this announcement. Funds are expected to be available on a competitive basis to qualified graduate students for research focused on a reserve(s) leading to a graduate degree.

Cost Sharing Requirements

Requested federal funds *must* be matched by at least 30 percent of the *TOTAL cost, not the Federal share, of the project* (i.e. $12,858 match for $30,000 in federal funds for a total project cost of $42,858). Requested overhead costs under fellowship awards are limited to 10% of the federal amount. Waived institutional overhead costs may be used as match.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Proposal Review and Selection Process

Once a full proposal has been received by NOAA an initial administrative review is conducted to determine compliance with requirements and completeness of the application. All proposals will be evaluated for scientific merit by no less than three reviewers from the scientific community. If any of these three reviewers are non-Federal employees, consensus advice regarding the proposals will not be given. The Estuarine Reserve Division, in collaboration with NOAA's Coastal Services Center and Office of Oceanic and Atmospheric Research, will oversee the review process. Efforts are taken to ensure that conflicts of interest are avoided. It is permissible for applicants to suggest those people whom they feel would have a conflict of interest and therefore not appropriate to review their proposal. The merit reviewer's ratings are used to produce a rank order of the proposals. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one of the selection factors identified below. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds and execute awards.

Evaluation Criteria

Applicants do not need to address Evaluation Criteria Nos. 4 and 5 in order to have a full proposal.

1. Academic record and statement of career goals and objectives of student (10 percent)
2. Quality of project and applicability to program priorities (80 percent)
3. Recommendations and/or endorsements of student (10 percent)

4. Additional relevant experience (0 percent)
5. Financial need of student (0 percent)

Selection Factors for Fellowship/Scholarships/Internships

1. Balance/Distribution of funds:
a. Academic disciplines
b. Types of institutions
c. Geography
2. Availability of funds
3. Program-specific objectives—These are found in the Full Funding Opportunity Announcement in sections I.A and B.
4. Degree in scientific area and type of degree sought

Further details on evaluation and selection criteria and procedures applicable to this notice can be found in the full funding opportunity announcement available through *http://www.grants.gov* and on the NERRS Web site *http://www.nerrs.noaa.gov/fellowship*.

National Environmental Policy Act

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this initiative fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws, agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046 and 0605–0001 respectively. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 12, 2006.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E6–21450 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112206A]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS announces Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in January, February, and March of 2007. Additional workshops will be held throughout 2007 and will be scheduled at a later date.

The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. As of December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit. Additionally, after December 31, 2007, Atlantic shark dealers may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate has been submitted with the permit renewal application. Atlantic Shark Identification Workshops will be held throughout 2007, at no charge to the participant.

The Protected Species Safe Handling, Release, and Identification Workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Vessel

owners and operators whose permits expire in January, February, or March 2007 must attend one of these free workshops in order to renew their permit.

DATES: The Atlantic Shark Identification Workshops will be held on January 26, February 22, and March 16, 2007.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on January 8, 12, and 24, February 1, 22, and 27, and on March 7, 15, and 21, 2007. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Madeira Beach, FL; Dania Beach, FL; and Manahawkin, NJ.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Coconut Grove, FL; Charleston, SC; Providence, RI; Ft. Pierce, FL; Houston, TX; Panama City, FL; Dedham, MA; St. Petersburg, FL; and Ronkonkoma, NY. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: For further information regarding workshop requirements, contact Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: On October 2, 2006, NMFS published a final rule (71 FR 58057) that, among other things, requires certain dealers and fishermen to attend mandatory workshops prior to renewing their permits.

Shark Identification Workshops for Dealers

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification workshop certificate is on the premises of each business listed under the shark dealer permit. Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks. Dealers may send a proxy to a Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business listed on the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate has been submitted with the permit renewal application.

Protected Species Safe Handling, Release, and Identification Workshops

Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit. As such, vessel owners whose permits expire in early 2007 must attend one of the free workshops offered in January, February, or March 2007. New shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to owners, all longline and gillnet vessel operators fishing with a limited access swordfish or limited access shark permit are required to attend the Protected Species Safe Handling, Release, and Identification Workshops. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times.

Workshop Dates, Times, and Locations

Additional workshops will be scheduled throughout the year. Fishermen should try to go to workshops that are close to the expiration date of their permit.

Atlantic Shark Identification Workshops

1. January 26, 2007 from 9 a.m. - 3 p.m. Madeira Beach Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708.

2. February 22, 2007 from 9 a.m. - 3 p.m. Nova Southeastern University Oceanographic Center, 8000 North Ocean Drive, Dania Beach, FL 33004. The Park entrance fee will be waived for participants attending the workshop at the university.

3. March 16, 2007 from 9 a.m. - 3 p.m. Ocean County Library (Stafford Branch), 129 North Main Street, Manahawkin, NJ 08050.

Protected Species Safe Handling, Release, and Identification Workshops

1. January 8, 2007 from 9 a.m. - 5 p.m. Hampton Inn Coconut Grove, 2800 SW 28th Terrace, Coconut Grove, FL 33133.

2. January 12, 2007 from 9 a.m. - 5 p.m. Town & Country Inn & Conference Center, 2008 Savannah Highway, Charleston, SC 29407.

3. January 24, 2007 from 9 a.m. - 5 p.m. Hotel Providence, 311 Westminster Street, Providence, RI 02903.

4. February 1, 2007 from 9 a.m. - 5 p.m. Hampton Inn & Suites, 1985 Reynolds Drive, Ft. Pierce, FL 34945.

5. February 22, 2007 from 9 a.m. - 5 p.m. Hampton Inn, 8620 Airport Blvd., Houston, TX 77061.

6. February 27, 2007 from 9 a.m. - 5 p.m. Hilton Garden Inn, 1101 U.S. Highway 231, Panama City, FL 32405.

7. March 7, 2007 from 9 a.m. - 5 p.m. Holiday Inn, Dedham, 55 Ariadne Road, Dedham, MA 02026.

8. March 15, 2007 from 9 a.m. - 5 p.m. Hilton, St. Petersburg Bayfront, 333 First Street South, St. Petersburg, FL 33701.

9. March 21, 2007 from 9 a.m. - 5 p.m. Hilton Garden Inn, Islip MacArthur Airport, 3485 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Aquatic Release Conservation ((877) 411–4272), 1870 Mason Ave., Daytona Beach, FL 32117.

Grandfathered Permit Holders

Participants in the industry-sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) will be issued a workshop certificate in December 2006 that will be valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid workshop certificate may result in a permit denial.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Atlantic Shark Identification Workshop

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Protected Species Safe Handling, Release, and Identification Workshop

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 12, 2006.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–9755 Filed 12–13–06; 3:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting: Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 3.3

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 Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 3.3 (CPDC–S&A 3.3) was established by a Decision Memorandum dated October 17, 2006. CPDC–S&A 3.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 3.3: ''Weather and Climate Extremes in a Changing Climate''.

Place: The meeting will be held at the Chicago O'Hare Airport Hilton Hotel, Chicago, Illinois, 60666.

TIME AND DATE: The meeting will convene at 7:30 a.m. on Tuesday, January 9, 2007 and adjourn at 4:30 p.m. the same day. Meeting information will be available online on the CPDC–S&A 3.3 Web site (*http://www.climate.noaa.gov/index.jsp?pg=./ccsp/33.jsp*). Please note that meeting location, times, and agenda topics described below are subject to change.

Status: The meeting will be open to public participation and will include a 30-minute public comment period on January 9 from 7:30 a.m. to 8 a.m. (check Web site to confirm this time and the room in which the meeting will be held). The CPDC—S&A 3.3 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 by the CPDC—S&A 3.3 Designated Federal Official (DFO) by January 2, 2007 to provide sufficient time for review. Written comments received after January 2 will be distributed to the CPDC—S&A 3.3, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

Matters to be Considered: The meeting will (1) work on written material for inclusion in an initial draft document; (2) finalize plans for completion and submission of the First Draft of Synthesis and Assessment Product 3.3 to the National Research Council for expert review.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher D. Miller, CPDC—S&A 3.3 DFO and the Program Manager, NOAA/OAR/Climate Program Office, Climate Change Data and Detection Program Element, 1315 East-West Highway, Room 12239, Silver Spring, Maryland 20910; telephone 301–734–1241, e-mail: *Christopher.D.Miller@noaa.gov*.

Dated: December 12, 2006.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 06–9733 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 5.3

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 Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 5.3 (CPDC—S&A 5.3) was established by Charter on October 12, 2006. CPDC—S&A 5.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 5.3: ''Decision-Support Experiments and Evaluations Using Seasonal to Interannual Forecasts and Observational Data''.

TIME AND DATE: The meeting will be held Monday, January 8, 2007—Wednesday, January 10, 2007. This time and the agenda topics described below are subject to change. Refer to the Web page *http://www.climate.noaa.gov/index.jsp?pg=./ccsp/53.jsp* for the most up-to-date meeting agenda.

Place: The meeting will be held at the Latham Hotel, 3000 M Street, NW., Washington, DC 20007. Please contact Dr. Nancy Beller-Simms for further information (contact information follows).

Status: The meeting will be open to public participation with a public comment period on January 9, at 9 a.m. (times are dependent on number of participants, check Web site to confirm this time). 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 by the CPDC—S&A 5.3 Designated Federal Official by December 27, 2006 to provide sufficient time for review. Written comments received after that date will be distributed to the CPDC—S&A 5.3, but may not be reviewed prior to the meeting date.

Matters to be Considered: The meeting will include, but not be limited to, the following topics: (1) Decision-support experiments within the water resource management sector as described in the Product Prospectus; (2) Discussion of procedures and a timeline for completion of the first draft of the Synthesis and Assessment Product 5.3; and (3) Discussion of plans for completion and submission of future drafts and procedures.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Beller-Simms, Designated Federal Official, CPDC—S&A 5.3 (NOAA Climate Program Office, 1315 East West Highway, Room 12221, Silver Spring, Maryland 20910. Phone: 301–734–1205, Fax: 301–713–0518, E-mail: *Nancy.Beller-Simms@noaa.gov*) or visit the Web site at *http://www.climate.noaa.gov/index.jsp?pg=./ccsp/53.jsp*.

Dated: December 12, 2006.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 06–9734 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120106A]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 4.5

AGENCY: National Oceanic and Atmospheric Administration (NOAA),Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Report for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comment. This draft Report addresses the following CCSP Topic: Product 4.5 Effects of Climate Change on Energy Production and Use in the United States

After consideration of comments received on the draft Report, the final Report along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by February 1, 2007.

ADDRESSES: The draft Report is posted on the CCSP Program Office web site. The web addresses to access the draft Report is:

Product 4.5 (Energy Production) *http://www.climatescience.gov/Library/sap/sap4–5/default.php*

Detailed instructions for making comments on the draft Report is provided with the Report. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW., Suite 250, Washington, DC 20006, Telephone: (202) 419 3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Report addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: December 6, 2006.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E6–21446 Filed 12–15–06; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–01 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 07 2006

In reply refer to:
I-06/012497

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-01, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to North Atlantic Treaty Organization for defense articles and services estimated to cost $589 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** North Atlantic Treaty Organization

(ii) **Total Estimated Value:**

Major Defense Equipment*	$120 million
Other	$469 million
TOTAL	$589 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** in support of a Direct Commercial Sale to NATO of up to four Boeing C-17 GLOBEMASTER III aircraft, up to two Pratt & Whitney F117-PW-100 spares engines, up to four AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, up to fifteen AN/AVS-9 Night Vision Goggles, Electronic Combat International Security Assistance Program software equipment, spare and repairs parts, mission planning system and software, Personnel Life Support equipment, flares, COMSEC equipment, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Air Force (QZZ)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** [illegible]

POLICY JUSTIFICATION

NATO Consortium – Support for C-17 GLOBEMASTER III Aircraft

The North Atlantic Treaty Organization (NATO) requests a possible sale in support of a Direct Commercial Sale for up to four Boeing C-17 GLOBEMASTER III aircraft. This proposed sale includes up to two Pratt & Whitney F117-PW-100 spare engines, up to four AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, up to fifteen AN/AVS-9 Night Vision Goggles, Electronic Combat International Security Assistance Program software equipment, spare and repair parts, mission planning system and software, Personnel Life Support equipment, flares, COMSEC equipment, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support and will be used by the NATO Maintenance and Supply Agency (NAMSA) to support the aircraft. The estimated cost is $589 million.

An international consortium made up of NATO allies is forming the NATO Strategic Airlift Capability (NSAC) consortium; the ownership entity will be a chartered NATO Weapon System Partnership (WSP) of allied nations. NAMSA will administer the WSP.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of NATO and further weapon system standardization and interoperability with U.S. forces. NATO is transitioning to an expanded global role, increasing the share of its burden in the Global War on Terrorism, specifically for out-of-area operations. NATO allies have agreed to increase the capability, usability, and deployability of their forces, transforming them from their Cold War territorial defense roles. This expanded role includes peacekeeping and stability operations, as well as disaster relief around the globe. The C-17 will partially serve NATO's agreed military requirement for eight C-17 equivalents to rapidly deploy a force around the globe, including the NATO Response Force (NRF). Futhermore, member nations will be able to execute strategic airlift missions in support of national objectives, or to fulfill national contributions to multi-nation missions. This capability provides consortium member nations with an organic capability that compliments global reach efforts supported by the U.S. Air Force.

NATO does not currently have a heavy airlift capability and must rely on outside sources for their military airlift needs. This assistance normally takes the form of either U.S. Air Force airlift or contract carriers that use Russian heavy airlift aircraft. The procurement of C-17s will increase interoperability with the U.S. Air Force airlift system and will enhance relationships with NATO Strategic Airlift Capability members.

NATO has the ability to absorb and employ the C-17. It has agreed to pursue basing the C-17s at Ramstein Air Base, further adding to the synergies of operating side-by-side with U.S. Air Force systems. Ramstein has already undergone significant NATO-funded infrastructure upgrades required to support operation of C-17s and other large aircraft, and this capability will qualify Ramstein for further NATO Security Investment program funding.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

This proposed sale will involve the following contractors:

Boeing Company	Long Beach, California
McDonnell Douglas Training Systems A Wholly Owned Subsidiary (Boeing Company)	St. Louis, Missouri
AAI Services Corporation	Goose Creek, South Carolina
United Technologies Cooperation, Pratt & Whitney Military Engines	East Hartford, Connecticut
Northrop Grumman Systems Corporation	Rolling Meadows, Illinois

Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no known offset agreements proposed in connection with this potential sale.

This proposed sale will require Boeing to enhance a facility at Ramstein to provide C-17 logistics support under the current GLOBEMASTER Support Partnership. The proposed plan will require approximately 14 U.S. Government representatives at the facility. Implementation of this proposed sale will require the assignment of up to 8 each U.S. Government and contractor representatives in country for annual participation in training, program management, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Boeing C-17 GLOBEMASTER III military airlift aircraft is the newest, most flexible cargo aircraft to enter the U. S. Air Force fleet. The C-17 is capable of rapid strategic delivery of up to 170,900 pounds of personnel and equipment to main operating bases or to forward operating bases. The aircraft is also capable of short field landings with a full cargo load. Finally, the aircraft can perform tactical airlift and airdrop missions and can also transport litters and ambulatory patients during aeromedical evacuation when required. A fully integrated electronic cockpit and advanced cargo systems allow a crew of three: the pilot, copilot and loadmaster to operate the aircraft on any type of mission.

2. The AN/AAQ-24V(13) Large Aircraft Infrared Countermeasure (LAIRCM) is an active countermeasure system designed to defeat man-portable, shoulder-fired, and vehicle-launched infrared guided missiles by directing a high-intensity modulated laser beam into the missile seeker. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. LAIRCM is designed for installation on a wide range of fixed-wing aircraft. The basic hardware is Unclassified. However, the system relies on jam codes that direct the laser to fire at a specified rate and frequency, depending on the threat detected. These jam codes are developed by the LAIRCM System Group and are classified Secret. Technical data and other documentation are classified up to Secret.

3. The AN/AVS-9 Night Vision Goggles (NVG), a 3rd generation aviation device offers a higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment; 25-mm eye relief eyepieces, which easily accommodate eyeglasses, and a low-profile battery pack. Minus-blue filters screen glare from cockpit instrument lighting; and a class B filter (available with some variants) can accommodate aircraft color displays. Other features include: low-distortion optics and automatic brightness control. The Night Vision Imaging System (NVIS) modification includes cockpit modifications to provide NVG-compatible

cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. The hardware, technical data, and documentation to be provided are Unclassified.

4. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–9742 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–02]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–02 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 07 2006

In reply refer to:
I-06/006201

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $185 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House
Committee on International Relations
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relation
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Pakistan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$120 million
Other	$ 65 million
TOTAL	$185 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 2,769 Radio Frequency (RF) TOW 2A Missiles, 7 RF TOW 2A Fly-to-buy Missiles, 415 RF Bunker Buster Missiles, 7 RF Fly-to-buy Bunker Buster Missiles, upgrade of 121 TOW Basic/TOW-I launchers to fire TOW II configuration for wire-guided and wireless missiles, TOW Data Acquisition Systems, gunner aiming sight, testers, cameras, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) **Military Department:** Army (VZT and VZM)

(v) **Prior Related Cases, if any:**
FMS case VZR - $65 million - 09Mar05
FMS case VIC - $ 9 million - 30Jun88
FMS case VFU - $19 million - 30Jun86

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(viii) **Date Report Delivered to Congress:** [illegible] 07 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – TOW-2A Anti-Armor Guided Missiles

The Government of Pakistan has requested a possible sale of 2,769 Radio Frequency (RF) TOW 2A Missiles, 7 RF TOW 2A Fly-to-buy Missiles, 415 RF Bunker Buster Missiles, 7 RF Fly-to-buy Bunker Buster Missiles, upgrade of 121 TOW Basic/TOW-I launchers to fire TOW II configuration for wire-guided and wireless missiles, TOW Data Acquisition Systems, gunner aiming sight, testers, cameras, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $185 million.

This proposed sale will contribute to furthering the foreign policy and national security of the United States by helping a friendly country provide for its own legitimate self-defense needs and to enable Pakistan to support U.S. operations against terrorist activity along its porous borders. In addition, these missiles have most recently been employed in several global war on terrorism operations in the tribal areas of Pakistan and have allowed, when coupled with Cobra attack helicopters, the Government of Pakistan to employ new tactics, techniques and procedures that have proven highly effective against terrorists.

Pakistan will augment its land forces with these TOW-2A anti-armor guided missiles. Pakistan will use these missiles to increase its military defensive posture and will have no difficulty absorbing these additional missiles into its armed forces. Pakistan's existing inventory of TOW missiles will soon begin to be affected by its specified shelf life. While TOW missiles can be employed beyond their shelf life, system reliability and safety are eroded. Pakistan continues to expend TOW missiles in both training exercises and combat operations.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW-2 Weapon System hardware and documentation provided with this proposed sale are unclassified. However, sensitive technology is contained with the system itself. This sensitivity is primarily in the software programs, which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–9743 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–03 with attached transmittal, policy justification, and sensitivity of technology.

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

07 DEC 2006

In reply refer to:
I-06/009228

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $855 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$241 million
Other	$614 million
TOTAL	$855 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment and modification of three excess P-3 aircraft with the E-2C HAWKEYE 2000 Airborne Early Warning (AEW) Suite, spare and repairs parts, simulators, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SBD and SBE)

(v) Prior Related Cases, if any: FMS case SAV - $54 million – 28Jun05

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none.

(viii) Date Report Delivered to Congress: 07 DEC 2006

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Pakistan – E-2C Hawkeye 2000 Airborne Early Warning Suite

The Government of Pakistan has requested a possible sale of refurbishment and modification of three excess P-3 aircraft with the E-2C HAWKEYE 2000 Airborne Early Warning (AEW) Suite, spare and repairs parts, simulators, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $855 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for economic progress in South Asia and a partner in the global war on terrorism. The command-and-control capabilities of these aircraft will improve Pakistan's ability to restrict the littoral movement of terrorists along Pakistan's southern border and ensure Pakistan's overall ability to maintain integrity of its borders.

Pakistan intends to use the proposed purchase to develop an effective air defense network for its naval forces and provide an AEW surveillance and enhanced command, control, and communications capability. The addition of these excess aircraft will provide Pakistan with search surveillance, and control capability in support of maritime interdiction operations. These aircraft will also increase Pakistan's ability to support the U.S. Operation Enduring Freedom operations, and provide anti-ship and anti-submarine warfare capabilities; and a control capability over land against transnational terrorists and narcotics smugglers. The modernization will enhance the capabilities of the Pakistani Navy and support its regional influence and meet its legitimate self-defense needs. Pakistan will have no difficulty absorbing the AEW platform into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Northrop Grumman Corporation, St. Augustine, Florida and Lockheed-Martin, Greenville, South Carolina. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Classified Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Hawkeye 2000 Airborne Early Warning (AEW) suite installed in a P-3B contains a mixture of newer and older technologies. Some of the hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Secret. The classified information to be provided consists of that which is necessary for the operation, maintenance and intermediate level repair of the P-3B airframe and the Hawkeye 2000 system as well as other installed and related software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–9744 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–07 with attached transmittal, policy justification.

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

7 DEC 21

In reply refer to:
I-06/014798

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-07, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $500 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	**Senate**
Committee on International Relations	**Committee on Foreign Relation**
Committee on Armed Services	**Committee on Armed Services**
Committee on Appropriations	**Committee on Appropriations**

Transmittal No. 07-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$500 million
TOTAL	$500 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: a Foreign Military Sales Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA), for spare parts in support of Air Force fleet of F-15K, F-16C/D, F-4, F-5, A-37, T-37, and C-130 aircraft, and support vehicles and equipment in the inventory of the Republic of Korea.

(iv) Military Department: Air Force (KCR)

(v) Prior Related Cases, if any:
FMS case KCO - $83 million - 20Apr05
FMS case KCM - $82 million - 08Apr04
FMS case KCL - $130 million - 22Jan03
FMS case KCP - $78 million - 29Mar91

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 07 DEC 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea – Cooperative Logistics Supply Support Arrangement

The Government of Korea has requested a possible sale for a Foreign Military Sales Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA), for spare parts in support of the Air Force fleet of F-15K, F-16C/D, F-4, F-5, A-37, T-37 and C-130 aircraft, and support vehicles and equipment in the inventory of the Republic of Korea. The estimated cost is $500 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The uninterrupted supply of spare parts will allow Korea to keep its Air Force fleet at the highest state of readiness. Korea requires the sustainment support to maintain its current defensive capability and will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to U.S. forces. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–9745 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–08 with attached transmittal, policy justification, sensitivity of technology, and section 620C(d).

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

DEC 0 8 2006

In reply refer to:
I-06/015595

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-08, concerning the Departments of the Air Force's and Navy's proposed Letters(s) of Offer and Acceptance to Greece for defense articles and services estimated to cost $104 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification required by subsection 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USA
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**
4. **Section 620C(d)**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 53 million
Other	$ 51 million
TOTAL	$104 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE)

40 AGM-154-C Joint Standoff Weapons (JSOW);
100 GBU-31 Joint Direct Attack Munition (JDAM) Kits;
200 CBU-103 Wind Corrected Munitions Dispenser (WCMD) with FZU-39 Proximity Mechanisms;
100 Enhanced Paveway II with BLU-109; and
136 Enhanced Paveway II with MK-84 Warhead.

Non-MDE

Also included are JSOW training missiles, BRU-57/A Smart Rack Launchers, containers, system integration and testing, sensors, missile modifications, fuzes, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Air Force (YDU and YDV) and Navy (ANQ)

* as defined in Section 47(6) of the Arms Export Control Act.

(v) **Prior Related Cases, if any:**
FMS case SNY - $2 billion - 13Dec05

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress:** DEC 0 8 20[illegible]

POLICY JUSTIFICATION

Greece – F-16C/D Munitions

The Government of Greece has requested a possible sale of

Major Defense Equipment (MDE)

40 AGM-154-C Joint Standoff Weapons (JSOW);
100 GBU-31 Joint Direct Attack Munitions (JDAM) Kits;
200 CBU-103 Wind Corrected Munitions Dispenser (WCMD) with FZU-39 Proximity Mechanisms;
100 Enhanced Paveway II with BLU-109; and
136 Enhanced Paveway II with MK-84 Warhead.

Also included are JSOW training missiles, BRU-57/A Smart Rack Launchers, containers, system integration and testing, sensors, missile modifications, fuzes, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $104 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving Greece's military capabilities and furthering weapon system standardization and interoperability with U.S. forces.

The Government of Greece needs these capabilities for mutual defense, regional security, modernization, and interoperability with the U.S. and other North Atlantic Treaty Organization (NATO) countries. The modernization of Greece's F-16 fleet will increase the effectiveness of its contribution and capabilities to future NATO, coalition, and anti-terrorism operations. This will also enhance Greece's ability to patrol its extensive coastline and borders against future threats, and will contribute to the War on Terrorism and to NATO operations. This modernization will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, and as embodied in the Letter of Offer and Acceptance.

The proposed sale of the weapons will bring overall standoff performance up to existing regional baselines. Greece will have no difficulty absorbing these weapons into its armed forces.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be:

Lockheed Martin Missiles and Fire Control	**Orlando, Florida**
Raytheon Missile Systems	**Tucson, Arizona**
Boeing Integrated Defense Systems	**Arlington, Virginia**

Although generally the purchaser requires offsets, at this time there are no known offset agreements proposed in connection with this potential sale.

The number of U.S. Government personnel and contractor representatives required in Greece to support the program will be determined in joint negotiations.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Classified Annex
Item No. vii

(vii) **Sensitivity of Technology:**

1. The proposed F-16 weapons for the most part are Unclassified. The highest level of classified information required for release for training, operation and maintenance is Secret. The highest level that could be revealed through reverse engineering or testing of the end item, including weapons, is Secret.

2. The Greek F-16 weapons will include the following classified or sensitive components and weapons:

a. The Enhanced Paveway II modification improves the existing Paveway II Laser Guided Bomb (LGB) by adding an additional Global Positioning System (GPS) guidance unit to the current LGB Control system. The nomenclature for the 2000 lb variant (MK-84 or BLU-109) of this weapon is the EGBU-10. The EGBU allows the user to employ the weapon as a traditional LGB, using end game terminal laser guidance for precision strike during favorable weather conditions, day or night. With the added Global Positioning System (GPS) feature, the weapon can be employed during all weather conditions where laser employment may not be feasible for terminal guidance. An additional benefit to the GPS guidance is increased range (comparable to similar sized JDAM variants). The basic Paveway II is classified Confidential (Pulse Interval Modulation and doublet coding are not releasable); technical data for the EGBU is classified up to Secret (similar to JDAM).

b. The AGM-154C Joint Standoff Weapon (JSOW) is a low observable, 1000-lb. class, Global Positioning System/Inertial Navigation System guided, family of air-to-ground glide weapons. JSOW consists of a common airframe and avionics that provide a modular payload assembly. JSOW provides combat forces with all-weather, day/night, multiple-kills-per-pass, launch-and-leave, and standoff capabilities. JSOW-C contains a 500- lb unitary warhead. The JSOW All-Up Round (AUR) is Unclassified, major components and subsystems are

classified up to Secret; and technical data and other documentation are up to Secret.

c. The CBU-103 is a wide area smart munition designed to defeat fixed and moving, lightly armored land combat vehicles, personnel, and soft targets. CBU-103 consists of a Tactical Munition Dispenser (TMD) and 202 BLU-97 submunitions. These combined effects submunitions are multi-mode to allow use against light armor in a shaped-charge mode and against soft targets, such as wood structures or personnel in a blast/fragmentation mode. The CBU-103 incorporates the Wind Corrected Munition Dispenser (WCMD) tail kit. The tail kit inertially steers the munition from a known release point to precise target coordinates while compensating for launch transients, winds aloft, surface winds, and adverse weather. The CBU-103 AUR is Unclassified; major components and subsystems are classified up to Confidential; technical data/documentation are classified up to Secret.

d. The Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM AUR and all of its components are unclassified, technical data for JDAM is classified up to Secret.

3. If hardware or publications for any or all of the above items are lost to a technologically savvy or competent adversary, the information could provide the adversary insight into many critical U.S. capabilities. Information gained from exploitation of the hardware, publications and software could be used to develop countermeasures (electronic, infrared, or other types) as well as offensive and defensive counter-tactics. Information gained would also allow an adversary to exploit known vulnerabilities during combat. Additionally, material exploitation of these items would give engineering, manufacturing, and integration insight to foreign industrial competitors.

CERTIFICATION PURSUANT TO § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 145, I hereby certify that the sale of defense articles and defense services, to include for F-16C/D munitions and related elements of logistical support to the Government of Greece is consistent with the principles set forth in § 620C(b) of the Act.

This certification will be made part of the notification to Congress in accordance with § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Robert Joseph

Robert G. Joseph
Under Secretary of State
for Arms Control and
International Security

[FR Doc. 06–9746 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–09 with attached transmittal, policy justification.

Dated: December 11, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

DEC 07 2006

In reply refer to:
I-06/016334

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $463 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$223 million
Other	$240 million
TOTAL	$463 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

MDE

522 High Mobility Multipurpose Wheeled Vehicles (HMMWVs) or 276 Infantry Light Armored Vehicles (I-LAVs)
8 Heavy Tracked Recovery Vehicles -- either Brem Tracked Recovery and Repair or M578 Recovery Vehicles
6 40 Ton Trailer Lowboy -- either - M871 or Commercial
66 8 Ton Cargo Heavy Trucks -- either M900 series or M35 series or MK23 Medium Tactical Vehicles or Commercial Medium Trucks

NON-MDE

451 5 Kilowatt Generators
102 Ambulances
68 Used Sedans
44 Tank Pumping Units
136 Commercial Light Trucks
78 Motorcycles
78 New Sedans
36 Recovery Trucks -- either - Brem Wheeled Recovery Vehicles or Commercial
5 Commercial Car Carriers
578 Commercial Trailer 8 Ton Cargo
118 500 Gallon Water Tanks
488 1 Ton Commercial Trailers
668 4X4 Commercial Light Utility Trucks
14 4X4 Commercial SUV Commercial Trucks
23 Used Commercial Vans

* as defined in Section 47(6) of the Arms Export Control Act.

Also included: logistics support services/equipment for vehicles (Armored Gun Trucks; Light, Medium, and Heavy Vehicles; trailer; recovery vehicles; and ambulances) supply and maintenance support, measuring and hand tools for ground systems, technical support, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (AAI)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: DEC 07 2006

POLICY JUSTIFICATION

Iraq – Trucks, Vehicles, Trailers, and Support

The Government of Iraq has requested a possible sale of the following:

MDE

- **522 High Mobility Multipurpose Wheeled Vehicles (HMMWVs) or 276 Infantry Light Armored Vehicles (I-LAVs)**
- **8 Heavy Tracked Recovery Vehicles -- either Brem Tracked Recovery and Repair or M578 Recovery Vehicles**
- **6 40 Ton Trailer Lowboy -- either M871 or Commercial**
- **66 8 Ton Cargo Heavy Trucks -- either M900 series or M35 series or MK23 Medium Tactical Vehicles or Commercial Medium Trucks**

NON-MDE

- **451 5 Kilowatt Generators**
- **102 Ambulances**
- **68 Used Sedans**
- **44 Tank Pumping Units**
- **136 Commercial Light Trucks**
- **78 Motorcycles**
- **78 New Sedans**
- **36 Recovery Trucks either - Brem Wheeled Recovery Vehicles or Commercial**
- **5 Commercial Car Carriers**
- **578 Commercial Trailer 8 Ton Cargo**
- **118 500 Gallon Water Tanks**
- **488 1 Ton Commercial Trailers**
- **668 4X4 Commercial Light Utility Trucks**
- **14 4X4 Commercial SUV Commercial Trucks**
- **23 Used Commercial Vans**

Also included: logistics support services/equipment for vehicles (Armored Gun Trucks; Light, Medium, and Heavy Vehicles; trailer; recovery vehicles; and ambulances) supply and maintenance support, measuring and hand tools for ground systems, technical support, software upgrades, spare and repair parts, support equipment, publications and documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $463 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country.

This proposed sale supports the Iraqi Prime Minister al-Maliki Initiative to train and equip an additional 30,000 additional Iraqi soldiers to accelerate the transition of combat operations in Iraq from Coalition to Iraqi National Forces, and is funded by Iraqi national funds. This proposed sale is critical in that it helps the Iraqi Government overcome internal contracting shortcomings, make effective use of Calendar Year 2007 fiscal resources, and make substantial investments in its own defense. The proposed sale will fund the establishment of new brigade headquarters and new battalions to increase the Iraqi force structure.

The vehicles will advance the U. S. Government's efforts to transition combat operations to the Iraqi Armed Forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The contractors are unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives or contractor representatives to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–9747 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to introduce new members and conduct orientation training. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., 29 December 2006. Oral presentations by members of the public will be permitted only on Wednesday, 3 January 2007 from 4:30 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., 29 December 2006 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on 29 December 2006.

DATES: 3 January 2007 8:30 a.m.–5 p.m., 4 January 2007, 8:30 a.m.–5 p.m., 5 January 2007, 8:30 a.m.–5 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: CPT Arnalda Magloire, USA, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Wednesday 3, January 2007 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.
2006 Report Review.
Public Forum.

Thursday 4, January 2007 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.
2006 Report Review.

Friday 5, January 2007 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.
2006 Report Review.

Note: Exact order may vary.

Dated: December 12, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–9741 Filed 12–15–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 12, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Follow Up to the Even Start Classroom Literacy Interventions and Outcomes Study.

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,015;
Burden Hours: 967.

Abstract: The original CLIO study examined enhanced family literacy interventions in Even Start and impacts on parent and child outcomes during the intervention period. The CLIO follow-up study will explore whether effects from preschool are sustained through the early school years.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3215. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–21466 Filed 12–15–06; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL ENERGY REGULATORY COMMISSION

Combined Notice Of Filings #1

December 11, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–33–000.

Applicants: Madison Gas and Electric Company; MGE Energy, Inc.; MGE Power LLC; MGE Power Elm Road LLC.

Description: Madison Gas and Electric Company, et al., submit an Application for approval of Intra-Company transfer of Jurisdictional Facilities under Section 203 of the Federal Power Act.

Filed Date: 12/07/2006.

Accession Number: 20061211–0002.

Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–837–006; ER99–3151–007.

Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company.

Description: PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Co submit an erratum to their joint triennial market power report.

Filed Date: 12/06/2006.

Accession Number: 20061207–0178.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Docket Numbers: ER04–135–002.

Applicants: Eurus Combine Hills 1 LLC.

Description: Eurus Combine Hills 1 LLC submits its Triennial Market Power Analysis, pursuant to FERC's 12/4/03 Order.

Filed Date: 12/07/2006.

Accession Number: 20061211–0152.

Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER06–1458–003.

Applicants: Louisville Gas and Electric Company; Kentucky Utilities Company.

Description: E.ON US, LLC on behalf of Louisville Gas and Electric Co et al. submits a revised unexecuted Service Agreement for Network Integration Transmission Service.

Filed Date: 12/07/2006.

Accession Number: 20061211–0153.

Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–42–001.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits revisions to its 10/6/06 filing.

Filed Date: 12/06/2006.

Accession Number: 20061208–0195.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Docket Numbers: ER07–48–001.

Applicants: Verde Renewable Energy, Inc.

Description: Verde Renewable Energy, Inc. submits supplemental testimony.

Filed Date: 12/05/2006.

Accession Number: 20061205–5002.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–129–001.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits its answer to comments and protests of its 10/31/06 filing.

Filed Date: 12/06/2006.

Accession Number: 20061206–5046.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Docket Numbers: ER07–139–001.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Co submits a supplement to its 11/1/06 filing and a clean version of its First Revised Rate Schedule 147.

Filed Date: 12/05/2006.

Accession Number: 20061207–0012.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–146–001.

Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits a supplemental affidavit and verification of Kari Dude Wetter.
Filed Date: 12/01/2006.
Accession Number: 20061205–0004.
Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–262–001.
Applicants: Central Vermont Public Service Corporation.
Description: Central Vermont Public Service Corp submits Page 2 to its 11/30/06 filing of Transmission and Interconnection Service Agreement that was inadvertently omitted.
Filed Date: 12/04/2006.
Accession Number: 20061211–0155.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–292–000.
Applicants: Rockingham Power, L.L.C.
Description: Rockingham Power, LLC submits a notice of cancellation of its FERC Electric Tariff, Original Volume 1.
Filed Date: 12/05/2006.
Accession Number: 20061207–0013.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–293–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits proposed revisions to its Open Access Transmission Tariff.
Filed Date: 12/05/2006.
Accession Number: 20061207–0011.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–294–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 12/05/2006.
Accession Number: 20061207–0010.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–295–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits amendments to Schedule 12 of the Amended and Restated Operating Agreement to update the PJM Member List to include new members etc.
Filed Date: 12/05/2006.
Accession Number: 20061207–0009.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–296–000.
Applicants: Sierra Pacific Resources Operating Companies.
Description: Sierra Pacific Resources Operating Companies submits revisions to the FERC Electric Tariff Third Revised Volume 1 Open Access Transmission Tariff.
Filed Date: 12/06/2006.
Accession Number: 20061208–0194.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Docket Numbers: ER07–297–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Texas North Company submits revisions to the 8/2/05 generation interconnection agreement with FPL Energy Horse Hollow Wind, LP.
Filed Date: 12/07/2006.
Accession Number: 20061211–0159.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–298–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Company submits a notice of cancellation of FERC Rate Schedule 208, 211 and 226.
Filed Date: 12/07/2006.
Accession Number: 20061211–0158.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–299–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits two executed agreements, Interim Dual Fuel Agreement and Interim Black Start Agreement with California Independent System Operator Corp.
Filed Date: 12/07/2006.
Accession Number: 20061211–0157.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–300–000.
Applicants: Central Connecticut Energy, LLC.
Description: Central Connecticut Energy, LLC submits a petition for acceptance of Initial Rate Schedule, Waivers and Blanket Authority designated as Rate Schedule FERC 1.
Filed Date: 12/07/2006.
Accession Number: 20061211–0156.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–301–000.
Applicants: Wildorado Wind, LLC.
Description: Wildorado Wind, LLC submits a petition for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.
Filed Date: 12/07/2006.
Accession Number: 20061211–0160.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–302–000.
Applicants: CAM Energy LLC.
Description: CAM Energy, LLC submits a Notice of Cancellation of Market Based Rate Tariff of FERC Electric Rate Schedule 1, effective 12/31/06.
Filed Date: 12/07/2006.
Accession Number: 20061211–0161.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–303–000.
Applicants: LMP Capital, LLC.
Description: LMP Capital, LLC submits notice of cancellation of market-based rate tariff, Second Revised FERC Rate Schedule 1 etc, effective 12/31/06.
Filed Date: 12/07/2006.
Accession Number: 20061211–0162.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–304–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits an executed service agreement for Network Integration Transmission Service and an executed Network Operating Agreement with Oklahoma Gas and Electric Company.
Filed Date: 12/07/2006.
Accession Number: 20061211–0163.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Docket Numbers: ER07–305–000.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc submits Amendments to its FERC Electric Tariff, Original Volume 1.
Filed Date: 12/07/2006.
Accession Number: 20061211–0165.
Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 2006.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES07–9–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co submits an application to issue promissory notes and other evidence of unsecured short-term indebtednesss, from time to time, in aggregate principal amount of up to $800 million.
Filed Date: 11/29/2006.
Accession Number: 20061211–0164.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ES07–10–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Co submits an application for authorization, under section 204(A) to issue short-term debt in connection with The Great Plains Energy Money Pool.

Filed Date: 12/07/2006

Accession Number: 20061207–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, December 28, 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. E6–21430 Filed 12–15–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0421; FRL–8258–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal), EPA ICR Number 2046.03, OMB Control Number 2060–0542

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 17, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0421, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 *FR* 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0421, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal).

ICR Numbers: EPA ICR Number 2046.03, OMB Control Number 2060–0542.

ICR Status: This ICR is scheduled to expire on January 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury Emissions from Mercury Cell Chlor-Alkali plants were promulgated on December 19, 2003. These standards apply to existing facilities and new facilities that are part

of major source of hazardous air pollutant (HAP) emissions or a part of an area source of HAP emissions.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities.

Any owner/operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 809 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Mercury cell chlor-alkali plants.

Estimated Number of Respondents: 9.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 14,558.

Estimated Total Annual Cost: $1,351,382 which is comprised of zero annualized Capital Start Up costs, $74,000 annualized Operating and Maintenance (O&M), and $1,277,382 annual Labor Costs.

Changes in the Estimates: The number of respondents has not changed and there are no program changes. However, there are adjustments for an increase in labor hours and a decrease in costs as compared to the currently ''active'' ICR.

The adjustments result from the transition by the respondents from initial compliance with the standard to continuing compliance with the standard. The respondents achieved compliance over the past three years by conducting performance tests and purchasing pollution monitors which resulted in a small number of labor hours, but a relatively high capital/startup cost. After achieving compliance, performance tests are not required and capital/startup costs are low because pollution monitors are a one-time, initial expense. However, the cost to maintain the monitors is increased. The overall labor costs are higher because the pollution levels must be recorded and compliance reports sent to the appropriate regulatory authority.

Dated: December 8, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–21501 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[A–1–FRL–8257–9]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Bio Energy in Hopkinton NH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a modification to a state operating permit.

SUMMARY: This notice announces that the EPA Administrator has responded to a citizen petition requesting that EPA object to a Clean Air Act (''CAA'' or ''the Act'') title V operating permit modification issued by the New Hampshire Department of Environmental Services (''New Hampshire DES''). Specifically, the Administrator has granted in part and denied in part the petition submitted by the Residents Environmental Action Committee of Hopkinton, the Conservation Law Foundation, and the Physician Petitioners (collectively referred to herein as ''Petitioners'') requesting that the Administrator object to the permit modification issued to Bio Energy, LLC of Hopkinton, New Hampshire.

Pursuant to section 505(b)(2) of the Act, the petitioner may seek judicial review of any portion of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: Copies of the final order, petition, and other supporting information are available at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2003.htm.*

FOR FURTHER INFORMATION CONTACT: Ida E. McDonnell, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023, telephone number (617) 918–1653, fax number (617) 918–0653, e-mail *mcdonnell.ida@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA approves State and local permitting authorities to administer the operating permit program set forth in title V of the CAA, 42 U.S.C. 7661–7661f. New Hampshire DES administers a fully approved title V program. The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits not in compliance with the CAA, if EPA has not already done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise such issues during the comment period or the grounds for the issues arose after this period.

On October 21, 2003, the Petitioners submitted a petition requesting that EPA object to the issuance of the modified title V permit pursuant to section 505(b)(2) of the Act. The Petitioners raised four broad objections to the issuance of the modified permit:

(1) NH DES failed to provide adequate notice of the proposed permit modification to the public;

(2) NH DES failed to perform adequate air quality modeling analyses in its assessment of the proposed permit modification;

(3) The modified permit does not contain requirements applicable to ''incinerators'' under the CAA and federal and state regulations;

(4) The modified permit does not contain state hazardous waste management requirements.

On October 27, 2006, the Administrator issued an order partially granting and partially denying the petition. EPA grants the Petitioners' request that EPA object to the issuance of the modified permit for failure to provide adequate public notice of the proposed modification, and directs New Hampshire DES to reissue the draft modified permit for public comment. EPA denies the petition with respect to all other allegations. The order explains EPA's rationale for concluding that NH DES must reopen the draft modified permit for public comment. The order also explains EPA's rationale for denying the Petitioners' remaining claims.

Dated: December 8, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E6–21528 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8252–7]

Ecological Benefits Assessment Strategic Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a document titled, ''Ecological Benefits Assessment Strategic Plan'' (EPA–240–R–06–001), which was prepared by several Offices within the Agency. The Ecological Benefits Assessment Strategic Plan identifies and communicates key research and institutional actions that will improve EPA's ability to perform assessments of the ecological benefits of its environmental policies and decisions.

DATES: This document will be available on or about December 18, 2006.

ADDRESSES: The Ecological Benefits Assessment Strategic Plan is available for downloading via the Internet on EPA's National Center for Environmental Economics home page at *http://www.epa.gov/economics.*

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Wayne R. Munns, Jr., U.S. EPA/ORD National Health and Environmental Effects Research Laboratory, telephone: 401–782–3017; facsimile: 401–782–9683; or e-mail: *munns.wayne@epa.gov* or Dr. Sabrina Lovell, U.S. EPA/OPEI National Center for Environmental Economics, telephone: 202–566–2272; facsimile: 202–566–2339; or e-mail: *ise-lovell.sabrina@epa.gov.*

SUPPLEMENTARY INFORMATION: The Ecological Benefits Assessment Strategic Plan was developed to guide future research and institutional actions for improving ecological benefits assessments conducted by the Agency. The goal of an ecological benefits assessment is to estimate the benefits of an environmental policy, and when appropriate, estimate the value to society in monetary terms. This facilitates comparisons among policy alternatives to support decision-making. In practice however, ecological benefits are difficult to evaluate. Several factors contribute to this challenge, including limited understanding of: (1) The linkages among policies, stressors, and ecosystem services; (2) the linkages within and between ecosystems; and (3) the linkages between ecological and economic systems. EPA developed the Ecological Benefits Assessment Strategic Plan to improve our understanding of these linkages.

The Ecological Benefits Assessment Strategic Plan was authored by a cross-Agency workgroup under the general direction of a steering committee representing offices involved with ecological benefits assessment. The plan describes the challenges currently faced by EPA in conducting comprehensive and rigorous ecological benefits assessments. It encourages a model of interdisciplinary participation in benefits assessments and research, and it promotes collaboration among economists, ecologists, and other natural and social scientists to facilitate identification and characterization of the important ecological benefits of Agency actions. The Plan also identifies strategic actions focusing on: institutional arrangements that foster interdisciplinary analyses and provide analysts with appropriate guidance and tools; interdisciplinary research that directly supports ecological benefits assessments, including broad methodological development and specific studies about resources, stressors, localities, and policies; and coordination of efforts with external partners. The Ecological Benefits Assessment Strategic Plan also describes mechanisms to facilitate adaptive implementation of the strategic actions, including periodic adjustments to reflect advances in knowledge. A primary audience for the Ecological Benefits Assessment Strategic Plan is the managers and analysts in EPA Program Offices, and natural and social scientists across the Agency.

The Ecological Benefits Assessment Strategic Plan was subjected to broad Agency review and external peer review by the Committee on Valuing the Protection of Ecological Systems and Services of EPA's Science Advisory Board. The final plan reflects the comments of both internal and external review.

Dated: December 12, 2006.

Nathalie B. Simon,

Acting Director, National Center for Environmental Economics.

[FR Doc. E6–21543 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Watch List Redress Request for Public Comment

AGENCY: Privacy and Civil Liberties Oversight Board, The White House.

ACTION: Request for public comment.

SUMMARY: The Privacy and Civil Liberties Oversight Board, established by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, December 17, 2004), advises the President and other senior executive branch officials to ensure that concerns about privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. This includes advising on whether adequate guidelines, supervision, and oversight exist to protect the important legal rights of all Americans.

Processes currently exist to redress errors and ameliorate false positives associated with the use of watch list data for aviation and other security screening purposes. Efforts to address, enhance, conform, and potentially streamline these procedures are ongoing throughout the Federal Government, and the Board is assisting relevant executive branch departments and agencies in those efforts. The Board seeks any comments, suggestions or other information from members of the

public who have knowledge on this subject. Comments may be forwarded via the Board's Web site at *http://www.PrivacyBoard.gov.* While there is no specific deadline for the submission, the Board is interested in receiving public comments soon. The Board is unable to respond to individual comments and cannot assist individual redress requests. Information gathered will be used solely to assist the Board in understanding the effects of policy and program operations on Americans' civil liberties.

DATES: While there is no specific deadline for the submission, the Board is interested in receiving public comments soon.

ADDRESSES: Comments can be e-mailed to: *PrivacyBoard@who.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Seth Wood, 202–456–1240.

SUPPLEMENTARY INFORMATION: Homeland Security Presidential Directive 6, dated September 16, 2003, requires that the Attorney General establish an organization to consolidate the Federal Government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. Pursuant to this directive, the Secretaries of State, Defense, the Treasury, and Homeland Security along with the Attorney General and the Director of Central Intelligence established by a memorandum of understanding the Terrorist Screening Center (TSC). Under TSC's supervision, the Terrorist Screening Database (TSDB) was created to compile the most thorough, accurate and current information possible about individuals known or suspected to be or to have been engaged in conduct advancing terrorism. This database consolidates the Federal Government's terrorism screening databases into a single integrated database and provides for its appropriate and lawful use in screening processes administered by Federal, State, local, and tribal authorities.

Authority: Pub. L. 108–408 Sec. 1061 *et seq.* (Dec. 17, 2004).

Dated: December 11, 2006.

Mark Robbins,

Executive Director.

[FR Doc. E6–21465 Filed 12–15–06; 8:45 am]

BILLING CODE 3195–W7–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, December 20, 2006

December 13, 2006.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 20, 2006, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment (MM Docket No. 92–266). *Summary:* The Commission will consider a Report on cable industry prices.
2	Media	*Title:* Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 05–311). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking regarding Section 621(a)(1)'s directive that local franchising authorities not unreasonably refuse to award competitive franchises.
3	Public Safety and Homeland Security	*Title:* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010 (WT Docket No. 96–86). *Summary:* The Commission will consider a Ninth Notice of Proposed Rulemaking concerning public safety communications in the 700 MHz band.
4	Consumer & Governmental Affairs	*Title:* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service (CG Docket No. 03–123). *Summary:* The Commission will consider a Declaratory Ruling regarding whether Internet Protocol (IP) captioned telephone service is a form of telecommunications relay service (TRS) compensable from the Interstate TRS Fund.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible formats; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be webcast with open captioning. Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 5 days advance notice. Include a description of the accommodation you will need including as much detail as you can. In addition, include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–9771 Filed 12–14–06; 2:23 pm]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through April 30, 2010 the current OMB clearance for information collection requirements contained in its Contact Lens Rule (''Rule''). That clearance expires on April 30, 2007.

DATES: Comments must be filed by February 16, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Contact Lens Rule: FTC File No. [R411002],'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H–135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/ContactLensRule*. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ContactLensRule* Weblink. If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Keith Fentonmiller, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2775.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''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'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 C.F.R. 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before February 16, 2007.

The Contact Lens Rule (''Rule''), 16 CFR Part 315, was promulgated by the FTC pursuant to the Fairness to Contact Lens Consumers Act (''FCLCA''), Pub. L. No. 108–164 (December 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon the completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either: (a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Commission staff estimates the paperwork burden of the FCLCA and Rule based on its knowledge of the eye care industry. Staff believes there will

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

be some burden on individual prescribers to provide contact lens prescriptions, although it involves merely writing a few items of information onto a slip of paper and handing it to the patient, or perhaps mailing or faxing it to a third party. In addition, there will be some recordkeeping burden on contact lens sellers—including retaining prescriptions or records of ''direct communications''—pertaining to each sale of contact lenses to consumers who received their original prescription from a third party prescriber.

Burden statement:

Estimated total annual hours burden: 950,000 hours (rounded to the nearest thousand).

In its 2003 PRA-related **Federal Register** Notice and corresponding submission to OMB, FTC staff estimated that the annual paperwork burden for the various disclosure and recordkeeping requirements under the FCLCA and then-proposed Rule would be approximately 600,000 disclosure hours for contact lens prescribers and approximately 300,000 recordkeeping hours for contact lens sellers, a combined industry total of 900,000 hours.

No provisions in the Rule have been amended since staff's prior submission to OMB. Thus, the Rule's disclosure and recordkeeping requirements remain the same. However, the number of contact lens wearers in the United States has increased to approximately 38 million.[2] Thus, assuming an annual contact lens exam for each contact lens wearer, 38 million people would receive a copy of their prescription each year under the Rule. At an estimated one minute per prescription, the annual time spent by prescribers complying with the disclosure requirement would be a maximum of 633,333 hours. [(38 million × 1 minute)/60 minutes = 633,333 hours]

As required by the FCLCA, the Rule also imposes two recordkeeping requirements. First, prescribers must document the specific medical reasons for setting a contact lens prescription expiration date shorter than the one year minimum established by the FCLCA. This burden is likely to be nil because the requirement applies only in cases when the prescriber invokes the medical judgment exception, which is expected to occur infrequently, and prescribers are likely to record this information in the ordinary course of business as part of their patients' medical records. The OMB regulation that implements the PRA defines ''burden'' to exclude any effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(B)(3)(2).

Second, the Rule requires contact lens sellers to maintain certain documents relating to contact lens sales. As noted above, a seller may sell contact lenses only in accordance with a prescription that the seller either (a) Has received from the patient or prescriber, or (b) has verified through direct communication with the prescriber. The FCLCA requires sellers to retain prescriptions and records of communications with prescribers relating to prescription verification for three years.

Staff believes that the burden of complying with this requirement is low. Essentially, sellers who seek verification of contact lens prescriptions must retain one or two records for each contact lens sale: Either the relevant prescription itself, or the verification request and any response from the prescriber. Staff estimates that such recordkeeping will entail a maximum of five minutes per sale, including time spent preparing a file and actually filing the record(s).

Staff also believes that, based on its knowledge of the industry, this burden will fall primarily on mail order and Internet-based sellers of contact lenses, as they are the entities in the industry most reliant on obtaining or verifying contact lens prescriptions. Based on conversations with the industry, staff estimates that these entities currently account for approximately 10% of sales in the contact lens market[3] and, by extension, that approximately 3.8 million consumers—10% of the 38 million contact lens wearers in the United States—purchase their lenses from them.

At an estimated five minutes per sale to each of 3.8 million consumers, contact lens sellers will spend a total of 316,667 burden hours complying with the recordkeeping requirement. [(3.8 million × 5 minutes)/60 minutes = 316,667 hours] This estimate likely overstates the actual burden, however, because it includes the time spent by sellers who already keep records pertaining to contact lens sales in the ordinary course of business. In addition, the estimate may overstate the time spent by sellers to the extent that records (*e.g.*, verification requests) are generated and stored automatically and electronically, which staff understands is the case for some larger online sellers.

Estimated labor costs: $32,819,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff estimates, based on its knowledge of the industry, that optometrists account for approximately 75% of prescribers. Thus, for simplicity, staff will focus on their average hourly wage in estimating prescribers' labor cost burden.

According to Bureau of Labor Statistics from May 2005, salaried optometrists earn an average wage of $45.91 per hour and clerical personnel earn an average of $11.82 per hour.[4] With these categories of personnel, respectively, likely to perform the brunt of the disclosure and recordkeeping aspects of the Rule, estimated total labor cost attributable to the Rule would be approximately $32.8 million. [($45.91 × 633,333 hours) + ($11.82 × 316,667 hours) = $32,819,322] .

The contact lens market is a multi-billion dollar market; one recent survey estimates that contact lens sales totaled $2.35 billion from June 2005 to June 2006.[5] Thus, the total labor cost burden estimate of $32.8 million represents approximately 1% of the overall market.

Estimated annual non-labor cost burden: $0 or minimal.

Staff believes that the Rule's disclosure and recordkeeping requirements impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.*, prescription pads, patients' medical charts, facsimile machines and paper, telephones, and recordkeeping facilities such as filing cabinets or other storage).

William Blumenthal,

General Counsel.

[FR Doc. E6–21514 Filed 12–15–06; 8:45 am]

BILLING CODE 6750–01–P

[2] *See* Statistics on Eyeglasses and Contact Lenses,'' All About Vision, August, 2006, available at *http://www.allaboutvision.com/resources/statistics-eyewear.htm*. *See also* Barr, J. ''2004 Annual Report,'' Contact Lens Spectrum, Jan. 2005, available at *http://www.clspectrum.com/article.aspx?article=12733*.

[3] The FTC's February 2005 study, ''The Strength of Competition in the Rx Sale of Contact Lenses: An FTC Study,'' cites various data that, averaged together, suggests that approximately 10% of contact lens sales are by online and mail-order sellers. The report is available online at *http://www.ftc.gov/reports/contactlens/050214contactlensrpt.pdf*.

[4] The Bureau of Labor Statistics are available online at: *http://www.bls.gov/oes/current/oes_nat.htm#b43–0000*.

[5] The Vision Council of America and Jobson Optical Research have conducted large scale continuous consumer research under the name VisionWatch, which reports on vision care industry and is available at *http://visionsite.org/s_vision/doc.asp?CID=791&DID=2524*.

FEDERAL TRADE COMMISSION

[File No. 061 0220, Docket No. C–4180]

Johnson & Johnson and Pfizer Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 11, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Johnson & Johnson and Pfizer, File No. 061 0220,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Michael R. Moiseyev, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3106.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 12, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/12/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

I. Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Johnson & Johnson (''J&J'') and Pfizer Inc. (''Pfizer''), which is designed to remedy the anticompetitive effects that would otherwise result from J&J's proposed acquisition of Pfizer Consumer Healthcare. Under the terms of the proposed Consent Agreement, the parties will be required to divest: (1) Pfizer's Zantac® H–2 blocker business; (2) Pfizer's Cortizone® hydrocortisone anti-itch business; (3) Pfizer's Unisom® nighttime sleep-aid business; and (4) J&J's Balmex® diaper rash treatment business.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to a Stock and Asset Purchase Agreement dated June 25, 2006, J&J proposes to acquire certain voting securities and assets comprising Pfizer's Consumer Healthcare business in a transaction valued at approximately $16.6 billion (''Proposed Acquisition''). The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the United States markets for the research, development, manufacture, distribution, and sale of the following over-the-counter (''OTC'') medications: (1) H–2 blockers, (2) hydrocortisone anti-itch products, (3) nighttime sleep-aids, and (4) diaper rash treatments (the ''Products'').

II. The Parties

J&J is one of the largest and most diversified suppliers of branded consumer health care products in the world, as well as a manufacturer and supplier of pharmaceuticals, medical devices, and diagnostic products. In 2005, J&J had worldwide net sales of $50.5 billion. The more than 230 J&J operating companies employ approximately 116,000 individuals in 57 countries and sell products throughout the world. In the consumer products segment, J&J manufactures and markets a broad range of OTC medications, women's health products, nutritional products, oral care products, and products used for baby and skin care. With its Pepcid® line of products, J&J is the leading supplier of OTC H–2 blocker acid relief products in the United States. J&J is also a leading supplier of OTC hydrocortisone-based anti-itch medications under its Cortaid® and Aveeno® brands and of OTC nighttime sleep-aids under its Simply Sleep® brand. J&J is also a leading supplier of products for treating diaper

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

rash under its Balmex®, Aveeno®, and Johnson's® No More Rash® brands.

Pfizer is one of the largest pharmaceutical companies in the world. Pfizer researches, develops, manufactures, and markets leading prescription medicines for humans and animals, as well as consumer healthcare products. In 2005, Pfizer had worldwide net sales of $51.3 billion. Pfizer Consumer Healthcare, which J&J proposes to acquire, is a global business that researches, develops, manufactures, and markets many well-known brands of OTC medications and oral care products to consumers throughout the world. In 2005, Pfizer Consumer Healthcare generated net sales of $3.9 billion. Like J&J, Pfizer is one of the leading suppliers of OTC H–2 blocker acid relief products in the United States with its Zantac® product line. Pfizer is also the leading supplier in the United States of OTC hydrocortisone anti-itch medications under its Cortizone® brand, OTC nighttime sleep-aids under its Unisom® brand, and diaper rash products under its Desitin® brand.

III. OTC H–2 Blockers

One of the relevant markets in which to assess the competitive effects of the Proposed Acquisition is the United States market for OTC H–2 blockers. H_2-receptor antagonists, more commonly known as ''H–2 blockers,'' are a class of drugs for the prevention and relief of heartburn associated with acid indigestion. Originally a prescription medicine, H–2 blocker products were later approved by the FDA for sale without a prescription. H–2 blockers work by blocking histamine from stimulating the gastric parietal cells, thereby suppressing secretion of stomach acid. Although there are other OTC acid relief medications, including antacids and proton pump inhibitors (''PPIs''), H–2 blockers are sufficiently different from these other products that they are not close economic substitutes. Currently, Prilosec OTC® is the only PPI available without a prescription. OTC PPIs are not a close substitute for OTC H–2 blockers because they are indicated for the relief of chronic heartburn and not for immediate relief of occasional heartburn or indigestion. Antacid tablets and liquids are not a close substitute for OTC H–2 blockers because they are less efficacious and do not provide as long relief as H–2 blockers.

The United States market for OTC H–2 blockers is highly concentrated. Today, this approximately $360 million market comprises four branded products—J&J's Pepcid®, Pfizer's Zantac®, GlaxoSmithKline's Tagamet®, and Reliant Pharmaceutical's Axid AR®—and private label versions of some Pepcid®, Zantac®, and Tagamet® products. J&J and Pfizer are the two largest suppliers in this market.

The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the two leading suppliers of OTC H–2 blockers in the United States. Branded manufacturers of these products spend significant sums of money annually to create and maintain distinct brand equities. As a result of the acquisition, J&J would account for over 70% of the sales of OTC H–2 blocker in the United States. Here the evidence confirmed that Pepcid® and Zantac® are close substitutes. Consumers have benefitted from the competition between Pfizer and J&J on pricing, discounts, promotional trade spending, and product innovation. Thus, unremedied, the Proposed Acquisition likely would cause significant anticompetitive harm by enabling J&J to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

IV. OTC Hydrocortisone Anti-Itch Products

A second relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for OTC hydrocortisone anti-itch products. Hydrocortisone is a corticosteroid that reduces or inhibits the actions of chemicals in the body that cause inflammation, redness and swelling. OTC products containing up to 1.0 percent hydrocortisone are approved by the FDA for topical application to treat minor skin irritations, itching, and rashes due to various conditions, including dermatitis, eczema, and psoriasis. Although OTC topical anesthetic and antihistamine products are available to treat minor skin irritations, itching and rashes, these products are not close economic substitutes for hydrocortisone anti-itch products because they work differently than hydrocortisone products. While these products may relieve symptoms of pain or itching, unlike hydrocortisone, they do nothing to cure or prevent the actual underlying skin conditions such as eczema or psoriasis.

The United States market for OTC hydrocortisone anti-itch products is highly concentrated. There are only two significant branded competitors in this market: (1) Pfizer, with its Cortizone® products and (2) J&J, with its Cortaid® products. In addition, private label hydrocortisone anti-itch products account for a significant share of the market. Pfizer's Cortizone® is the market leader among branded products, while J&J's Cortaid® is the second leading branded product line. In 2005, sales of OTC hydrocortisone anti-itch products in the United States totaled approximately $120 million.

The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the two leading suppliers of OTC hydrocortisone anti-itch products in the United States. As a result of the acquisition, J&J would account for over 55% of the sales of OTC hydrocortisone anti-itch products in the United States. Evidence indicates that the parties' products compete on many levels, including pricing, shelf-space, and advertising. By eliminating competition between the two leading branded suppliers, the Proposed Acquisition would likely result in higher prices, less promotional spending, and reduced product innovation. Although private label OTC hydrocortisone anti-itch products account for a significant share of the market, private label products are less close substitutes for a significant share of customers, and it is unlikely that private label products would be able to reposition themselves to replace the competition between J&J and Pfizer, the two largest branded competitors in this market, that would be lost through the Proposed Acquisition. Thus, unremedied, the Proposed Acquisition likely would cause significant anticompetitive harm by enabling J&J to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

V. OTC Nighttime Sleep-Aids

A third relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for OTC nighttime sleep-aids. OTC nighttime sleep-aids are non-prescription drugs that are indicated solely for the relief of occasional sleeplessness by individuals who have difficulty falling asleep. The active ingredient in the best-selling sleep-aids is a sedating antihistamine, such as diphenhydramine hydrochloride or doxylamine succinate. Prescription sleep-aids, such as zolpidem (Ambien®), zaleplon (Sonata®) or eszopiclone (Lunesta®), are not close economic substitutes for OTC nighttime sleep-aids. Consumers of OTC nighttime sleep-aids likely would not switch to prescription sleep-aids in response to a 5 to 10 percent increase

in the price of OTC nighttime sleep-aids because of the higher prices of prescription sleep-aids (particularly for those without insurance coverage) and the inconvenience and cost of a doctor's visit (including delays for consumers who have exhausted their prescriptions).

The United States market for OTC nighttime sleep-aids is highly concentrated. J&J and Pfizer are the two largest suppliers of branded OTC nighttime sleep-aids in the United States. Pfizer is the market leader with its Unisom® products, while J&J is the second leading supplier with its Simply Sleep® products. In 2005, sales of OTC nighttime sleep-aids in the United States totaled approximately $100 million.

The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the two leading suppliers of OTC nighttime sleep-aids in the United States. As a result of the acquisition, J&J would account for over 45% of the sales of OTC nighttime sleep-aids in the United States. In addition, the evidence confirmed that Unisom® and Simply Sleep® are close substitutes and have similar efficacy, brand equity, and brand positioning. Consumers have benefitted from the competition between Pfizer and J&J on pricing, discounts, promotional trade spending, and product innovation. Although private label OTC nighttime sleep-aids account for a significant share of the market, private label products are less close substitutes for a significant share of customers, and it is unlikely that private label products would reposition themselves to replace the competition between J&J and Pfizer, the two largest branded competitors in this market, that would be lost through the Proposed Acquisition. Thus, unremedied, the Proposed Acquisition likely would cause significant anticompetitive harm by enabling J&J to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

VI. OTC Diaper Rash Treatments

A fourth relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for OTC diaper rash treatment products. Consumers use diaper rash creams or ointments to treat and prevent diaper rash and to protect sore or chafed skin from moisture or irritation. Most diaper rash products fall into one of two categories: (1) Creams or pastes containing the active ingredient zinc oxide and (2) ointments containing the active ingredient petrolatum. There are no close substitutes for OTC diaper rash creams or ointments.

The United States market for OTC diaper rash treatments is highly concentrated. Today, three large, established brands—Pfizer's Desitin®, Schering-Plough's A&D®, and J&J's Balmex®—account for over 70% of sales in this approximately $84 million market. The rest of the market is composed of several small, niche brands. Private label products account for a negligible share of the market. Pfizer is the largest supplier of OTC diaper rash treatment products with its Desitin® line of products, while J&J is the third largest supplier with its Balmex®, Aveeno®, and Johnson's® No More Rash® brands. Neither the Aveeno® nor the Johnson's® No More Rash® brands, however, account for a significant share of sales in this market.

The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the two leading suppliers of OTC diaper rash treatment products in the United States. As a result of the acquisition, J&J would account for nearly 50% of the sales of OTC diaper rash treatment products in the United States. Although there are additional suppliers of branded OTC diaper rash treatment products in this market, the evidence confirmed that Desitin® and Balmex® are perceived to be close substitutes by consumers, and evidence suggests that they are similar in formulation, texture, and appearance. Consumers have benefitted from the competition between Pfizer and J&J on pricing, discounts, promotional trade spending, and product innovation. Thus, unremedied, the Proposed Acquisition likely would cause significant anticompetitive harm by enabling J&J to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

VII. Entry

Entry into the markets for the research, development, manufacture, and sale of the Products is unlikely to deter or counteract the anticompetitive effects of the Proposed Acquisition. Each of the relevant markets is relatively mature and dominated by a few well-established brand names. In such a market environment, a new entrant faces a difficult task of convincing retailers to carry its product, especially if the new product does not have a competitive advantage based on differentiated claims or efficacy. Developing and obtaining Food and Drug Administration approval for the manufacture and sale of a novel, differentiated medication takes at least two (2) years. Once product development is complete, a new entrant must invest extremely high sunk costs on marketing, advertising, and promotional allowances to create and maintain consumer awareness and acceptance of the new product. Given the sales opportunities available in the markets for the Products, coupled with the significant investment necessary to market and sell the Products, it is unlikely that a new competitor will enter any of the markets for the Products.

VIII. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant markets discussed above. The Consent Agreement preserves competition in these markets by requiring the divestiture of: (1) All assets related to the Zantac® H–2 blockers to Boehringer Ingelheim Pharmaceuticals, Inc. (''Boehringer Ingelheim Pharmaceuticals''); and (2) all assets relating to Cortizone® hydrocortisone anti-itch products, all assets relating to Unisom® sleep-aids, and all assets relating to Balmex® diaper rash treatment products to Chattem, Inc. (''Chattem'') (the ''Divested Assets''). These divestitures must take place within fifteen days after the closing of the Proposed Acquisition or January 2, 2007, whichever is later.

The Commission is satisfied that Boehringer Ingelheim Pharmaceuticals is a well-qualified acquirer of the Zantac business. Boehringer Ingelheim Pharmaceuticals engages in the research, development, sale and marketing of branded pharmaceuticals and OTC drugs, including well known brands such as Dulcolax®, Spiriva®, Atrovent®, Combivent®, Flomax® and Mirapex®. Boehringer Ingelheim Pharmaceuticals is part of the Boehringer Ingelheim Group, which is a leading worldwide manufacturer of pharmaceuticals for humans and animals and the eighth largest manufacturer and marketer of OTC health care products worldwide. Boehringer Ingelheim Pharmaceutical's Consumer Health Care business has an existing sales and distribution network that sells products through the same channels as Zantac® is currently sold, and has a strong record of integrating product acquisitions successfully.

The proposed Consent Agreement contains several provisions designed to ensure the successful divestiture of the

Zantac® business to Boehringer Ingelheim Pharmaceuticals by requiring that: (1) J&J divest to Boehringer Ingelheim Pharmaceuticals all assets relating to Pfizer's Zantac® line of products, including all research and development, intellectual property, and customer and supply contracts; (2) J&J and Pfizer take steps to ensure that confidential business information relating to Zantac® will not be obtained or used by J&J; (3) Boehringer Ingelheim Pharmaceuticals have the opportunity to enter into employment contracts with certain key individuals who have experience relating to Zantac®; and (4) certain management employees of Pfizer who were substantially involved in the research, development or marketing of Zantac® be precluded from working on competitive H–2 blocker products at J&J for a period of two years.[2]

The Commission is also satisfied that Chattem is a well-qualified acquirer of the Cortisone®, Unisom®, and Balmex® businesses. Chattem is a leading manufacturer and marketer of a broad portfolio of branded OTC healthcare products, toiletries, and dietary supplements, including brands such as Icy Hot®, Gold Bond®, Selsun blue®, Garlique®, Pamprin®, and BullFrog®. Chattem's products are among the market leaders in their respective categories across food, drug and mass merchandisers. Chattem has an experienced sales force with existing relationships with major retailers and has a strong record of integrating prior product acquisitions successfully.

The proposed Consent Agreement contains several provisions designed to ensure the successful divestiture of the Cortisone®, Unisom®, and Balmex® businesses to Chattem by requiring that: (1) J&J divest to Chattem all assets relating to the Cortisone®, Unisom®, and Balmex® line of products, including all research and development, intellectual property, and customer and supply contracts; (2) J&J and Pfizer take steps to ensure that confidential business information relating to Cortisone®, Unisom®, and Balmex® will not be obtained or used by J&J; and (3) Chattem have the opportunity to enter into employment contracts with certain key individuals who have experience relating to Cortisone®, Unisom®, and Balmex®.

The Order to Maintain Assets that is included in the proposed Consent Agreement requires that J&J and Pfizer maintain the viability of the Divested Assets for the brief transition period between the time the Commission approves the proposed Order and when the divestitures take place, which will not be later than January 2, 2007. Even though such a period is relatively short, maintenance of current supply, advertising and promotional levels and activities at all times prior to divestiture is of paramount importance. The proposed Consent Agreement incorporates this plan in the Order to Maintain Assets, detailing requirements for the assets that must be held separate, services that may be shared with the ongoing business, and the employee positions that are necessary for the held separate business.

The Commission has appointed David Painter of LECG as Interim Monitor to oversee the transfer of assets, the establishment of appropriate firewalls to prevent the transfer or use of confidential business information and to ensure that J&J and Pfizer comply with all other provisions of the Order. To ensure that the Commission remains informed about the status of the Divested Assets and their transfer, the proposed Consent Agreement requires J&J and Pfizer to file reports with the Commission periodically until the divestitures are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission with Commissioners Harbour, Kovacic and Rosch recused.

Donald S. Clark,

Secretary.

[FR Doc. E6–21519 Filed 12–15–06; 8:45 am]

BILLING CODE 6750–01–P

[2] This firewall will prevent J&J from taking competitive advantage of know-how, product development, marketing, and sales plans relating to Zantac®.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Pilot Project for a National Monitoring System for Major Adverse Effects of Medication Use During Pregnancy and Lactation—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection is based on the following components of the Public Health Service Act: (1) Act 42 U.S.C. 241, Section 301, which authorizes ''research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man.'' (2) 42 U.S.C. 247b–4, Section 317 C, which authorizes the activities of the National Center on Birth Defects and Developmental Disabilities. This section was created by Public Law 106–310, also known as ''the Children's Health Act of 2000.'' This portion of the code has also been amended by Public Law 108–154, which is also known as the ''Birth Defects and Developmental Disabilities Prevention Act of 2003''.

The use of a number of medications during pregnancy is known to be associated with serious adverse effects in children. However, because pregnant and lactating women are traditionally excluded from clinical trials, and because premarketing animal studies do not necessarily predict the experience of humans, little information is available about the safety of most prescription

medications during pregnancy and lactation at the time they are marketed. Nevertheless, many women inadvertently use medications early in gestation before realizing they are pregnant, and many maternal conditions require treatment during pregnancy and breastfeeding to safeguard the health of both mother and infant. Currently, the United States does not have a comprehensive early warning system for major adverse pregnancy or infant outcomes related to medication exposures.

Teratology Information Services (TIS) utilize trained specialists to provide free phone consultation, risk assessment, and counseling about exposures during pregnancy and breastfeeding—including medications—to women and healthcare providers. Altogether, they respond to approximately 70,000–100,000 inquiries each year in the United States and Canada. Because they have direct contact with pregnant and breastfeeding women, TIS are in a unique position to monitor the adverse effects of medication exposures during pregnancy and lactation. The objective of this project is to conduct a pilot study to assess whether TIS in the United States can serve as an effective monitoring and early warning system for major adverse effects on (1) pregnancy outcomes (e.g., live birth, stillbirth, premature birth, low birth weight, etc.) and (2) maternal and infant health. The project will assess the willingness of pregnant and breastfeeding women who contact a TIS about medication exposure to participate in and complete a follow-up study; whether these women are similar in demographic characteristics to the U.S. population of child-bearing age women; the specificity and completeness of the information obtained from such a study about adverse pregnancy outcomes, and maternal and infant health; and the amount of time required to conduct the follow-up.

Within a continuous six-month period, three individual TIS will recruit all women who contact their service (approximately 250 enrollees per TIS) who have used any prescription or over-the-counter medication during pregnancy or while breastfeeding to participate in a follow-up study. Informed consent to participate will be obtained from each woman by telephone. For each pregnant woman who agrees to participate, the TIS will conduct 4 telephone interviews:(1) At enrollment; (2) during the third trimester of pregnancy; (3) approximately one month after delivery; and (4) when the infant is about 3 months old. For each breastfeeding woman who agrees to participate, the TIS will conduct 3 telephone interviews:(1) At enrollment; (2) approximately one month after enrollment; and (3) 3 months after enrollment, if the woman is still taking medication and still breastfeeding. The interviews will assess maternal and fetal health throughout pregnancy, and maternal and infant health at delivery, during the newborn and early infancy period, and while breastfeeding, and correlate these outcomes with medication exposure during pregnancy and while breastfeeding. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Prenatal exposure group alone	338	4	20/60	451
Lactation exposure group alone	74	3	20/60	74
Prenatal exposure group and lactation exposure group (pregnant women who subsequently breastfeed)	338	4	30/60	676
Total	750			1,201

Dated: December 12, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21527 Filed 12–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0246]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Manufactured Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 17, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Manufactured Food Regulatory Program Standards

The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Manufactured Food Regulatory Program Standards: (draft program standards). The draft program standards, which establish a uniform foundation for the design and management of State programs responsible for regulation of plants that manufacture, process, pack, or hold foods in the United States, are being distributed for comment purposed only. This document is neither final nor is it intended for implementation.

The elements of the draft program standards are intended to ensure that the States have the best practices of a high-quality regulatory program to use for self-assessment and continuous improvement and innovation. The ten standards describe the critical elements

of a regulatory program designed to protect the public from foodborne illness and injury. These elements include the State program's regulatory foundation, staff training, inspection, quality assurance, food defense preparedness and response, foodborne illness and incident investigation, enforcement, education and outreach, resource management, laboratory resources, and program assessment. Each standard has corresponding self-assessment worksheets, and certain standards have supplemental worksheets and forms that will assist State programs in determining their level of conformance with the standard.

The State program is not required to use the forms and worksheets contained herein; however, alternate forms should be equivalent to the forms and worksheets in the draft program standards. These draft program standards do not address the performance appraisal processes that a State agency may use to evaluate individual employee performance. When finalized, FDA will use the program standards as a tool to improve contracts with State agencies. The program standards will assist both FDA and the States in fulfilling their regulatory obligations.

The implementation of the program standards will be negotiated as an option for payment under the State contract. States that are awarded this option will receive up to $5,000 to perform the self assessment and to maintain an operational plan for self improvement. FDA recognizes that full use and implementation of the program standards by those States will take several years. Such States will, however, be expected to implement improvement plans to demonstrate that their programs are moving toward full implementation. Those self assessments and improvement plans will be audited as a part of the program oversight of the FDA state contracts.

The goal is to enhance food safety by establishing a uniform basis for measuring and improving the performance of manufactured food regulatory programs in the United States. The development and implementation of these program standards will help Federal and State programs better direct their regulatory activities at reducing foodborne illness hazards in plants that manufacture, process, pack, or hold foods. Consequently, the safety and security of the food supply in the United States will improve.

In the **Federal Register** of July 20, 2006 (FR 71 41221), FDA published a 60-day notice requesting public comment on the information collection provisions in the draft program standards. FDA received a number of comments on the draft program standards; however, only two letters of comment included comments regarding the information collection provisions. An additional letter supported the comments provided in one of the two letters of comment.

Two comments stated that the record collection required to meet the standards is cumbersome and voluminous. FDA does not agree with the comments about the record collection. The record collection requested by the program standards is not outside the information collected and reported by an efficient and effective regulatory program. The program standards capture the State program's accomplishments in standardized forms.

FDA reminds you that in the draft program standards FDA anticipates full implementation of the program standards will take several years so that State programs can integrate the program standards into its own quality assurance programs. FDA estimates that the majority of the State agencies have quality assurance programs and only a minimum amount of time would be necessary to revise or update them to comply with the program standards. Ultimately, the program standards will assist both FDA and the States in fulfilling their regulatory obligations and developing strategies that will continuously improve the State programs.

Furthermore, the total estimated burden under the draft program standards did not consider the use of forms in Portable Document Format (PDF) that will be filled and submitted electronically. The PDF fill-in forms will reduce the estimated burden for both the reporting and recordkeeping burdens and should be accessible when the program standards are negotiated as an option for payment under the State contracts.

One comment requested that alternative mechanisms to document compliance with the standards be permitted. FDA further reminds you that in the draft program standards we provide for using alternate forms.

In revising the draft program standards, FDA will consider the general comments on draft program standards.

Because State agencies already keep records of the usual and customary activities required by their inspection programs, the burden from compiling these records is not included in the burden chart.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
40	0.5	20	40	800

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED FIVE-YEAR SELF ASSESSMENT BURDEN[1]

Number of Respondents	Five-Year Frequency per Response	Total Five-year Responses	Hours per Response[2]	Total Hours[2]
40	1	40	100/40	4,000/1,600

[1]The initial self assessment is estimated at 100 hours per respondent. Subsequent updates of the self assessments will be conducted every five years and should be completed in 40 hours or less.

TABLE 3.—ESTIMATED ANNUAL IMPROVEMENT PLAN BURDEN

No. of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
40	1	40	5	200

Dated: December 11, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21472 Filed 12–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0036]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of Possible Footnotes and Cueing Schemes to Help Consumers Interpret Quantitative *Trans* Fat Disclosure on the Nutrition Facts Panel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 18, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study of Possible Footnotes and Cueing Schemes to Help Consumers Interpret Quantitative *Trans* Fat Disclosure on the Nutrition Facts Panel—(OMB Control Number 0910–0532—Reinstatement)

FDA is requesting OMB approval of an experimental study of possible footnotes and cueing schemes intended to help consumers interpret quantitative *trans* fat information on the Nutrition Facts Panel (NFP) of a food product. The purpose of the experimental study is to help FDA's Center for Food Safety and Applied Nutrition formulate decisions and policies affecting labeling requirements for *trans* fat disclosure.

In the **Federal Register** of July 11, 2003 (68 FR 41434), FDA issued a final rule requiring disclosure on the Nutrition Facts Panel of quantitative *trans* fat information on a separate line without any accompanying footnote. At the same time, the agency issued an advance notice of proposed rulemaking entitled ''Food Labeling: *Trans* Fatty Acids in Nutrition Labeling; Consumer Research to Consider Nutrient Content and Health Claims and Possible Footnote or Disclosure Statements'' (68 FR 41507) which requested comments about possible footnotes to help consumers better understand *trans* fat declarations on the product label. The agency sought comments about whether it should consider requiring statements about *trans* fat, either alone or in combination with saturated fat and cholesterol, as a footnote on the Nutrition Facts Panel to enhance consumers' understanding about such cholesterol-raising lipids and how to use information on the label to make healthy food choices. Comments received in response to the notice contained suggested footnotes and cueing schemes. The proposed experimental study will evaluate the ability of several possible footnotes and cueing schemes to help consumers make heart-healthy food choices. The results of the experimental study will provide empirical support for possible policy decisions about the need for such requirements and the appropriate form they should take.

FDA or its contractor will use information gathered from Internet panel samples to evaluate how consumers understand and respond to possible footnote and cueing schemes. The distinctive features of Internet panels for the purpose of the experimental study are that they allow for controlled visual presentation of study materials, experimental manipulation of study materials, and the random assignment of subjects to condition. Experimental manipulation of labels and random assignment to condition makes it possible to estimate the effects of the various possible footnotes and cueing schemes while controlling for individual differences between subjects. Random assignment ensures that mean differences between conditions can be tested using well-known techniques such as analysis of variance or regression analysis to yield statistically valid estimates of effect size. The study will be conducted using a convenience sample drawn from a large, national consumer panel of about one million households.

Participants will be adults, age 18 and older, who are recruited for a study about foods and food labels. Each participant will be randomly assigned to 1 of the 54 experimental conditions derived from fully crossing 8 possible footnotes/cueing schemes, 3 product types, and 2 prior knowledge conditions.

FDA will use the information from the experimental study to evaluate regulatory and policy options. The agency often lacks empirical data about how consumers understand and respond to statements they might see in product labeling. The information gathered from this experimental study will be used to estimate consumer comprehension and the behavioral impact of various footnotes and cueing schemes intended to help consumers better understand quantitative *trans* fat information.

The experimental study data will be collected using participants of an Internet panel of approximately one million people. Participation in the experimental study is voluntary.

In the **Federal Register** of February 6, 2006 (71 FR 6079), FDA published a 60-day notice requesting public comment on the information collection that will take place as part of the experimental study. FDA received two letters in response to the notice, each containing multiple comments.

(*Comment 1*) One comment stated that the organization concurs with the objectives of the study and believes the information from this study will be useful to FDA in developing labeling policy to assist consumers with interpretation of *trans* fat claims in food labeling. Another comment expressed concern that the NFP of only one of the three product pairs (margarine) showed polyunsaturated fat and monounsaturated fat content and recommended that the NFPs for all three products tested in the study show the fuller fat profile.

(*Response*) FDA disagrees with the recommendation that the NFPs for all three products tested in the study disclose a fuller fat profile. Most NFPs do not include the optional polyunsaturated fat and monounsaturated fat content. Typically, this information is disclosed on NFPs for products that are entirely or largely composed of fat (e.g., butter, margarine, and cooking oils). In these cases, the fat profile may be shown in greater detail because consumers may use this information to select among alternative food products. The NFPs for the product pairs tested in the study are consistent with actual donut, margarine, and frozen lasagna labels. Because the recommended change would limit products tested in the study to those such as butter, margarine and cooking oils, FDA will retain the NFPs as proposed.

(*Comment 2*) One comment suggested that the NFPs should not reflect rounding, to minimize potential consumer confusion. The comment specifically recommended that FDA edit the study NFPs containing declarations of polyunsaturated and monounsaturated fats (i.e., for the margarine product pair) to declare total fat grams in an amount equal to the sum of the four listed fatty acids.

(*Response*) FDA agrees that for the margarine labels, which include the four fatty acids under total fat, the fatty acids gram (g) amounts declared should add up to the total fat gram amount to avoid raising questions or distracting the participants in the margarine conditions. We made the requested change.

(*Comment 3*) One comment suggested that, for the margarine labels, FDA should edit the polyunsaturated and monounsaturated values to be as equal as possible in the product pairings to ensure that the focus is on the saturated fat and *trans* fat content.

(*Response*) FDA disagrees with the suggested change to the NFPs for the margarine product pairs. In order to keep the values for the polyunsaturated and monounsaturated fats identical in the margarine pairs, the saturated fat content would become unrealistically high in one label because it is the only fat component that could increase when *trans* fat equals zero. FDA will retain the NFPs as proposed.

(*Comment 4*) One comment noted that only one of the NFPs for the three products tested in the study showed some cholesterol present in the product; the other two products disclosed cholesterol as zero. In particular, the comment identified lasagna as unlikely to contain 0 milligrams of cholesterol.

(*Response*) FDA agrees that zero cholesterol is not likely to be a realistic amount of cholesterol disclosed on a NFP for a lasagna product and has revised the NFPs for the lasagna pairs. In addition, FDA changed a product category from cookies to donuts and edited the NFPs for the new donut product pair to add a disclosure of cholesterol.

(*Comment 5*) One comment critiqued the draft Full Information treatment language. The comment criticized the one-page summary because: (1) It did not identify calories in the discussion of fat as a major source of energy and (2) it did not relate the calorie contribution of fat to that of carbohydrates and protein. The comment also criticized the information about sources of *trans* fat because it omitted mention of natural sources of *trans* fat in the diet, which the comment suggested would help ensure factually correct and balanced information about sources of *trans* in the diet. The comment questioned the value of stating that *trans* fat extends shelflife and has desirable taste characteristics since many saturated fat sources are relatively shelf stable and have desirable taste characteristics.

(*Response*) FDA agrees and has revised the Full Information treatment in response to these concerns. Calories and other sources of energy are now mentioned in the introductory passage. Natural sources of *trans* fat are now mentioned and the similarity between *trans* fat and saturated fat in terms of shelflife and taste are now addressed. The revised draft will be included in the study pretest and further revisions will be made if FDA determines they are needed based upon pretest results.

(*Comment 6*) One comment suggested consumer confusion may be caused when a NFP for a product discloses 0 g of *trans* fat but the ingredient list discloses an ingredient that contains *trans* fat, as is permitted by the *trans* fat labeling regulations. The comment concluded that FDA should add experimental conditions in which this occurs. The comment suggested that for this situation the study should test language for a footnote to the ingredient list to explain that there may be a *trans* fat ingredient in the product when the NFP shows *trans* fat as zero.

(*Response*) FDA disagrees with the proposed addition to the study's experimental conditions. Under existing *trans* fat labeling regulations, food manufacturers are allowed to list amounts of *trans* fat less than 0.5 g per serving as zero on the NFP. While such situations occur in the marketplace and are permitted by the *trans* fat labeling regulations, whether this causes consumer confusion is an issue outside the scope of the proposed research, which focuses on the effects of NFP footnotes and alternative presentations of *trans* fat information in the NFP on consumers' ability to correctly identify more healthful food products. The Office of Nutritional Products, Labeling and Dietary Supplements has received and responded to a separate letter on this topic from the commenter.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	40	1	40	.25	10
Study	3,240	1	3,240	.25	810
Total					820

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 8, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21486 Filed 12–15–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2006–0009]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Amended Notice of Partially Closed Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet in a partially closed session.

DATES: Tuesday, December 19, 2006, from 9 a.m. until 1 p.m.

ADDRESSES: The meeting will take place at the U.S. Chamber of Commerce, 1615 H St., NW., Washington, DC. To register for this meeting and for access to meeting materials, contact Mr. William Fuller at (703) 235–5521, or by e-mail at *William.C.Fuller@dhs.gov* by 5 p.m. on Monday, December 18, 2006. If you desire to submit comments, they must be submitted by December 18, 2006. Comments must be identified by Docket Number NCS–2006–0009 and may be submitted by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *NSTAC1@dhs.gov.* Include docket number in the subject line of the message.
- Mail: Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC 20529.
- Fax: 866–466–5370

Instructions: All submissions received must include the words ''Department of Homeland Security'' and NCS–2006–0009, the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 235–5525, e-mail: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, CS&T/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App.).

This meeting was the subject of a prior notice published on December 4, 2006 (71 FR 70413). In that notice, the meeting was scheduled for December 19, at the location provided above, from 1 p.m. to 4 p.m. However, due to exceptional circumstances, the meeting must be rescheduled for earlier in the day.

Pursuant to 41 CFR 102–3.150(b), this amended notice is being published less than 15 days prior to the meeting date due to exceptional circumstances. The Department adjusted the meeting schedule set forth in the December 4, 2006 notice in order to accommodate the schedule of the President of the United States. The Department determined that it would impracticable to change the date of the substantive activity scheduled for this meeting. In order to allow the greatest possible public participation, the Department has extended the usual deadlines to submit comments. As noted above, this date is December 18, 2006.

Between 9 a.m. and 11 a.m., the committee will discuss the Global Infrastructure Resiliency (GIR) Report. This portion of the meeting will be closed to the public.

Between 11 a.m. and 1 p.m., the NSTAC will receive comments from government stakeholders, discuss the work of the NSTAC's Emergency Communications and Interoperability Task Force (ECITF), and discuss the work of the Telecommunications and Electric Power Interdependency Task Force (TEPITF). This portion of the meeting will be open to the public. The meeting may be adjourned earlier if all business is concluded.

Basis for Closure: The GIR discussion will likely involve sensitive infrastructure information concerning system threats and explicit physical/cyber vulnerabilities related to current communications capabilities. Public disclosure of such information would heighten awareness of potential vulnerabilities and increase the likelihood of exploitation by terrorists or other motivated adversaries. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action. Accordingly, this portion of the meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(9)(B).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Kiesha Gebreyes as soon as possible.

Dated: December 14, 2006.

George W. Foresman,

Under Secretary for Preparedness.

[FR Doc. 06–9769 Filed 12–14–06; 2:23 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–240–06–1770–PC–211A]

Call for Nominations for the Sonoran Desert National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice under Section 9(a)(2) of the Federal Advisory Committee Act. The BLM is giving notice that the Secretary of the Interior is extending the call for nominations for positions to the Sonoran Desert National Monument Advisory Council (SDNMAC). This notice request the public to submit nominations for membership on the SDNMAC. Any individual or organization may nominate one or more persons to serve on the SDNMAC. Individuals may nominate themselves for SDNMAC membership.

DATES: Submit nomination packets to the address listed below no later than 21 days after date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sonoran Desert National Monument (SDNM) Advisory Council, c/o Karen Kelleher, Monument Manager, BLM, Phoenix District, 21605 North 7th Avenue, Phoenix, Arizona 85027, Phone 623–580–5500, FAX 623–580–5580, e-mail: *AZ_SDNMAC@blm.gov.* Nomination packets are available for download at the BLM Internet site: *http://www.blm.gov/az/sonoran/*

council.htm, or from the SDNM, BLM (see address listed above).

SUPPLEMENTARY INFORMATION: The purpose of the SDNMAC is to advise the BLM on the management of the Sonoran Desert National Monument as described in the Secretary of the Interior's January 19, 2001, Memorandum. Each member will be a person qualified through education, training, knowledge, or experience to give informed and objective advice regarding the purposes for which the Monument was established, have demonstrated experience or knowledge of the geographical area under the purview of the Council, and have demonstrated a commitment to collaborate in seeking solutions to a wide spectrum of resource management issues. The authority to establish this Council is found in Section 309 of the Federal Land Policy and Management Act, Public Law 94–579 and in Section 14(b) of the Federal Advisory Committee Act, 5 U.S.C. Appendix.

To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the SDNM, Bureau of Land Management (see address above). Nominees must reside in Arizona or those portions of adjoining states which the BLM in Arizona administers (including St. George, Utah). The Secretary will appoint 15 members to the Council. The Council shall consist of the following:

- Four persons, one from each tribe, who are selected from nominees submitted by the governing bodies of the following tribes: Tohono O'odham Nation, AK Chin Indian Community, Gila River Indian Community, and Salt River Pima-Maricopa Indian Community, and who represent interests of the nominating tribe;
- A person who represents and participates in what is commonly called dispersed recreation, such as hiking, camping, hunting, nature viewing, nature photography, bird watching, horseback riding, or trail walking;
- A person who represents and participates in what is commonly called mechanized recreation or off-highway driving;
- A person who is a recognized environmental representative from Arizona;
- A person who is an elected official from a city or community in the vicinity of the Monument;
- A person who is a livestock grazing permittee or who represents the permittees on the allotments within the Monument;
- A person who represents the rural communities around the Monument and who is selected at-large from these communities;
- Two persons who represent sciences such as wildlife biology, archaeology, ecology, botany, history, social sciences, or other applicable disciplines;
- A person who represents Maricopa County's interests, to be appointed from nominees submitted by the Supervisors of Maricopa County;
- A person who represents Pinal County's interests, to be appointed from nominees submitted by the Supervisors of Pinal County; and
- A person who represents the State of Arizona, to be appointed from nominees submitted by the Governor of Arizona.

You should identify the specific category that the nominee will represent in your letter of nomination. The SDNM, BLM will collect the nomination forms and letters of reference and distribute them to the officials responsible for recommending nominees. BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Members of the SDNMAC serve for 3-year terms. For the initial Council, five members will be appointed to 2-year terms, five members will be appointed for 3 years, and five members will be appointed for 4 years. Thereafter, members of the SDNMAC will be appointed to 3-year terms. One Native American position, the elected official from a local community, the State of Arizona position, the livestock permittee position, and one science position will be 2-year terms that will expire 2 years from the date of appointment to the Council by the Secretary. The mechanized recreation position, the Arizona environmental organization position, the Pinal County representative, and two of the Native American positions will be 3-year terms and will expire 3 years from the date of appointment to the Council by the Secretary. The non-mechanized recreation position, the fourth Native American position, the second science position, the rural at-large position, and the Maricopa County representative will be 4-year terms and will expire 4 years from the date of appointment to the Council by the Secretary. Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The SDNMAC will meet only at the call of the Monument Manager, who is the Designated Federal Official with respect to the Council. The charter requires the SDNMAC to meet no less than 2 times per year.

Karen Kelleher,

Sonoran Desert National Monument Manager, Phoenix District of the Bureau of Land Management.

[FR Doc. E6–21482 Filed 12–15–06; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–FQ; F–012027, F–013539]

Public Land Order No. 7673; Partial Revocation of Public Land Order No. 1396, and Revocation of Public Land Order No. 1996; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two public land orders insofar as they affect 118.60 acres of public lands withdrawn from surface entry, mining, and mineral leasing and reserved for use by the Department of the Air Force for military purposes at Fort Yukon. The lands are no longer needed for the purpose for which they were withdrawn.

EFFECTIVE DATE: December 18, 2006.

ADDRESSES: Alaska State Office, Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, Alaska, 99513–7599.

FOR FURTHER INFORMATION CONTACT: Terrie D. Evarts, Bureau of Land Management, Alaska State Office, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513–7599, 907–271–5630.

SUPPLEMENTARY INFORMATION: The lands have been conveyed out of Federal ownership pursuant to Public Law 107–117 (115 Stat. 2277). This revocation is for record-clearing purposes only.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 1396 (22 FR 1637, March 14, 1957), and Public Land Order No. 1996 (24 FR 7956, October 2, 1959), which withdrew public lands and reserved them for use of the Department of the Air Force for military purposes, are hereby revoked insofar as they affect the following described lands:

Fairbanks Meridian

U.S. Survey No. 7008, Lot 1, and U.S. Survey No. 7161, Lots 26 and 27, located within

T. 20 N., R. 12 E.

The areas described aggregate 118.60 acres.

Dated: November 21, 2006.

C. Stephen Allred.

Assistant Secretary—Land and Minerals Management.

[FR Doc. E6–21467 Filed 12–15–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–78219, 7–08807]

Notice of Realty Action: Direct Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell by direct sale, two parcels of public land aggregating approximately 10.0 acres, more or less, in the Las Vegas Valley, Nevada, within the City of Henderson in Clark County, to M Holdings, LLC. The sale will be under the authority of the Southern Nevada Public Land Management Act of 1998 (Public Law 105–263, 112 Stat. 2343), as amended, (''SNPLMA''). The land will be offered noncompetitively as a direct sale in accordance with the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), and the BLM's land sale and mineral conveyance regulations at 43 CFR parts 2710 and 2720 at not less than the appraised Fair Market Value (FMV) of the parcels.

DATES: Comments regarding the proposed sale, including comments regarding the environmental assessment (EA), must be received by BLM on or before February 1, 2007.

ADDRESSES: Comments regarding the proposed sale should be addressed to: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale and the land involved, including the environmental studies and reports, may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the BLM's Las Vegas Field Office (LVFO).

FOR FURTHER INFORMATION CONTACT: You may contact Anna Wharton, Supervisory Realty Specialist at (702) 515–5082. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: The land is located in the City of Henderson, Nevada, and there is no physical and legal access to the parcels.

Land Proposed for Sale:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,

Section 9, S½SE¼NW¼NW¼ and N½SW¼SE¼NW¼.

The lands described above contain 10.0 acres, more or less.

The City of Henderson wishes to address critical transportation needs and further enhance the gateway to the City by eliminating a truck stop and fuel refilling facility adjacent to the St. Rose Parkway/Las Vegas Boulevard/Haven road interchange. The City of Henderson, by letters dated March 21, 2006 and April 17, 2006, has proposed that 10.0 acres of public lands be sold to M Holdings, LLC (MHLLC). Consistent with these goals and the City of Henderson's approved development and design standards, MHLLC has acquired, and is the owner of record for most of the remaining lands surrounding the subject Federal parcels, including the truck stop and related facilities. As such, MHLLC controls physical and legal access to both parcels, and MHLLC has worked cooperatively with the City of Henderson, including entering into appropriate transportation and access agreements as part of an overall redevelopment plan for the surrounding land. The City of Henderson has applied for a lease and/or patent pursuant to the authority of the Recreation and Public Purposes Act of 1926, as amended, for other public lands adjacent to the subject Federal parcels, in furtherance of this planned project.

The project, known as the M Resort, will be built at the southeast corner of Las Vegas Boulevard and St. Rose Parkway. The master planned M. Resort is to include the development of an Urban Village with 1,900 condominium units, retail space, a 5,000-seat amphitheater, a fire station and a public park. The subject Federal parcels consist of two 5-acre parcels. One of the parcels will be incorporated into a public parking garage that will support overall development. The second 5-acre parcel will be included as a portion of the proposed convention center adjacent to the planned hotel. Collectively, these parcels are integral components of the overall 72-acre development approved by the City of Henderson. Through extensive collaboration and partnership with the City of Henderson, MHLLC has agreed to provide extensive off-site utility and roadway improvements in excess of $30 million. MHLLC will be responsible for financing and constructing all infrastructure improvements including major roadway improvements and a new fire station, public parking garage and convention center, and a public park.

Federal regulations governing sales of lands at 43 CFR 2711.3–3 state that (a) ''Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by direct sale.'' Examples include, but are not limited to a tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize a timely completion and economic viability of the project, and circumstances where the adjoining ownership pattern and access indicate a direct sale is appropriate.''

Because MHLLC owns the adjacent private parcels, controls access to the Federal parcels, and is involved with a larger master-planned project involving the City of Henderson, the authorized officer has concluded that a direct sale is warranted.

The proposed sale is consistent with the BLM's Las Vegas Resource Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The subject parcels lack physical or legal access other than that owned and controlled by MHLLC and they contain no other known public values. The subject parcels have not been identified for transfer to the State or any other local government or non-profit organization and this action is strongly supported by the City of Henderson. The environmental assessment, map, and approved appraisal report covering the proposed sale are available for review at the BLM Las Vegas Field Office, Las Vegas, Nevada (LVFO).

Minerals from this parcel will be reserved in accordance with the BLM's approved Mineral Potential Report dated January 22, 1999. Minerals to be reserved to the United States are oil and gas and all saleable minerals. Acceptance of the offer to purchase will constitute an application for conveyance of the unreserved ''no known value'' mineral interests. In conjunction with the final payment, the applicant for unreserved ''no known value'' mineral interests will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the

unreserved ''no known value'' mineral interest which will be sold simultaneously with the surface interests.

Terms and Conditions of Sale: The BLM sale parcels are subject to the following, with those numbered to appear in the conveyance document and are as follows:

1. All saleable and oil and gas mineral deposits are reserved to the United States; but, permittees, licensees, and lessees retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. The parcels are subject to valid existing rights.

4. The purchaser/patentee, by accepting a patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any cost, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or State environmental laws; off, on, into, or under land, property, and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

5. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcels of land proposed for sale, and the conveyance of any such parcels will not be on a contingency basis. However, to the extent required by law, all such parcels are subject to the requirements of section 120(h) of the CERCLA.

Parcels may also be subject to applications received prior to publication of this NORA if processing the application would have no adverse affect on the marketability or on the federally approved Fair Market Value (FMV) of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the BLM LVFO.

Maps delineating the individual proposed sale parcels are available for public review at the BLM LVFO along with the appraisal.

Upon acceptance of the offer to purchase, MHLLC will submit 20% of the FMV, which has been determined to be $13,500,000, to the BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV, 89130. Within 180 days following payment of the deposit, MHLLC will remit the balance of the FMV to BLM in the form of a certified check, money order, bank draft, or cashier's check made payable to the order of the BLM.

The BLM may accept or reject any or all offers to purchase any parcel, or may withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable laws or is determined to not be in the public interest.

Additional Information: In order to determine the appraised value of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made as to the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Public Comments: The BLM Field Manager, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130 will receive the comments of the general public and interested parties up to 45 days after publication of this Notice in the **Federal Register**. Facsimiles, telephone calls, and electronic mail are unacceptable means of comment submission and would not be considered as properly filed. Any adverse comments on the sale or EA will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments this realty action will become the final determination of the Department of the Interior. Any comments received during this process, as well as the commenter's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public.

Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by case basis. A request from a commenter to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Authority: 43 C.F.R. 2711.1–2.

Dated: October 12, 2006.

Juan Palma,

Field Manager.

[FR Doc. E6–21469 Filed 12–15–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ Environmental Impact Report for Redwood Creek and Wetland Restoration at Big Lagoon-Muir Beach Area Golden Gate National Recreation Area Marin County, CA; Notice of Availability

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended), and the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement/Draft Environmental Report (Draft EIS/EIR) for the Wetland and Creek Restoration at Big Lagoon. This Draft EIS/EIR evaluates alternatives for ecological restoration and public access upgrades in the Big Lagoon area at Muir Beach, part of the Golden Gate National Recreation Area (GGNRA). The National Park Service (NPS) and County of Marin (County) have jointly prepared the Draft EIS/EIR in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Draft EIS/EIR analyzes multiple alternatives for ecological restoration, public access improvements, bridge replacement, and fill disposal locations. The alternatives are based upon park values, effective restoration strategies and public access approaches, NPS and County policy, and applicable law.

Background: Redwood Creek is a coastal stream located in Marin County, California. The project's area of potential effect encompasses the lower reach of Redwood Creek extending from where the creek passes underneath Highway 1, to its mouth at the Pacific Ocean approximately 2,800 feet downstream. Within this reach, the creek and its floodplain have been extensively modified by realignment of the creek; construction of Pacific Way and the Pacific Way bridge, a levee road that borders the creek, and the NPS parking lot and picnic area; and placement of gabions and other artificial fill in the creek channel and on its floodplain. Combined, these modifications to the creek and its floodplain have altered channel hydraulics and reduced its sediment transport capacity, resulting in extreme sediment deposition in the creek channel and reduction in channel capacity. Under current conditions, the creek floods during even moderate rain events, inundating Pacific Way, stranding residents, and hindering access to the public beach. In the winter, residents along Pacific Way often cannot access Highway 1, the sole connecting road, because floodwaters commonly prevent passage by vehicles and pedestrians. This lack of access severely limits emergency services.

In addition to the flooding, current conditions in lower Redwood Creek present a risk of channel avulsion, in which the creek could abandon its existing channel and establish a new channel in the floodplain. Avulsion of the channel to the adjacent meadow, which is several feet lower in elevation than the channel bed, could impair passage of adult and juvenile coho salmon and steelhead through the lower creek and could have undetermined consequences to infrastructure.

GGNRA has determined that restoration activities at the project site are necessary to address these issues, GGNRA and the County have been involved in an active planning process to identify alternative restoration and public access alternatives to address these identified issues.

Proposal and Alternatives: As noted, this Draft EIS/EIR describes and analyzes four alternatives. *Alternative 1*, the ''baseline'' No Action Alternative, would maintain the existing management direction. Alternatives 2, 3, and 4 (action alternatives) contain varying mixes of three main components: (1) Ecological restoration; (2) public access upgrades, including a reconfiguration of the existing parking lot; and (3) replacement of the Pacific Way Bridge. Each of the action alternatives incorporates the following elements: Interim flood reduction measures; Relocation of the Redwood Creek channel; Construction of new drainage swale and upper pasture modification; Backbeach lagoon enhancement, channel realignment, and dune restoration; Removal of levee road; Invasive species removal; Removal of tavern remnants; Removal of utility lines; Removal of concrete channels and revetment; Modification to Green Gulch field 7. The main differences between the action alternatives is the approach by which ecological restoration would occur.

Alternative 3 would combine riparian restoration components with restoration of open water and wetland habitants. Two open-water lagoons would be created, one on either side of the new channel. The two small lagoons would be backwaters, connected to the creek near the downstream end of each lagoon. The banks of the lagoons would have varied slopes to favor a variety of habitats. The lagoons would maintain a minimum water depth of 3–4 feet year-round. *Alternative 4* would create a periodically brackish open-water habitat similar to historic (1853) conditions, modified to reflect existing constraints of Pacific Way and private property. This would involve creating a large lagoon with fringing wetlands extending to the edge of the valley immediately landward of Muir Beach. The lagoon would be excavated with gentle side slopes to encourage colonization of emergent wetland vegetation. Like the small lagoons under Alternative 3, the large lagoon would maintain a minimum water depth of 3–4 feet year-round.

Alternative 2 (Creek Restoration) (agency-preferred alternative) would involve relocating approximately 2,000 linear feet of Redwood Creek to the topographically lowest portion of the valley, while maintaining a habitat mix similar to current conditions. In addition to relocating Redwood Creek, this alternative includes the following two core elements: *Parking*—A parking lot with capacity for 175 cars located parallel to Pacific Way. The lot would include a new turn-off from Pacific Way and would include 310 linear feet of stacking room for cars between the entrance and the first parking stall. Other parking lot options considered in the Draft EIS/EIR include: maintaining the current capacity of 175 Cars at Beach; Alternative B1 (50 Cars at Beach); Alternative B2 (145 Cars at Beach); Alternative B3 (175 Cars at Beach—similar shape as existing lot); Alternative B5 (200 Cars at Beach); and Alternative C (118 Cars at Alder Grove plus 14 Handicapped Spaces and Drop-Off at Beach).

Bridge Replacement—150-foot-long bridge with raised road. This bridge would span the new 35-foot-wide channel and areas of riparian habitat and flood plain on either side of the channel. Two-foot-wide piers, placed at approximately 40-foot intervals, would

be used to support the span. Other bridge alternatives considered in the Draft EIS/EIR include: Alternative BR1 (50-foot-long bridge with a raised road); Alternative BR2 (50-foot-long bridge with a low road); Alternative BR3 (150-foot-long bridge with raised road); and Alternative BR4 (266- to 300-foot-long bridge with highest road).

Scoping and Public Involvement: Between December 2002 and December 2004, 17 public meetings were held, as well as a variety of site visits and meetings with representatives of various agencies. On December 3, 2002, a Notice of Intent (NOI) to prepare an Environmental Impact Statement was published in the **Federal Register**, beginning the formal scoping process for the project. The NOI identified goals for the project, and public scoping meetings were held on October 22, October 29, and November 2, 2002, with a site visit for the public held on November 9, 2002, to solicit input on the project and its potential impacts. Following these meetings, a Big Lagoon Working Group consisting of interested individuals, agencies, and organizations was formed to help develop project alternatives. The working group convened regularly in meetings that were open to the public. In addition, two alternatives workshops were held for the public on September 30 and October 4, 2003. The results of those workshops, as well as a more detailed summary of the scoping process, are presented in the Alternatives Public Workshops Report (NPS 2004). Finally, Marin County circulated a Notice of Preparation of an Environmental Impact Report on April 27, 2004, soliciting comments on the specific issues to be included in the scope of CEQA environmental review. All of these activities informed the alternatives formulation process.

Comments: Copies of the Draft EIS/EIR will be sent to affected Federal, Tribal, State and local government agencies, to interested parties, and those requesting copies. Paper and digital copies (compact disc) of the document will also be available at park headquarters and at local libraries. The complete document will be posted on the GGNRA's Web site (*http://www.nps.gov/goga*) and on NPS's Planning, Environment and Public Comment Web site (*http://parkplanning.nps.gov/goga*). All written comments must be postmarked or transmitted no later than 75 days from the date of EPA's notice of filing published in the **Federal Register** (as soon as this occurs, the confirmed close of the comment period will be posted on the Web sites noted above, and listed in all notification announcements sent from GGNRA). Written comments will be accepted online at *http://parkplanning.nps.gov/goga* (click on the project title and follow instructions), or by sending a letter addressed as follows: Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123 (Attn: Muir Beach Creek and Wetland Restoration). Two public meetings will be scheduled to hear comments on the Draft EIS/EIR, approximately 30 days after publication of this notice in the **Federal Register.** Please visit the project Web site (noted above) to learn more about the project, planning process, and the confirmed dates and time for the public meetings. Questions regarding this project may also be directed at any time to Steve Ortega (415) 561–4841 or via e-mail at *steve_ortega@nps.gov.*

All comments are maintained in the administrative record and will be available for public review at GGNRA headquarters. Please note our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Decision Process: Following the analysis of all comments received concerning the Draft EIS/EIR, at this time it is anticipated that the Final EIS/EIR would be completed in spring 2007. The availability of the final documents will be announced in the **Federal Register**, and also publicized via local and regional press media, direct mailings, and Web site postings. Not sooner than thirty days after the distribution of the Final EIS/EIR, a Record of Decision may be executed (at this time it is anticipated a recommended decision would be developed in summer 2007). As a delegated EIS the approving official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the approved wetland and restoration plan will be the General Superintendent, Golden Gate National Recreation Area.

Dated: October 3, 2006.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 06–9748 Filed 12–15–06; 8:45 am]

BILLING CODE 4312–FN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

New Melones Lake Project Resource Management Plan/Environmental Impact Statement (RMP/EIS), Calaveras and Tuolumne Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an RMP/EIS and notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Reclamation Act of 1902, the Reclamation Project Act of 1939, and the Reclamation Recreation Management Act of 1992, the Bureau of Reclamation (Reclamation) proposes to prepare an integrated RMP/EIS for the New Melones Lake Project. Reclamation is the lead federal agency for NEPA. The RMP process is designed to evaluate current and future resource conditions for a management area and to analyze whether updated or new management actions are necessary to attain desired long-term goals.

The public is invited to participate in the planning process by submitting comments during the scoping period and the public comment period on the draft RMP/EIS. Other opportunities to participate will be described during the public scoping meetings.

DATES: Reclamation will host a series of three public scoping meetings to solicit input on the development of alternatives, concerns, and issues to be addressed in the RMP/EIS. The meeting dates and times are:

- Monday, January 29, 2007, 6:30 to 8:30 p.m., Sonora, CA,
- Tuesday, January 30, 2007, 6:30 to 8:30 p.m., Angels Camp, CA,
- Wednesday, January 31, 2007, 6:30 to 8:30 p.m., Manteca, CA.

ADDRESSES: Scoping meetings will be held at:

- Sonora at the Sonora Union High School Cafeteria, 251, South Barretta Street, Sonora, CA,

• Angels Camp at the Brett Harte High School Library, 323 South Main, Angels Camp, CA,

• Manteca at the Manteca High School Cafeteria, 450 East Yosemite Avenue, Manteca, CA.

Written comments on the scope of the proposed RMP/EIS should be sent by close of business on February 16, 2007 to: Ms. Elizabeth Vasquez, Natural Resource Specialist, Central California Area Office, U.S. Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630, or e-mail to *evasquez@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Vasquez at 916–989–7192.

SUPPLEMENTARY INFORMATION: In 1976, during planning for construction of the New Melones Dam, a master plan was created to manage the various resources available at New Melones Lake. This plan and a subsequent 1995 draft resource management plan do not fulfill the need for resource management planning, due to the age of the documents, changes in visitor use over the last 30 years, and the accumulation of more complete information about the various resources managed by Reclamation as part of the New Melones Lake Project.

The RMP process is designed to evaluate current and future resource conditions for a management area and to analyze whether updated or new management actions are necessary to attain desired long-term goals. All proposed management actions will be incorporated into a single document that will guide management of biological, social, and physical resources and, when implemented, will result in the desired conditions for the management area. The associated EIS will assess the potential effects of current management actions as well as those proposed under the action alternatives. The final RMP/EIS will reflect the alternative that is deemed most preferable given the range of resources to be managed and the management tools available to Reclamation.

Reclamation has developed a preliminary list of management issues to be addressed in the RMP/EIS. These items include:

• Public health and safety;

• Recreational use;

• Interest groups;

• Traffic and transportation;

• Cultural and archaeological resources;

• Land use, including historic and proposed rights-of-way; and

• Sensitive species and habitats.

This list is not exhaustive and may increase or change as a result of public response during the scoping period.

Additional Information

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Ms. Vasquez as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the meeting. Information regarding this proposed action is available in alternative formats upon request.

During the meetings, Reclamation representatives will present an overview of the project. Those attending the meeting will have the opportunity to submit comments, which Reclamation will consider in the development of alternatives and for analysis of environmental issues that should be addressed in the RMP and EIS. (Additional coordination meetings can be arranged with responsible/cooperating agencies and with special interest groups upon request.)

Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies and to private organizations and citizens who have expressed an interest or who are known to have an interest in this proposal.

Comments received in response to this notice will become part of the administrative record and are subject to public inspection. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Michael Nepstad,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E6–21471 Filed 12–15–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0094]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review:

Reinstatement of a previously approved collection for which approval has expired:

The Annual Survey of Jails.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. The proposed information collected was previously published in the **Federal Register** Volume 71, Number 200, page 61071, on October 17, 2006, allowing a 30 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until January 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Officer of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the Form/Collection:* The Annual Survey of Jails (ASJ).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–5, CJ–5A, CJ–5B, and CJ–5B Addendum. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* County and City jail authorities and Tribal authorities. This form is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses. The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Nine hundred and forty-five respondents each taking an average 75 minutes to respond for collection forms CJ–5, CJ–5A, and CJ–5B. Sixty-eight respondents each taking an average of 30 minutes to respond for collection form CJ–5B Addendum.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,215 annual total burden hours associated with the collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 12, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–21478 Filed 12–15–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Existing Collection in Use Without OMB Control Number; Comments Requested

ACTION: 60-Day notice of information collection under review: Survey of state criminal history information systems.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 16, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerard Ramker, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing collection in use without OMB control number.

(2) *Title of the Form/Collection:* Survey of State Criminal History Information Systems.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Government. This information collection is a survey of State record repositories to estimate the percentage of total state records that are immediately available through the FBI's Interstate Identification Index and the percentage of records that are complete and fingerprint-supported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 53 respondents will expend approximately 3 hours to complete the survey once every two years.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 159 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 12, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–21481 Filed 12–15–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Reinstatement with change of a previously approved collection; 2007 survey of public defenders offices.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 16, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Lynn Langton, (202) 353–3328, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or *Lynn.Langton@usdoj.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired. 2007 Survey of Public Defenders Offices.

(2) *The Title of the Form/Collection:* 2007 Survey of Public Defenders Offices.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* Previous OMB number was 1121–0095. The agency form numbers are 06–SPDO Form–A and 06–SPDO Form–B. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract: Primary:* All State- and locally-funded attorneys serving as the head public defender for a county, city, or judicial district. Other: None. This nationwide information collection will identify the number and characteristics of state- and county-funded public defender offices. Information will be gathered on type of offenses represented, expenditures, caseloads, training requirements, funding sources, reliance on outside legal services, and other related administrative issues. The information collected will provide a comprehensive portrait of state and local efforts to meet the needs of indigent criminal defendants through designated public defender offices.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 1,400 public defender offices will complete a 1-hour questionnaire (06–SPDO Form–A).

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this collection is 1,400 hours. (1,400 data collection forms completed by each public defender office * one hour per form = 1,400 burden hours).

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 12, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–21483 Filed 12–15–06; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04794]

Notice of Environmental Assessment Related to the Issuance of a License Amendment to Byproduct Material License No. 21–01443–06, for Unrestricted Release of a Former Facility for Warner-Lambert, LC., Ann Arbor, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9871; fax number: (630) 515–1259; or by e-mail at *wgs@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Byproduct Materials License No. 21–01443–06, which is held by Warner-Lambert, LLC (licensee), which is a wholly owned subsidiary of Pfizer, Inc. The amendment would authorize the decommissioning and unrestricted release of the licensee's former Traverwood facility located at 2900 Huron Parkway, Ann Arbor, Michigan (the facility). The NRC has prepared an Environmental Assessment in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the Environmental Assessment, the NRC has determined that a Finding of No Significant Impact is appropriate. The amendment to Warner-Lambert's license will be issued following the publication of this Environmental Assessment and Finding of No Significant Impact.

I. Environmental Assessment

Identification of Proposed Action

The proposed action would approve Warner-Lambert's request to amend its license and release the licensee's facility for unrestricted use in accordance with 10 CFR Part 20, Subpart E. The

proposed action is in accordance with the licensee's request to the U.S. Nuclear Regulatory Commission (NRC) to amend its license by letter dated August 31, 2006 (ADAMS Accession No. ML062440517). Warner-Lambert was first licensed to use byproduct materials at its Traverwood facility on June 27, 2000. The licensee is authorized to use byproduct materials for activities involving in-vitro biochemical research. Hydrogen-3 and carbon-14 were the only two isotopes with a half-life greater than 120 days that were used at the facility in an unsealed form, and these were limited to less than 25 millicuries at any one time in the entire building. On May 17, 2006, Warner-Lambert completed removal of licensed radioactive material from the Traverwood facility.

The licensee conducted surveys of the facility as part of its decommissioning activities and provided this information to the NRC to demonstrate that the radiological condition there is consistent with radiological criteria for unrestricted use in 10 CFR Part 20, Subpart E. No radiological remediation activities are required to complete the proposed action.

Need for the Proposed Action

The licensee is requesting this license amendment because it has moved out of the Traverwood facility, and is conducting licensed activities at another location. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning that ensures that residual radioactivity is reduced to a level that is protective of the public health and safety and the environment, and allows the facility to be released for unrestricted use.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided and surveys performed by the licensee to demonstrate that the release of the Traverwood facility is consistent with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. Based on its review, the staff determined that there were no radiological impacts associated with the proposed action because no radiological remediation activities were required to complete the proposed action, and that the radiological criteria for unrestricted use in § 20.1402 have been met.

Based on its review, the staff determined that the radiological environmental impacts from the proposed action for the Traverwood facility are bounded by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Therefore, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment.

Alternatives to the Proposed Action

The only alternative to the proposed action is to take no action. Under the no-action alternative, the licensee's facility would remain under an NRC license and would not be released for unrestricted use. Denial of the license amendment request would result in no change to current conditions at the Traverwood facility. The no-action alternative is not acceptable because it is inconsistent with 10 CFR 30.36, which requires that decommissioning of by-product material facilities be completed and approved by the NRC after licensed activities cease. This alternative would impose an unnecessary regulatory burden in controlling access to the former Traverwood facility, and limit potential benefits from the future use of the facility.

Conclusion

The NRC staff concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action will not affect listed species or critical habitats. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

The NRC consulted with the Michigan Department of Environmental Quality (DEQ). The Michigan DEQ, Waste and Hazardous Materials Division, Radiological Protection and Medical Waste Section was provided the draft EA for comment on November 9, 2006. Mr. Bob Skowronek, Chief, Radioactive Material and Medical Waste Unit, with the Michigan DEQ, responded to the NRC by e-mail on November 13, 2006, indicating that the State had no comments regarding the NRC Environmental Assessment for the release of the Warner-Lambert, Traverwood facility .

II. Finding of No Significant Impact

On the basis of the EA in support of the proposed license amendment to release the facility for unrestricted use, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment. Thus, the NRC has not prepared an environmental impact statement for the proposed action.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The documents and ADAMS accession numbers related to this notice are:

1. Carol Lentz, Pfizer, Inc., letter to Patricia Pelke, U.S. Nuclear Regulatory Commission, August 31, 2006 (ADAMS Accession No. ML062440517).

2. U.S. Nuclear Regulatory Commission, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003.

3. U.S. Nuclear Regulatory Commission, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, August 1994.

4. NRC, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volumes 1–3, September 2003.

Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission,

Dated at Lisle, Illinois, this 5th day of December 2006.

George M. McCann,

Acting Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E6–21463 Filed 12–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation and Model License Amendment Request on Technical Specification Improvement Regarding Adding an Action Statement for Two Inoperable Control Room Air Conditioning Subsystems

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to changes to Standard Technical Specification (STS) 3.7.5 (STS 3.7.4 for BWR/6), ''Control Room Air Conditioning (AC) System'' for NUREG–1433 and NUREG–1434. The proposed changes would also revise the Bases for STS 3.7.5 (STS 3.7.4 for BWR/6). The General Electric Boiling Water Reactor Owners Group (BWROG) participants in the Technical Specifications Task Force (TSTF) proposed these changes to the STS in TSTF–477, Revision 3, ''Add an Action for Two Inoperable Control Room AC Subsystems.''

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate changes into plant-specific Technical Specifications (TS) for General Electric Boiling Water Reactors (BWR). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model LAR, model SE and NSHC determination to its plant. The NRC staff is requesting comments on the model LAR, model SE and NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 30 days from the date of this publication. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submit comments by electronic mail to: *CLIIP@nrc.gov.*

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Peter C. Hearn, Mail Stop: O–12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1189.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process [CLIIP] for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comments on a proposed change to the STS that adds an action statement for two inoperable control room subsystems to the General Electric BWR STS Revision 3.0 of NUREG–1433 and NUREG–1434. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Following the public comment period, the model LAR and model SE will be finalized, and posted on the NRC Web page. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves adding an action statement for two inoperable control room air conditioning subsystems. By letter dated September 8, 2006, the BWROG proposed these changes for incorporation into the STS as TSTF–477, Revision 3. These changes are accessible electronically from the Agency-wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession No. ML062510321) at the NRC Web site *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Applicability

These proposed changes will revise Section 3.7.5 (Section 3.7.4 for BWR/6) for the General Electric plants.

To efficiently process incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–477, Revision 3, using the CLIIP submit an LAR that adheres to the following model. Any variations from the model LAR should be explained in the licensee's submittal. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–477.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of this publication. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the model LAR, model SE or model NSHC determination

as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of December, 2006.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

ENCLOSURE 1

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would revise Technical Specification 3.7.5 (3.7.4 for BWR/6) ''Control Room Air Conditioning (AC) System'' to add an action statement for two inoperable control room subsystems. Technical Specification Task Force (TSTF) change traveler TSTF–477, Revision 3, ''Add Action for Two Inoperable Control Room AC Subsystems'' was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Changes

Consistent with NRC-approved TSTF–477, Revision 3, the proposed TS changes include: Add an action statement for two inoperable control room subsystems.

B. Two [control room AC] subsystems inoperable ...	B.1 Verify control room area Temperature < [90] °F.	Once per 4 hours.
	AND	
	B.2 Restore one [control room AC] to OPERABLE status.	72 hours.

The Technical Specification Task Force (TSTF) change traveler TSTF–477, Revision 3, was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

3.0 Background

The background for this application is as stated in the model SE in NRC's Notice of Availability published on [DATE] [ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–477, Revision 3.

4.0 Technical Analysis

[LICENSEE] has reviewed References 1 and 2, and the model SE published on [DATE] ([ ] FR [ ]) as part of the CLIIP Notice for Comment. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–477, Revision 3 and the model SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.], and justify this amendment for the incorporation of the changes to the [PLANT] TS.

5.0 Regulatory Analysis

A description of this change and its relationship to applicable regulatory requirements and guidance was provided in the NRC Notice of Availability published on [Date] ([FR [ ]), the NRC Notice for Comment published on [Date] ([ ] FR [ ]) and TSTF–477, Revision 3.

6.0 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

7.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental consideration included in the model SE published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented therein are applicable to [PLANT] and the determination is hereby incorporated by reference for this application.

8.0 References

1. **Federal Register** Notices: Notice for Comment published on [DATE] ([ ] FR [ ]) Notice of Availability published on [DATE] ([ ] FR [ ])

Enclosure 2

Proposed Technical Specification Changes and Technical Specification Bases Changes (Mark-Up)

Enclosure 3

Final Technical Specification and Bases Pages

[Clean copies of Licensee specific Technical Specification (TS) pages, corresponding to the TS pages changed by TSTF–477, Rev 3, are to be included in Enclosure 3]

Model Safety Evaluation—U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation—Technical Specification Task Force TSTF–477, Revision 3, ''Add an Action for Two Inoperable Control Room AC Subsystems.''

1.0 Introduction

By letter dated [__, 20__], [LICENSEE] (the licensee) proposed changes to the technical specifications (TS) for [PLANT NAME]. The requested changes are the adoption of TSTF–477, Revision 3, ''Add Action for Two Inoperable Control Room AC Subsystems'' which was proposed by the Technical Specification Task Force (TSTF) by letter on August____ , 2006. The proposed changes revising Technical Specification 3.7.5 (3.7.4 for BWR/6) ''Control Room Air Conditioning (AC) System'' involve adding the following Limiting Conditions for Operation (LCO):

2.0 Regulatory Evaluation

Section 182a of the Atomic Energy Act (the ''Act'') requires applicants for nuclear power plant operating licenses to include TS as part of the license. The TS ensure the operational capability of structures, systems and components that are required to protect the health and safety of the public. The Commission's regulatory requirements related to the content of the TS are contained in 10 CFR Section 50.36. That regulation requires that the TS include items in the following specific categories: (1) safety limits, limiting safety systems settings, and limiting control settings

(50.36(c)(1)); (2) Limiting Conditions for Operation (50.36(c)(2)); (3) Surveillance Requirements (50.36(c)(3)); (4) design features (50.34(c)(4)); and (5) administrative controls (50.36(c)(5)).

In general, there are two classes of changes to TS: (1) Changes needed to reflect modifications to the design basis (TS are derived from the design basis), and (2) voluntary changes to take advantage of the evolution in policy and guidance as to the required content and preferred format of TS over time. This amendment deals with the second class of changes.

In determining the acceptability of revising STS 3.7.5 (STS 3.7.4 for BWR/6), the staff used the accumulation of generically approved guidance in NUREG–1433, ''Standard Technical Specifications, Revision 3 General Electric Plants, BWR/4'' dated June, 2004 and; NUREG–1434, Revision 3, ''Standard Technical Specifications, General Electric Plants, BWR/6'' dated June, 2004.

Licensees may revise the TS to adopt current improved STS (iSTS) format and content provided that plant-specific review supports a finding of continued adequate safety because: (1) The change is editorial, administrative or provides clarification (i.e., no requirements are materially altered), (2) the change is more restrictive than the licensee's current requirement, or (3) the change is less restrictive than the licensee's current requirement, but nonetheless still affords adequate assurance of safety when judged against current regulatory standards. The detailed application of this general framework, and additional specialized guidance, are discussed in Section 3.0 in the context of specific proposed changes.

3.0 Technical Evaluation

The BWR STS for the Control Room Air Conditioning AC System do not contain an Action Statement for two inoperable subsystems. During the TS Conversion of the BWR/6 Plants, the BWR/6 Plants adopted Action Statements for the Ventilation and AC systems that contained Action Statements for 2 inoperable subsystems similar to the proposed Action Statements in TSTF–477. The STS for numerous safety related systems also contain Action Statements for 2 inoperable subsystems. The TSTF proposes to add an Action Statement for 2 inoperable CR AC subsystems to the BWR STS in order to be consistent with the BWR/6 current iSTS. Furthermore, the consistency of the BWR STS will be enhanced since most safety related systems presently have Action Statements in the STS to address two inoperable subsystems.

3.1 NUREG–1433, Revision 3, ''Standard Technical Specifications, General Electric Plants, BWR/4''

The proposed BWR/4 Action statement allows 72 hours to restore 1 subsystem to the operable status for 2 inoperable subsystems. During the 72 hour completion time the CR Temperature is verified < 90 degrees every 4 hours. If 1 CRAC can not be restored to operable status or the CR Temperature can not be maintained < 90 degrees then the unit must be placed in at least Mode 3 within 12 hours and Mode 4 within 36 hours. Maintaining the CR Temperature < 90 degrees assures that the Safety Related Equipment in the CR will remain within the original licensed design operating temperature, because the maximum allowable CR Temperature is unchanged by TSTF–477. The NRC staff finds that the proposed changes in TSTF–477 are acceptable for the BWR/4 because the TSTF–477 changes provide TS requirements that the CR Temperature will be maintained within the original licensed design operating temperature of the CR equipment or the plant will be placed in the Cold Shutdown Mode (Mode 4, Safe Shut Condition).

3.2 NUREG–1434, Revision 3, ''Standard Technical Specifications, General Electric Plants, BWR/6''

The proposed BWR/6 Action statement allows 7 days to restore 1 subsystem to the operable status for 2 inoperable subsystems. This is consistent with the current BWR/6 Plants iSTS. During the 7 days completion time the CR Temperature is verified < 90 degrees every 4 hours. If 1 CR AC cannot be restored to operable status or the CR Temperature cannot be maintained < 90 degrees then the unit must be placed in at least Mode 3 within 12 hours and Mode 4 within 36 hours. Maintaining the CR Temperature < 90 degrees assures that the Safety Related Equipment in the CR will remain within the original licensed design operating temperature, because the original allowable CR Temperature remains unchanged by TSTF–477. The NRC staff confirms that the proposed changes in TSTF–477 are acceptable for the BWR/6 because the TSTF–477 changes provide TS requirements that the CR Temperature will be maintained within the original licensed design operating temperature of the CR equipment or the plant will be placed in the Cold Shutdown Mode (Mode 4, Safe Shut Condition).

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment[s] change[s] a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 or surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on such finding published [DATE] ([ ] FR [ ]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [Plant name] requests adoption of an approved change to the standard technical specifications (STS) for Boiling Water Reactor (BWR) Plants (NUREG–1433 and NUREG–1434) and plant specific technical specifications (TS), to add an action statement for two inoperable control room subsystems. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specifcation Change Traveler, TSTF–477, Revision 3.

Basis for proposed no-significant-hazards-consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no-significant-hazards-consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–477 adds an action statement for two inoperable control room subsystems.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add an action statement for two inoperable control room subsystems. The equipment qualification temperature of the control room equipment is not affected. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, '' Changes, test and experiments'', to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed changes add an action statement for two inoperable control room subsystems. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal pant operation. The requirements in the TS continue to require maintaining the control room temperature within the design limits.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes add an action statement for two inoperable control room subsystems. Instituting the proposed changes will continue to maintain the control room temperature within design limits. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that the control room temperature will be maintained within design limits.

The proposed changes maintain sufficient controls to preserve the current margins of safety.

Based upon the reasoning above, the NRC staff concludes that the amendment request involves no significant hazards consideration.

For the Nuclear Regulatory Commission.

Project Manager, Plant Licensing Branch [ ], Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–21462 Filed 12–15–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between October 1, 2006, and October 31, 2006. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for October 2006.

Schedule B

No Schedule B appointments were approved for October 2006.

The following Schedule C appointments were approved during October 2006:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS70004 Special Assistant and Counselor to the Controller to the Controller, Office of Federal Financial Management. Effective October 11, 2006.

BOGS60157 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective October 23, 2006.

BOGS70005 Confidential Assistant to the Associate Director for Legislative Affairs. Effective October 23, 2006.

BOGS70006 Press Assistant to the Associate Director for Communications. Effective October 31, 2006.

Office of the United States Trade Representative

TNGS70001 Confidential Assistant to the Chief of Staff. Effective October 23, 2006.

Section 213.333 Office of Science and Technology Policy

TSGS60042 Deputy to the Associate Director to the Associate Director, Technology. Effective October 23, 2006.

TSGS60043 Program Management Specialist to the Chief of Staff and General Counsel. Effective October 23, 2006.

Section 213.334 Department of State

DSGS61115 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs. Effective October 06, 2006.

DSGS61126 Staff Assistant to the Director, Policy Planning Staff. Effective October 11, 2006.

DSGS61128 Special Assistant to the Under Secretary for Global Affairs. Effective October 11, 2006.

DSGS61104 Special Assistant to the Director, Policy Planning Staff. Effective October 23, 2006.

DSGS61127 Special Assistant to the Assistant Secretary for International Organizational Affairs. Effective October 23, 2006.

Section 213.335 Department of the Treasury

DYGS60277 Speechwriter to the Assistant Secretary (Public Affairs). Effective October 31, 2006.

Section 213.336 Department of Defense

DDGS16985 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective October 06, 2006.

DDGS16986 Special Assistant to the Deputy General Counsel Legal Counsel. Effective October 06, 2006.

DDGS16999 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs). Effective October 16, 2006.

DDGS16984 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective October 23, 2006.

DDGS16995 Special Assistant to the Under Secretary of Defense (Acquisition, Technology, and Logistics). Effective October 23, 2006.

DDGS16996 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective October 27, 2006.

DDGS16998 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective October 27, 2006.

DDGS16993 Deputy, White House Liaison Office to the Special Assistant to the Secretary of Defense for White House Liaison. Effective October 30, 2006.

Section 213.337 Department of the Army

DWGS60027 Special Assistant to the Deputy Under Secretary of the Army to the Deputy Under Secretary of the Army. Effective October 05, 2006.

DWGS60024 Personal and Confidential Assistant to the Under Secretary of the Army. Effective October 06, 2006.

Section 213.339 Department of the Air Force

DFGS08001 Special Assistant to the Deputy Assistant Secretary (Force Management Integration). Effective October 30, 2006.

Section 213.3310 Department of Justice

DJGS00406 Public Affairs Specialist to the Director, Office of Public Affairs. Effective October 27, 2006.

Section 213.3311 Department of Homeland Security

DMGS00577 Deputy Director of the Center for Faith Based and Community Initiatives to the Director of Faith-Based and Community Initiatives. Effective October 03, 2006.

DMGS00580 Associate Director of Strategic Communications for Policy to the Director of Strategic Communications. Effective October 03, 2006.

DMGS00578 Business Liaison Director to the Assistant Secretary for Private Sector. Effective October 05, 2006.

DMGS00579 Associate Director for Latin American Affairs to the Assistant Secretary for International Affairs. Effective October 05, 2006.

Section 213.3311 Department of Homeland Security

DMGS00583 Policy Advisor to the Chief of Staff. Effective October 11, 2006.

DMGS00581 Associate Director of Legislative Affairs to the Assistant Secretary for Legislative Intergovernmental Affairs. Effective October 24, 2006.

DMGS00582 Associate Director of Legislative Affairs to the Assistant Secretary for Legislative Intergovernmental Affairs. Effective October 24, 2006.

DMGS00586 Counselor to the Director and Deputy Director to the Under Secretary for Federal Emergency Management. Effective October 24, 2006.

Section 213.3312 Department of the Interior

DIGS01079 Science Advisor to the Assistant Secretary for Water and Science. Effective October 25, 2006.

Section 213.3313 Department of Agriculture

DAGS00864 Confidential Assistant to the Administrator, Rural Housing Service. Effective October 30, 2006.

Section 213.3314 Department of Commerce

DCGS00442 Director of Public Affairs to the Assistant Secretary for Telecommunications and Information. Effective October 06, 2006.

DCGS00431 Special Assistant to the Assistant Secretary for Export Administration. Effective October 11, 2006.

DCGS00531 Confidential Assistant to the Deputy Assistant Secretary for Services. Effective October 11, 2006.

DCGS00544 Chief of Staff to the Assistant Secretary and Director General of United States/For Commercial Services. Effective October 11, 2006.

DCGS60262 Deputy Director of Advisory Committees to the Director of Advisory Committees. Effective October 11, 2006.

DCGS60263 Special Assistant to the Executive Director for Trade Promotion and Outreach. Effective October 11, 2006.

DCGS60533 Special Assistant to the Deputy Under Secretary and Deputy Director of U.S. Patent and Trademark Office. Effective October 11, 2006.

Section 213.3315 Department of Labor

DLGS60190 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 03, 2006.

DLGS60078 Staff Assistant to the Assistant Secretary for Policy. Effective October 05, 2006.

DLGS60111 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 05, 2006.

DLGS60178 Staff Assistant to the Counselor in the Office of the Secretary. Effective October 05, 2006.

DLGS60182 Staff Assistant to the White House Liaison. Effective October 05, 2006.

DLGS60278 Staff Assistant to the Chief Financial Officer. Effective October 05, 2006.

DLGS60228 Chief of Staff to the Assistant Secretary for Occupational Safety and Health. Effective October 24, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60040 Special Assistant to the Chief of Staff. Effective October 03, 2006.

DHGS60056 Special Assistant to the Director Office of Refugee Resettlement. Effective October 24, 2006.

DHGS60042 Special Assistant to the Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective October 27, 2006.

DHGS60238 Regional Director, Boston, Massachusetts, Region I to the Director of Intergovernmental Affairs. Effective October 27, 2006.

DHGS60698 Special Assistant to the Director, Office of External Affairs. Effective October 31, 2006.

Section 213.3318 Environmental Protection Agency

EPGS06028 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Relations. Effective October 27, 2006.

EPGS06029 Director, Office of Web Communications to the Associate Administrator for Public Affairs. Effective October 27, 2006.

Section 213.3325 United States Tax Court

JCGS60077 Trial Clerk to the Chief Judge. Effective October 26, 2006.

Section 213.3330 Securities and Exchange Commission

SEOT90007 Confidential Assistant to the Chairman. Effective October 25, 2006.

SEOT90008 Confidential Assistant to a Commissioner. Effective October 31, 2006.

Section 213.3331 Department of Energy

DEGS00545 Senior Policy Advisor to the Assistant Secretary for Fossil Energy. Effective October 23, 2006.

DEGS00544 Senior Communications Advisor to the Assistant Secretary of Energy (Environmental Management). Effective October 25, 2006.

DEGS00546 Senior Advisor to the Assistant Secretary for Policy and International Affairs. Effective October 26, 2006.

Section 213.3332 Small Business Administration

SBGS00606 Speech Writer to the Associate Administrator for Communications and Public Liaison. Effective October 06, 2006.

Section 213.3333 Federal Deposit Insurance Corporation

FDOT00010 Chief of Staff to the Chairman of the Board of Directors (Director). Effective October 20, 2006.

FDOT00011 Special Advisor to the Chairman to the Chairman of the Board of Directors (Director). Effective October 20, 2006.

Section 213.3337 General Services Administration

GSGS00166 Deputy Associate Administrator for Small Business Utilization to the Associate Administrator for Small Business Utilization. Effective October 05, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60187 Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 06, 2006.

Section 213.3391 Office of Personnel Management

PMGS60019 Special Assistant to the Director, Office of Communications and Public Liaison. Effective October 25, 2006.

Section 213.3396 National Transportation Safety Board

TBGS11123 Confidential Assistant to the Chairman. Effective October 23, 2006.

Section 213.3397 Federal Housing Finance Board

FBOT00010 Special Assistant to the Board Director. Effective October 23, 2006.

Section 213.33 National Endowment for the Humanities

NHGS00078 Associate Director of Communications and Chief Speechwriter to the Director of Communications. Effective October 25, 2006.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–21541 Filed 12–15–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54920]

Extension of Order Regarding Broker-Dealer Financial Statement Requirements Under Section 17 of the Exchange Act

December 12, 2006.

The Securities and Exchange Commission (''Commission'') is extending its Order, originally issued on August 4, 2003,[1] and extended on July 14, 2004[2] and on December 7, 2005 (the ''2005 Order'')[3] under Section 17(e) of the Securities Exchange Act of 1934 (''Exchange Act''), regarding audits of financial statements of broker-dealers that are not issuers (''non-public broker-dealers''). The 2005 Order provided that non-public broker-dealers may file with the Commission and may send to their customers documents and information required by Section 17(e) certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2007.

Section 17(e)(1)(A) of the Exchange Act requires that every registered broker-dealer annually file with the Commission a certified balance sheet and income statement, and Section 17(e)(1)(B) requires that the broker-dealer annually send to its customers its ''certified balance sheet.''[4] The Sarbanes-Oxley Act of 2002 (''Act'')[5] established the Public Company Accounting Oversight Board (''Board'')[6] and amended Section 17(e) to replace the words ''an independent public accountant'' with ''a registered public accounting firm.''[7]

The Act establishes a deadline for registration with the Board of auditors of financial statements of ''issuers,'' as that term is defined in the Act.[8] The Act does not provide a deadline for registration of auditors of non-public broker-dealers.

The 2005 Order expires January 1, 2007. Application of registration requirements and procedures to auditors of non-public broker-dealers is still being considered. The Commission has therefore determined that extending the Order for two years is consistent with the public interest and the protection of investors.

Accordingly,

It is ordered, pursuant to Section 17(e) of the Exchange Act, that non-public broker-dealers may file with the Commission a balance sheet and income statement and may send to their customers a balance sheet certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2009.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21475 Filed 12–15–06; 8:45 am]

BILLING CODE 8011–01–P

[1] Exchange Act Release No. 48281, 68 FR 47375 (August 8, 2003).

[2] Exchange Act Release No. 50020, 69 FR 43482 (July 20, 2004).

[3] Exchange Act Release No. 52909, 70 FR 73809 (December 13, 2005).

[4] Exchange Act Rule 17a–5 requires registered broker-dealers to provide to the Commission and to customers of the broker-dealer other specified financial information.

[5] Public Law 107–204.

[6] Section 101 of the Act.

[7] Section 205(c)(2) of the Act.

[8] Section 2 of the Act defines ''issuer.'' Section 102 of the Act establishes a specific deadline by which auditors of issuers must register with the Board. Based on the statutory deadline of 180 days after the Commission determined the Board was ready to carry out the requirements of the Act, that date was October 22, 2003. See Exchange Act Release No. 48180 (July 16, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54915; File No. SR–BSE–2006–54]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Removal of Minimum Volume and Fill-Or-Kill Order Type Designations

December 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 8, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove the Minimum Volume (''MV'') and Fill-Or-Kill (''FOK'') order type designations in the Boston Options Exchange (''BOX'') Rules. The text of the proposed rule change is available on BSE's Web site (*http://www.bostonstock.com*), at BSE'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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 remove the MV and FOK order type designations contained in Chapter V, Sections 9(a), 14(d)(3)–(4), and 27(b)(iv) of the BOX Rules. The Exchange proposes to remove the MV and FOK order types because they are currently not supported by BOX's new trading system. The Exchange intends to add the MV and FOK order types when that functionality is implemented into the trading system.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 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 foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4[11] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay.[12] The Commission is exercising its authority to waive the five day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because it would allow the BSE to ensure that its rules more accurately reflect its trading system functionality. Therefore, the Commission designates the proposal, as amended, to be operative and effective upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that there is no proposed change to the Supplemental Material following part (c) of Section 27, entitled ''Complex Orders.''

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] The Exchange represents that it will submit a proposed rule change to the Commission to add the MV and FOK order types into the BOX rules pursuant to Section 19(b) of the Act. Telephone conversation between Brian Donnelly, AVP Regulation & Compliance, BSE, Terri Evans, Special Counsel, Division of Market Regulation (''Division''), Commission, and Angela Muehr, Attorney, Division, Commission, on December 4, 2006.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 8, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2006–54 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–BSE–2006–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–54 and should be submitted on or before January 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21477 Filed 12–15–06; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54919; File No. SR–CBOE–2006–14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to Customer Portfolio Margining; Order Granting Accelerated Approval to the Proposed Rule Change, as Amended

December 12, 2006.

I. Introduction

On February 2, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to amend CBOE Rule 12.4 to expand the scope of products that are eligible for treatment as part of CBOE's approved portfolio margin pilot program and to eliminate the requirement for a separate cross-margin account.[3] The proposed rule change would expand the scope of eligible products in the pilot to include margin equity securities,[4] unlisted derivatives, listed options and securities futures.[5] The proposed rule change was published in the **Federal Register** on April 6, 2006.[6] The Commission subsequently extended the comment period for the original proposed rule filing until May 11, 2006.[7] The Commission received 7 comment letters in response to the **Federal Register** notice.[8] On July 26, 2006, CBOE filed a response to these comments.[9] The comment letters and CBOE's response to the comments are summarized below. On August 9, 2006, CBOE filed Amendment No. 1 to the proposed rule change.[10] On September 27, 2006, CBOE filed Amendment No. 2 to the proposed rule change.[11]

This order provides notice of filing of Amendment Nos. 1 and 2 and solicits comments from interested persons on Amendment Nos. 1 and 2. This order also grants accelerated approval of the proposed rule change, as amended by Amendment Nos. 1 and 2.[12]

II. Description

a. Portfolio Margining

The proposed rule change consists of amendments to Rule 12.4 to include

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005) (SR–CBOE–2002–03). On July 14, 2005, the Commission approved on a pilot basis expiring July 31, 2007, amendments to CBOE's margin rules that permit broker-dealers to determine customer margin requirements for portfolios of listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds using a specified portfolio margin methodology. The Commission also approved rule amendments to require disclosure to, and written acknowledgment from, customers using a portfolio margin account.

[4] For purposes of the pilot, a margin equity security is a security that meets the definition of a ''margin equity security'' under Regulation T of the Federal Reserve Board (''FRB''). *See* 12 CFR 220.2. An unlisted derivative means ''any equity-based (or equity index-based) unlisted option, forward contract or swap that can be valued by a theoretical pricing model approved by the Securities and Exchange Commission.'' *See* proposed Rule 12.4(a)(4).

[5] In addition to CBOE Rule 12.4, the proposed rule change also approves changes to CBOE Rules 9.15, 13.5 and 15.8A.

[6] *See* Exchange Act Release No. 53576 (March 30, 2006), 71 FR 17519 (April 6, 2006) (SR–CBOE–2006–14). The New York Stock Exchange LLC (''NYSE'') also filed a similar proposed rule filing seeking to expand the scope of eligible products under its portfolio margin pilot program. *See* Exchange Act Release No. 53577 (March 30, 2006), 71 FR 17539 (April 6, 2006) (SR–NYSE–2006–13).

[7] *See* Exchange Act Release No. 53728 (April 26, 2006), 71 FR 25878 (May 2, 2006).

[8] *See* letter from Timothy H. Thompson, Senior Vice President, Chief Regulatory Officer, Regulatory Services Division, CBOE, to Nancy Morris, Secretary, Commission, dated June 5, 2006 (''CBOE Letter''); letter from William H. Navin, Executive Vice President, General Counsel and Secretary, The Options Clearing Corporation (''OCC''), to Nancy M. Morris, Secretary, Commission, dated May 19, 2006 (''OCC Letter''); letter from James Barry, on behalf of the *Ad Hoc* Portfolio Margin Committee, John Vitha, Chair, Derivatives Product Committee and Christopher Nagy, Chair, Options Committee, Securities Industry Association, to Nancy M. Morris, Secretary, dated May 16, 2006 (''SIA Letter''); letter from Gary Alan DeWaal, Group General Counsel and Director of Legal and Compliance, Fimat USA, LLC, to Nancy M. Morris, Secretary, Commission, dated May 11, 2006 (''Fimat Letter''); letter from Stuart J. Kaswell, Partner, Dechert LLP, Counsel for Federated Investors, Inc., to Nancy M. Morris, Secretary, Commission, dated May 10, 2006 (''Federated Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange Inc., to Jonathan G. Katz, Secretary, Commission, dated May 9, 2006 (''CME Letter''); and letter from Gerard J. Quinn, Vice President and Associate General Counsel, SIA, to Nancy M. Morris, Secretary, Commission, dated April 21, 2006 (''SIA Extension Letter'').

[9] *See* letter from Timothy H. Thompson, Senior Vice President, Chief Regulatory Officer, Regulatory Services Division, CBOE, to Nancy M. Morris, Secretary, Commission, dated July 26, 2006 (''CBOE Response'').

[10] CBOE filed Amendment No. 1 in response to comments received and to make other clarifying changes to the proposed rule filing. Amendment No. 1 replaced and superceded the original filing in its entirety.

[11] CBOE filed partial Amendment No. 2 to conform its day trading language to the NYSE rule language and to request accelerated approval. A clean copy of the proposed rule, as amended by Amendment Nos. 1 and 2, is attached to this order as *Exhibit A.*

[12] By separate order, the Commission also is approving a parallel rule filing by the NYSE (SR–NYSE–2006–13). Exchange Act Release No. 54918; *see also supra* note 6.

margin equity securities (as defined in Regulation T), unlisted derivatives, listed options and securities futures as eligible products for the portfolio margining pilot.[13] The proposed rule change also includes amendments to eliminate the requirement of a separate cross-margin account. CBOE Rule 12.3 prescribes specific margin requirements for customers based on the type of securities held in their accounts.[14] Outside the existing pilot program, CBOE's margin rules require that margin be calculated using fixed percentages, on a position-by-position basis. In contrast, the current portfolio margin pilot program permits a broker-dealer to calculate customer margin requirements by grouping all products in an account that are based on the same index or issuer into a single portfolio. For example, futures, options and exchange traded funds based on the S&P 500 would each be grouped in a portfolio and products based on IBM would be grouped into a separate portfolio.

The broker-dealer then calculates a customer's margin requirement by ''shocking'' each portfolio at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. Currently, under the pilot, products of portfolios based on high capitalization, broad-based securities indexes are shocked along a range spanning an increase of 6% and a decrease of 8%. Portfolios of products based on non-high capitalization, broad-based securities indexes are shocked along a range spanning an increase of 10% and a decrease of 10%. The proposed rule change would continue to apply these shock ranges. Under the proposed amendments, portfolios of products based on an equity security or a narrow-based index would be shocked along a range spanning an increase of 15% and a decrease of 15%.[15] In addition, as with the current pilot, a theoretical options pricing model would continue to be used to derive position values at each valuation point for the purpose of determining the gain or loss.[16]

The portfolio shocks described above result in a gain or loss for each instrument in a portfolio at each calculation point along the range. These gains and losses are netted to derive a potential portfolio-wide gain or loss for the point. The margin requirement for a portfolio is the amount of the greatest portfolio-wide loss among the calculation points. The margin requirements for each portfolio are added together to calculate the total margin requirement for the portfolio margin account. This approach, in most cases, will generally lower customer margin requirements.[17]

The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest portfolio-wide loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier.[18] The second computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer in the event the greatest portfolio-wide loss among the valuation points is *de minimis*.

b. Expansion of Eligible Products

Under CBOE's proposed rule, products eligible for portfolio margining would be expanded to include margin equity securities (as defined under Regulation T),[19] unlisted derivatives, listed options and securities futures. The unlisted derivatives would be included in a portfolio based on the underlying reference index or security. Individual equities and narrow-based index futures would be included in a portfolio shocked at a range spanning an increase of 15% and a decrease of 15%.

c. Margin Deficiency

The proposed rule change would require a customer to satisfy a margin deficiency in a portfolio margin account within three business days by depositing additional margin or effecting an offsetting hedge. The current pilot requires that a customer deposit addition margin by T+1. The proposed rule also would require a broker-dealer to deduct from its net capital the amount of any portfolio margin call not met by the close of business on T+1 and until the call is satisfied. Additionally, the proposal would further require a broker-dealer to have in place procedures to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and to take appropriate action when warranted.[20]

d. $5 Million Equity Requirement

The current pilot requires customers that are not broker-dealers or futures firms to maintain minimum account equity of $5 million dollars. The proposed rule change would eliminate the $5 million account equity requirement for all portfolio margin accounts, except those holding unlisted derivatives.[21]

e. Risk Management Methodology

The pilot requires member broker-dealers to monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing potential risk to the firm's capital. This risk analysis methodology must be filed and maintained with CBOE. The proposed rule change strengthens these requirements by providing that, member organizations must file the risk analysis methodology with its firm's DEA and submit it to the Commission prior to implementation.[22] The proposed rule change also requires the inclusion of additional procedures and guidelines as part of the methodology.[23]

f. Cross-Margin Account

The proposed rule change would eliminate the requirement that portfolios with futures positions be held in a separate cross-margin account. Under the proposal, a customer would be permitted to use a single securities margin account for all eligible products. The Exchange and commenters have

[13] The list of eligible products under the pilot currently includes listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds.

[14] The margin rules specify the amount of equity a customer must maintain in his or her margin account with respect to securities positions financed by the broker-dealer. The equity protects the broker-dealer in the event the customer defaults on the obligation to re-pay the financing and the broker-dealer is forced to liquidate the position at a loss.

[15] For example, under the pilot, a portfolio of single stock futures and listed equity options would be shocked at 10 equidistant points along a range bounded on one end by a 15% increase in the market value of the instrument and at the other end by a 15% decrease (*i.e.*, at ±3%, ±6%, ±9%, ±12% and ±15%).

[16] Currently, the only model that qualifies is the OCC's Theoretical Intermarket Margining System (TIMS).

[17] For example, the current required initial and maintenance margin requirements for an equity security are 50% and 25%, respectively. The market movement range to calculate the potential gains and losses under the proposed portfolio margin rule for equity securities is ±15%.

[18] The multiplier for a standard listed option is fixed by the options market on which the options series is traded. For example, a cash settled equity option generally has a multiplier of 100. Therefore, the minimum margin for one options contract would be $37.50. The multipliers for different securities and futures products may vary.

[19] Margin equity securities include certain foreign equity securities and options on foreign equity securities. *See* 12 CFR 220.2

[20] *See* proposed rule 12.4(i)(1).

[21] *See* proposed rule 12.4(b)(3).

[22] *See* proposed Rule 12.4(b), under which the broker-dealer must receive prior approval from its DEA prior to offering portfolio margining to its customers. As part of the approval process, CBOE will require a firm to demonstrate compliance with the risk management analysis rules.

[23] *See* proposed Rule 15.8A.

indicated that maintaining and monitoring two separate margin accounts would be operationally difficult and that it would be more efficient to hold all positions in one securities account.

g. Excess Equity and Collateral

CBOE also proposes to amend Rule 12.4 to add language allowing a customer to use excess equity in a regular margin account to meet a margin deficiency in a portfolio margin account without having to transfer any funds or securities where the portfolio margin account is a sub-account of the regular margin account. In addition, the proposed rule change adds language allowing positions (including nonequity securities and money market mutual funds) not eligible for portfolio margin treatment to be carried in the portfolio margin account for their collateral value, subject to the margin requirements of a regular margin account.

h. Day Trading

The proposed rule change amends the day trading provisions of Rule 12.4 to provide that CBOE's day trading rules do not apply to portfolio margin accounts that have at least $5 million equity, provided the member firm has the ability to monitor the intra-day risk associated with day trading. In addition, the proposed rule change would provide that day trading will not be deemed to have occurred whenever the position or positions day traded were part of a hedge strategy [24] that reduced the risk of the portfolio.

i. Risk Disclosure Statement

The proposed rule change eliminates the sample risk disclosure statement and acknowledgement in the rule text.[25]

j. Hedged Positions

Under the pilot, an underlying security in a portfolio margin account must be removed from the account if it is no longer offset by an option position. The amendments propose to eliminate the requirement to remove instruments that are no longer offset by options positions. CBOE made this change in response to comments that all positions eligible for a portfolio margin account, including underlying securities, should receive equal treatment. Moreover, CBOE noted that it would be operationally difficult to move positions in and out of the portfolio margin account based on whether they are currently being offset.

III. Summary of Comments Received and CBOE Response

The Commission received a total of 7 comment letters to the proposed rule change.[26] The comments, in general, were supportive. One commenter stated that it strongly supports ''the significant step forward represented by the currently proposed changes.'' [27] Another commenter stated that the portfolio margining of securities products will ''help U.S. brokers and exchanges compete more effectively with their overseas counterparts * * * and thereby increase the strength and liquidity of U.S. markets.'' [28] Each commenter, however, recommended changes to specific provisions of the proposed rule change.

Several commenters [29] submitted comments regarding the ability to use portfolio margin methodologies other than the method prescribed in the rule to calculate customer margin requirements. One commenter stated that the Commission has experience in approving proprietary market risk models for consolidated supervised entities (CSEs) and OTC derivatives dealers.[30] The Exchange stated, however, that initially, the most prudent course is for all broker-dealers to utilize the rule's specified methodology and that in the longer term, proprietary risk models could be considered as alternatives.[31]

One commenter suggested that CBOE eliminate the requirement for a separate cross margin account and provide for one portfolio margin account for both futures and options; eliminate the requirement that stock must be hedged in order to be carried in a portfolio margin account; and eliminate the two-tiered per contract minimum margin requirement in favor of one overall minimum.[32] The CBOE stated that it agrees with the proposed changes and believes they are operationally feasible. In response, CBOE made these changes in Amendment No. 1 to the proposed rule filing.[33]

One commenter stated that portfolio margining should be expanded to include nonequity securities, interest rate derivatives, collateralized debt obligations and other similar non-equity related products, and foreign currency derivatives.[34] This commenter also requested that nonequity securities be permitted to be held in the portfolio margin account for collateral purposes only, subject to the other applicable margin requirements.[35] The Exchange noted that it agrees with the commenter to the extent that nonequity securities may serve as collateral in the portfolio margin account.[36]

One commenter requested that CBOE and NYSE eliminate differences between the CBOE and NYSE risk disclosure documents. In response, CBOE (and the NYSE) amended the rule text to eliminate the risk disclosure language.[37]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [39] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements and will better align margin requirements with actual risk.

Under a portfolio margin system, offsets are fully realized, whereas under the Exchange's current margin rules, positions are margined independent of each other and offsets between them do not figure into the total margin requirement. A portfolio margin system recognizes the offsetting gains from positions that react favorably in market declines, while market rises are

[24] A ''hedge strategy'' for purposes of the day trading restrictions on portfolio margining means a transaction or series of transactions that reduces or offsets a material portion of the risk in a portfolio.

[25] Instead the Exchange will send out a regulatory circular with the sample disclosure language. The Exchange made this change to avoid having to file a proposed rule change each time in the risk disclosure document is changed.

[26] *See supra* note 8. One of the comment letters related to the extension of the comment period for the proposed rule change. *See* SIA Extension Letter.

[27] *See* SIA Letter.

[28] *See* Fimat Letter.

[29] *See* SIA Letter and OCC Letter; *see also* CME Letter (discussing SPAN).

[30] *See* SIA Letter.

[31] *See* CBOE Response, *supra* note 9.

[32] *See* SIA Letter.

[33] CBOE also made these changes to maintain consistency with the NYSE filing.

[34] *See* SIA Letter.

[35] *See* SIA Letter.

[36] *See* Amendment No. 1; *see also* CBOE Response, *supra* note 9.

[37] *Id.*; *see supra* note 25.

[38] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

tempered by offsetting losses from positions that react negatively. Consequently, a portfolio margin approach can have a neutralizing effect on the volatility of margin requirements. Thus, a portfolio margin system may better align a customer's total margin requirement with the actual risk associated with the customer's positions taken as a whole. The Commission further notes portfolio margining may alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility.

Moreover, the Commission notes that approving the proposed rule change would enhance portfolio margining by permitting more products to be margined under this methodology. This is consistent with the amendments to Regulation T made by the FRB in 1998, which sought to advance the use of portfolio margining.[40] The Commission also believes that this expanded program for portfolio margining will serve to advance the development of even more risk-sensitive approaches to margining customer positions, including the use of internal models as advocated by commenters. The Commission intends to work with CBOE and the NYSE towards this objective after it gains experience with the portfolio margining system of this proposal.

The Commission believes that while the portfolio margining system in the proposed rule will have the effect of reducing customer margin (in most cases), the methodology is relatively conservative in that it requires positions to be shocked at specified market move ranges (*e.g.*, ±15% for individual equities) that represent potential future stress events. Essentially the same portfolio methodology has been used by broker-dealers to calculate haircuts on options positions for net capital purposes.[41] Furthermore, the proposed requirement that a firm receive pre-approval from the Exchange prior to offering portfolio margining to its customers, coupled with the requirement for enhanced risk management procedures, is designed to ensure that only those firms with adequate controls would be eligible to implement a customer portfolio margining program.[42]

CBOE also has requested that the Commission approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that the changes in Amendment Nos. 1 and 2 to the proposed rule change do not raise significant new or unique issues from those previously raised in the earlier portfolio margin rule filings.[43] The changes proposed by the Exchange in Amendment Nos. 1 and 2 are designed to ensure consistency with the companion NYSE proposed rule filing and to respond to comments received as a result of the **Federal Register** notice.[44] The Commission believes that these proposed changes strengthen the proposed rule change.

Accordingly, the Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that it is consistent with section 19(b)(2) of the Act[45] to approve Amendment Nos. 1 and 2 to CBOE's proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

Uniform Effective Date

The Commission believes that approving the amendments on an accelerated basis will permit CBOE to begin the process of approving broker-dealers to implement portfolio margining and would allow firms to begin to make the necessary changes and upgrades to their systems, as well as their policies and procedures, in order to accommodate customer portfolio. The Commission, however, believes that if some firms receive CBOE approval to begin offering customer portfolio margining to customers before other firms, these other firms would be at a competitive disadvantage. Therefore, the Commission has determined to set a uniform effective date of April 2, 2007 for the proposed rule change, as amended. As stated above, the Commission believes that setting a uniform effective date will avoid placing some firms at a competitive disadvantage and reduce confusion in the marketplace.

V. Solicitation of Comments of Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–CBOE–2006–14 and should be submitted on or before January 8, 2007.

[40] Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers,'' 63 FR 2806 (January 16, 1998); *see also* 12 CFR 220.1(b)(3)(i); *see also* letter from the FRB to James E. Newsome, Acting Chairman, Commodity Futures Trading Commission, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001. The FRB concluded the letter by writing ''the Board anticipates that the creation of securities futures products will provide another opportunity to develop more risk-sensitive, portfolio-based approaches for all securities, including securities options and securities futures products.'' *Id.*

[41] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[42] The proposed rules also would continue to require a minimum per contract charge of $.375. The Commission also notes that the proposed rules contain a leverage test under which a broker-dealer cannot permit the amount of portfolio margin required of its customers to exceed 10 times the firm's net capital.

[43] *See supra* note 3.

[44] *See supra* notes 6 and 7.

[45] 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[46] that the proposed rule change (File No. SR–CBOE–2006–14), as amended, be and it hereby is, approved on an accelerated basis, on a pilot basis to expire on July 31, 2007. The effective date will be April 2, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

Exhibit A—Chicago Board Options Exchange, Inc.

Chapter XII

Margins

Rule 12.4. Portfolio Margin

As an alternative to the transaction/position specific margin requirements set forth in Rule 12.3 of this Chapter 12, a member organization may require margin for all margin equity securities (as defined in Section 220.2 of Regulation T), listed options, unlisted derivatives, security futures products, and index warrants in accordance with the portfolio margin requirements contained in this Rule 12.4.

In addition, a member organization, provided it is a Futures Commission Merchant (''FCM'') and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this Rule 12.4 to combine a customer's related instruments (as defined below), listed index options, unlisted derivatives, options on exchange traded funds, index warrants, and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis. Application of the portfolio margin provisions of this Rule 12.4 to IRA accounts is prohibited.

(a) Definitions.

(1) The term ''listed option'' shall mean any equity (or equity index-based) option traded on a registered national securities exchange or automated facility of a registered national securities association.

(2) The term ''security future'' means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, to the extent that that term is defined in Section 3(a)(55) of the Securities Exchange Act of 1934.

(3) The term ''security futures product'' means a security future, or an option on any security future.

(4) The term ''unlisted derivative'' means any equity-based (or equity index-based) unlisted option, forward contract or swap that can be valued by a theoretical pricing model approved by the Securities and Exchange Commission.

(5) The term ''option series'' means all option contracts of the same type (either a call or a put) and exercise style, covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units.

(6) The term ''class'' refers to all listed options, unlisted derivatives, security futures products, and related instruments that are based on the same underlying instrument, and the underlying instrument itself.

(7) The term ''portfolio'' means products of the same class grouped together.

(8) The term ''related instrument'' within a class or product group means index futures contracts and options on index futures contracts covering the same underlying instrument, but does not include security futures products.

(9) The term ''underlying instrument'' means a security or security index upon which any listed option, unlisted derivative, security futures product or related instrument is based. The term underlying instrument shall not be deemed to include futures contracts, options on futures contracts or underlying stock baskets.

(10) The term ''product group'' means two or more portfolios of the same type for which it has been determined by Rule 15c3–1a(b)(ii) under the Securities Exchange Act of 1934 that a percentage of offsetting profits may be applied to losses at the same valuation point.

(11) The terms ''theoretical gains and losses'' means the gain and loss in the value of each eligible position at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument.

The magnitude of the valuation point range shall be as follows:

Portfolio type	Up/down market move (high & low valuation points) (percent)
High Capitalization, Broad-based Market Index [1].	+6/−8
Non-High Capitalization, Broad-based Market Index [1].	+/−10
Narrow-based Index [1]	+/−15
Individual Equity [1]	+/−15

[1] In accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a under the Securities Exchange Act of 1934.

(b) Eligible Participants.

Any member organization intending to apply the portfolio margin provisions of this Rule 12.4 to its accounts must receive prior approval from its DEA. The member organization will be required to, among other things, demonstrate compliance with Rule 15.8A—Risk Analysis of Portfolio Margin Accounts, and with the net capital requirements of Rule 13.5—Customer Portfolio Margin Accounts.

The application of the portfolio margin provisions of this Rule 12.4 is limited to the following customers:

(1) Any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;

(2) any member of a national futures exchange to the extent that listed index options, unlisted derivatives, options on exchange traded funds, index warrants or underlying instruments hedge the member's related instruments, and

(3) any person or entity not included in (b)(1) or (b)(2) above that is approved for writing uncovered options. However, such persons or entities may not establish or maintain positions in unlisted derivatives unless minimum equity of at least five million dollars is established and maintained with the member organization. For purposes of the five million dollar minimum equity requirement, all securities and futures accounts carried by the member organization for the same customer may be combined provided ownership across the accounts is identical. A guarantee by any other account for purposes of the minimum equity requirement is not permitted.

(c) Opening of Accounts.

(1) Only customers that, pursuant to Rule 9.7, have been approved for writing uncovered options are permitted to utilize a portfolio margin account.

(2) On or before the date of the initial transaction in a portfolio margin account, a member shall:

(A) Furnish the customer with a special written disclosure statement describing the nature and risks of portfolio margining and which includes an acknowledgement for all portfolio margin account owners to sign, attesting that they have read and understood the disclosure statement, and agree to the

[46] 15 U.S.C. 78s(b)(2).

terms under which a portfolio margin account is provided, and

(B) obtain a signed acknowledgement from the customer and record the date of receipt.

(d) Establishing Account and Eligible Positions.

(1) For purposes of applying the portfolio margin requirements provided in this Rule 12.4, member organizations are to establish and utilize a dedicated securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for a customer.

A margin deficit in the portfolio margin account of a customer may not be considered as satisfied by excess equity in another account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained. In the case of a portfolio margin account carried as a sub-account of a margin account, excess equity in the margin account may be used to satisfy a margin deficiency in the portfolio margin sub-account without transferring funds and/or securities to the portfolio margin sub-account.

(3) Eligible Positions

(A)

(i) a margin equity security (including a foreign equity security and option on a foreign equity security, provided the foreign equity security is deemed to have a ''ready market'' under SEC Rule 15c3–1 or a no-action position issued thereunder; and a control or restricted security, provided the security has met the requirements in a manner consistent with SEC Rule 144 or an SEC no-action position issued thereunder, sufficient to permit the sale of the security, upon exercise of any listed option or unlisted derivative written against it, without restriction).

(ii) a listed option on an equity security or index of equity securities,

(iii) a security futures product,

(iv) an unlisted derivative on an equity security or index of equity securities,

(v) a warrant on an equity security or index of equity securities, and

(vi) a related instrument.

(4) Positions other than those listed in (3)(A) above are not eligible for portfolio margin treatment. However, positions not eligible for portfolio margin treatment (except for ineligible related instruments) may be carried in a portfolio margin account subject to the margin required pursuant Rule 12.3 of this Chapter 12. Shares of a money market mutual fund may be carried in a portfolio margin account subject to the margin required pursuant to Exchange Rule 12.3 of this Chapter 12 provided that:

(i) The customer waives any right to redeem the shares without the member organization's consent,

(ii) the member organization (or, if the shares are deposited with a clearing organization, the clearing organization) obtains the right to redeem the shares in cash upon request,

(iii) the fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request, and

(iv) the member organization complies with the requirements of Section 11(d)(1) of the Securities Exchange Act of 1934 and Rule 11d1–2 thereunder.

(e) Initial and Maintenance Margin Required. The amount of margin required under this Rule 12.4 for each portfolio shall be the greater of:

(1) The amount for any of the ten equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (f) below or

(2) $.375 for each listed option, unlisted derivative, security futures product, and related instrument multiplied by the contract or instrument's multiplier, not to exceed the market value in the case of long positions.

(f) Method of Calculation.

(1) Long and short positions in eligible positions are to be grouped by class; each class group being a ''portfolio''. Each portfolio is categorized as one of the portfolio types specified in paragraph (a)(11) above.

(2) For each portfolio, theoretical gains and losses are calculated for each position as specified in paragraph (a)(11) above. For purposes of determining the theoretical gains and losses at each valuation point, member organizations shall obtain and utilize the theoretical value of a listed option, unlisted derivative, security futures product, underlying instrument, and related instrument rendered by a theoretical pricing model that has been approved by the Securities and Exchange Commission.[1]

(3) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point.

Offsets between portfolios within the High Capitalization, Broad-Based Index Option, Non-High Capitalization, Broad-Based Index Option and Narrow-Based Index Option product groups may then be applied as permitted by Rule 15c3–1a under the Securities Exchange Act of 1934.

(4) After applying paragraph (3) above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(5) In addition, if a security that is convertible, exchangeable, or exercisable into a security that is an underlying instrument requires the payment of money or would result in a loss if converted, exchanged, or exercised at the time when the security is deemed an underlying instrument, the full amount of the conversion loss is required.

(g) Minimum Equity Deficiency. If, as of the close of business, the equity in the portfolio margin account declines below the five million dollar minimum equity required under Paragraph (b) of this Rule 12.4 and is not restored to the required level within three (3) business days by a deposit of funds or securities, or through favorable market action; member organizations are prohibited from accepting new orders beginning on the fourth business day, except that new orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until such time as:

(1) The required minimum account equity is re-established or

(2) all unlisted derivatives are liquidated or transferred from the portfolio margin account to the appropriate account.

In computing net capital, a deduction in the amount of a customer's equity deficiency may not serve in lieu of complying with the above requirements.

(h) Determination of Value for Margin Purposes. For the purposes of this Rule 12.4, all *eligible* positions shall be valued at current market prices. Account equity for the purposes of this Rule 12.4 shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting the current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.

(i) Additional Margin.

(1) If, as of the close of business, the equity in any portfolio margin account is less than the margin required, the customer may deposit additional margin or establish a hedge to meet the margin requirement within three business days. After the three business day period, member organizations are prohibited from accepting new orders, except that new orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin

[1] Currently, the theoretical model utilized by the Options Clearing Corporation is the only model qualified.

requirements. In the event a customer fails to deposit additional margin in an amount sufficient to eliminate any margin deficiency or hedge existing positions after three business days, the member organization must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to account equity. Member organizations should not permit a customer to make a practice of meeting a portfolio margin deficiency by liquidation. Member organizations must have procedures in place to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and a member organization is expected to take appropriate action when warranted. Liquidations to eliminate margin deficiencies that are caused solely by adverse price movements may be disregarded. Guarantees by any other account for purposes of margin requirements is not permitted.

(2) Pursuant to Rule 13.5—Customer Portfolio Margin Accounts, if additional margin required is not obtained by the close of business on T+1, member organizations must deduct in computing net capital any amount of the additional margin that is still outstanding until such time as the additional margin is obtained or positions are liquidated pursuant to (i)(1) above.

(3) A deduction in computing net capital in the amount of a customer's margin deficiency may not serve in lieu of complying with the requirements of (i)(1) above.

(4) A member organization may request from its DEA an extension of time for a customer to deposit additional margin. Such request must be in writing and will be granted only in extraordinary circumstances.

(5) The day trading restrictions promulgated under Rule 12.3(j) shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided a member organization has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under Rule 12.3(j), provided the member organization has the ability to apply the applicable day trading restrictions under that Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A ''hedge strategy'' for the purpose of this rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Member organizations are also expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements.

(j) Portfolio Margin Accounts—Requirement to Liquidate.

(1) A member organization is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry related instruments within portfolio margin accounts, all customer portfolio margin accounts with positions in related instruments if the member is:

(i) Insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;

(ii) The subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(iii) Not in compliance with applicable requirements under the Securities Exchange Act of 1934 or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(iv) Unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

(2) Nothing in this paragraph (j) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

* * * * *

(Note: The sample risk description document is deleted in its entirety)

Chapter 9

Doing Business with the Public

Rule 9.15. Delivery of Current Options Disclosure Documents and Prospectus

(a) no change

(b) no change

(c) The special written disclosure statement describing the nature and risks of portfolio margining and acknowledgement for customer signature, required by Rule 12.4(c)(2) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

* * * * *

Chapter XIII

Net Capital

Rule 13.5. Customer Portfolio Margin Accounts

(a) No member organization that requires margin in any customer accounts pursuant to Rule 12.4—Portfolio Margin shall permit gross customer portfolio margin requirements to exceed 1,000 percent of its net capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day of any non-compliance, cease opening new portfolio margin accounts until compliance is achieved.

(b) If, at any time, a member organization's gross customer portfolio margin requirements exceed 1,000 percent of its net capital, the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; to the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to its Designated Examining Authority.

(c) If any customer portfolio margin account becomes subject to a call for additional margin, and all of the additional margin is not obtained by the close of business on T+1, member organizations must deduct in computing net capital any amount of the additional margin that is still outstanding until such time as it is obtained or positions are liquidated pursuant to Rule 12.4(i)(1).

* * * * *

Chapter XV

Records, Reports and Audits

Rule 15.8A. Risk Analysis of Portfolio Margin Accounts

(a) Each member organization that maintains any portfolio margin accounts for customers shall establish and maintain a comprehensive written risk analysis methodology for assessing and monitoring the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This

risk analysis methodology must be filed with the member organization's Designated Examining Authority and submitted to the SEC prior to the implementation of portfolio margining.

(b) Upon direction by the Department of Member Firm Regulation, each affected member organization shall provide to the Department such information as the Department may reasonably require with respect to the member organization's risk analysis for any or all of the portfolio margin accounts it maintains for customers.

(c) In conducting the risk analysis of portfolio margin accounts required by this Rule 15.8A, each member organization shall include in the written risk analysis methodology required pursuant to paragraph (a) above procedures and guidelines for:

(1) Obtaining and reviewing the appropriate customer account documentation and financial information necessary for assessing the amount of credit extended to customers,

(2) the determination, review and approval of credit limits to each customer, and across all customers, utilizing a portfolio margin account,

(3) monitoring credit risk exposure to the member organization from portfolio margin accounts, on both an intra-day and end of day basis, including the type, scope and frequency of reporting to senior management,

(4) the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate,

(5) the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group,

(6) managing the impact of credit extension on the member organization's overall risk exposure,

(7) the appropriate response by management when limits on credit extensions have been exceeded, and

(8) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible position(s).

Moreover, management must periodically review, in accordance with written procedures, the member organization's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this Rule 15.8A is accessible on a timely basis and information systems are available to capture, monitor, analyze and report relevant data.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54909; File No. SR–NASD–2006–129]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Use of a Special Indicator for Transactions Reported in Accordance With Section 3 of Schedule A to the NASD By-Laws

December 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD has submitted the proposed rule change under 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to adopt new paragraph (f) of NASD Rule 6130C, ''Trade Report Input,'' which will require members that report to the NASD/NSX Trade Reporting Facility (''NASD/NSX TRF'')[6] odd-lot transactions, sales where the buyer and seller have agreed to a price substantially unrelated to the current market for the security (also referred to as ''away from the market sales''), and purchases or sales of securities effected upon the exercise of an over-the-counter (''OTC'') option to use a special indicator denoting that such transactions are reported in accordance with Section 3 of Schedule A to the NASD By-Laws. Because the systems changes required to enable the NASD/NSX TRF to support the proposed new trade report modifiers have not been completed, proposed NASD Rule 6130C(f) specifies that prior to December 15, 2006, members cannot use the NASD/NSX TRF to report these transactions to the NASD and must use another electronic mechanism to satisfy their reporting obligations. The text of proposed NASD Rule 6130C(f) is substantially similar to NASD Rule 6130(g), which the Commission approved on June 12, 2006,[7] and which became effective on December 1, 2006. In this proposal, the NASD also is proposing technical conforming changes to NASD Rule 6130(g).

The text of the proposed rule change is available at *www.nasd.com*, at the principal offices of the NASD, 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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In the June 2006 Order, the Commission approved an NASD proposal that, among other things, amended the NASD's By-Laws to require members to report to the NASD in an automated manner all transactions that must be reported to the NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws (''Section 3'').[8] In that proposal, the NASD also adopted NASD Rule 6130(g), which requires members to report to the System, defined to include the NASD/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD has asked the Commission to waive the 30-day operative delay provided in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] The NASD/NSX TRF is the trade reporting facility established by the NASD and the National Stock Exchange.

[7] *See* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving SR-NASD–2006–055) (''June 2006 Order'').

[8] *See* June 2006 Order, *supra* note 7. Pursuant to Section 31 of the Act, the NASD and the national securities exchanges are required to pay transaction fees and assessments to the Commission that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The NASD obtains its Section 31 fees and assessments from its membership, in accordance with Section 3.

Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF''), odd-lot transactions, away from the market sales, and OTC option exercises with a special indicator denoting that such transactions are reported in accordance with Section 3. The effective date of the proposal was December 1, 2006.

On November 6, 2006, the Commission approved the NASD's proposal to establish the NASD/NSX TRF.[9] The NASD/NSX TRF provides members with an additional mechanism for reporting transactions in exchange-listed securities executed otherwise than on an exchange. The rules relating to the NASD/NSX TRF, which are found in the NASD Rule 4000C and 6000C Series, are substantially similar to the rules relating to the NASD/Nasdaq TRF. The NASD/NSX TRF rules became effective on November 27, 2006, the date on which the NASD/NSX TRF commenced operation with respect to certain Nasdaq-listed securities.

Proposed Amendments

The NASD proposes to adopt new NASD Rule 6130C(f) to require members that submit reports to the NASD/NSX TRF for odd-lot transactions, away from the market sales, and transactions pursuant to the exercise of an OTC option to use a special indicator denoting that such transactions are reported in accordance with Section 3. The proposed new paragraph specifies that transactions may be entered as clearing or non-clearing. Pursuant to NASD Rule 4632C(e), these transactions are not to be reported to the NASD/NSX TRF for purposes of publication. Proposed NASD Rule 6130C(f) also specifies the trade report modifiers that must be used when reporting these transactions to the NASD/NSX TRF: (1) .RO for transactions of less than a normal unit of trading; (2) .RA for away from the market sales; and (3) .RX for transactions effected pursuant to the exercise of an OTC option. These trade report modifiers are identical to the modifiers required under NASD Rule 6130(g).

The text of proposed NASD Rule 6130C(f) differs slightly from the current text of NASD Rule 6130(g). While members have an affirmative obligation pursuant to Section 3 to report to the NASD in an automated manner all covered odd-lot transactions, away from the market sales, and exercises of OTC options, they are not required to report such transactions to the NASD/NSX TRF. Instead, members may use any NASD facility that accepts the electronic reporting of such transactions, *e.g.,* the NASD/Nasdaq TRF or the Alternative Display Facility (''ADF''), to satisfy their reporting obligations. The text of proposed NASD Rule 6130C(f) makes clear that if members use the NASD/NSX TRF to report such transactions to the NASD, their reports must comply with the requirements set forth in NASD Rule 6130C(f). The NASD also is proposing conforming changes to the text of NASD Rule 6130(g) to maintain consistency among the rules for the NASD Trade Reporting Facilities and to clarify that members may, but are not required to, use the NASD/Nasdaq TRF to report such transactions.[10]

Finally, the NASD notes that the systems changes that will enable the NASD/NSX TRF to support the new trade report modifiers cannot be implemented as of December 1, 2006. As a result, proposed NASD Rule 6130C(f) provides that prior to December 15, 2006, members cannot report these transactions to the NASD/NSX TRF and must use an alternative electronic mechanism to satisfy their reporting obligations under Section 3.

The NASD believes that requiring members to report these transactions for regulatory purposes with the appropriate modifier will enhance the audit trail while preventing the dissemination of trade information that could distort the tape.

The NASD has filed the proposed rule change for immediate effectiveness. The NASD proposes to make the proposed rule change operative on December 1, 2006, the effective date of the amendments to Section 3 and substantially similar amendments to NASD Rule 6130(g) relating to the NASD/Nasdaq TRF.[11]

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will enhance the audit trail while preventing the dissemination of trade information that could distort the tape.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Because the NASD has designated the foregoing proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of 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. As required under Rule 19b–4(f)(6)(iii), the NASD provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day operative delay to allow the proposed rule change to become operative on December 1, 2006, the effective date for substantially similar amendments to NASD Rule 6130, which governs the NASD/Nasdaq TRF.[15] The NASD notes, however, that the systems changes necessary to allow the NASD/NSX TRF to support the new

[9] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR–NASD–2006–108).

[10] The NASD notes that ''System'' is defined for purposes of NASD Rule 6130 to include the OTC Reporting Facility, which is the only mechanism available to members for reporting transactions in OTC equity securities in accordance with NASD Rule 6620.

[11] *See* June 2006 Order, *supra* note 7.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *See* June 2006 Order, *supra* note 7.

trade report modifiers provided in NASD Rule 6130C(f) could not be implemented as of December 1, 2006. For that reason, NASD Rule 6130C(f) prohibits NASD members from reporting transactions covered by NASD Rule 6130(f) to the NASD/NSX TRF prior to December 15, 2006, and requires them to use an alternative electronic mechanism to satisfy their reporting obligations prior to that date.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NASD members to submit to the NASD/NSX TRF trade reports for the transactions specified in NASD Rule 6130C(f) on or after December 15, 2006, thereby providing NASD members with an additional means to satisfy their obligation to report these transactions.[16] For this reason, the Commission designates that the proposal become operative on December 1, 2006.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. 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–2006–129 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–NASD–2006–129. 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 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 publicly available. All submissions should refer to File Number SR–NASD–2006–129 and should be submitted on or before January 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21452 Filed 12–15–06; 8:45 am]

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[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–54918; File No. SR–NYSE–2006–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Rule 431 (''Margin Requirements'') and Rule 726 (''Delivery of Options Disclosure Document and Prospectus''), and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Customer Portfolio Margining

December 12, 2006.

I. Introduction

On March 2, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to amend NYSE Rules 431 and 726 to expand the scope of products that are eligible for treatment as part of the NYSE's approved portfolio margin pilot program and to eliminate the requirement for a separate cross-margin account.[3] The proposed rule change would expand the scope of eligible products in the pilot to include margin equity securities and unlisted derivatives.[4] The proposed rule change was published in the **Federal Register** on April 6, 2006.[5] The Commission subsequently extended the comment period for the original proposed rule filing until May 11, 2006.[6] The Commission received 8 comment letters in response to the **Federal Register** notice.[7] On July 20,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19). On July 14, 2005, the Commission approved on a pilot basis expiring July 31, 2007, amendments to Rule 431 that permit broker-dealers to determine customer margin requirements for portfolios of listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds using a specified portfolio margin methodology. The Commission also approved amendments to Rule 726 to require disclosure to, and written acknowledgment from, customers using a portfolio margin account. *See also* NYSE Information Memo 05–56, dated August 18, 2005 (for additional information); and Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR–NYSE–2005–93) (approving securities futures products and listed single stock options as eligible products for portfolio margining).

[4] For purposes of the pilot, a margin equity security is a security that meets the definition of a ''margin equity security'' under Regulation T of the Federal Reserve Board (''FRB''). *See* 12 CFR 220.2. An unlisted derivative means ''any equity-based or equity index-based unlisted option, forward contract, or security-based swap that can be valued by a theoretical pricing model approved by the SEC.'' *See* proposed Rule 431(g)(2)(I).

[5] *See* Exchange Act Release No. 53577 (March 30, 2006), 71 FR 17539 (April 6, 2006) (SR–NYSE–2006–13). The Chicago Board Options Exchange, Incorporated (''CBOE'') also filed a similar proposed rule filing seeking to expand the scope of eligible products under its portfolio margin pilot program. *See* Exchange Act Release No. 53576 (March 30, 2006), 71 FR 17519 (April 6, 2006) (SR–CBOE–2006–14).

[6] *See* Exchange Act Release No. 53728 (April 26, 2006), 71 FR 25878 (May 2, 2006).

[7] *See* letter from Timothy H. Thompson, Senior Vice President, Chief Regulatory Officer, Regulatory Services Division, CBOE, to Nancy Morris, Secretary, Commission, dated June 5, 2006 (''CBOE Letter''); letter from William H. Navin, Executive Vice President, General Counsel and Secretary, The Options Clearing Corporation (''OCC''), to Nancy M. Morris, Secretary, Commission, dated May 19, 2006 (''OCC Letter''); letter from James Barry, on behalf of the *Ad Hoc* Portfolio Margin Committee, John Vitha, Chair, Derivatives Product Committee and Christopher Nagy, Chair, Options Committee, Securities Industry Association, to Nancy M. Morris, Secretary, dated May 16, 2006 (''SIA Letter''); letter from Gary Alan DeWaal, Group

2006, the Exchange filed a response to these comments.[8] The comment letters and the Exchange's responses to the comments are summarized below. On September 13, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[9]

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1, grants accelerated approval of Amendment No. 1 and solicits comments from interested persons on Amendment No. 1.[10]

II. Description

a. Portfolio Margining

The proposed rule change consists of amendments to Rule 431 to include margin equity securities (as defined in Regulation T) and unlisted derivatives as eligible products for the portfolio margining pilot.[11] The proposed rule change also includes amendments to eliminate the requirement of a separate cross-margin account. Rule 431 prescribes specific margin requirements for customers based on the type of securities held in their accounts.[12] Outside the existing pilot program, Rule 431 requires that margin be calculated using fixed percentages, on a position-by-position basis. In contrast, the current portfolio margin pilot program permits a broker-dealer to calculate customer margin requirements by grouping all products in an account that are based on the same index or issuer into a single portfolio. For example, futures, options and exchange traded funds based on the S&P 500 would each be grouped in a portfolio and products based on IBM would be grouped into a separate portfolio.

The broker-dealer then calculates a customer's margin requirement by ''shocking'' each portfolio at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. Currently, under the pilot, products of portfolios based on high capitalization, broad-based securities indexes are shocked along a range spanning an increase of 6% and a decrease of 8%. Portfolios of products based on non-high capitalization, broad-based securities indexes are shocked along a range spanning an increase of 10% and a decrease of 10%. Portfolios of products based on an equity security are shocked along a range spanning an increase of 15% and a decrease of 15%.[13] The proposed rule change would continue to apply these shock ranges. In addition, as with the current pilot, a theoretical options pricing model would continue to be used to derive position values at each valuation point for the purpose of determining the gain or loss.[14]

The portfolio shocks described above result in a gain or loss for each instrument in a portfolio at each calculation point along the range. These gains and losses are netted to derive a potential portfolio-wide gain or loss for the point. The margin requirement for a portfolio is the amount of the greatest portfolio-wide loss among the calculation points. The margin requirements for each portfolio are added together to calculate the total margin requirement for the portfolio margin account. This approach, in most cases, will generally lower customer margin requirements.[15]

The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest portfolio-wide loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier.[16] The second computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer in the event the greatest portfolio-wide loss among the valuation points is *de minimis*.

b. Expansion of Eligible Products

Under the Exchange's proposed rule, products eligible for portfolio margining would be expanded to include margin equity securities (as defined under Regulation T),[17] unlisted derivatives and futures contracts on narrow-based security indexes.[18] The unlisted derivatives would be included in a portfolio based on the underlying reference index or security. Individual equities and narrow-based index futures would be included in a portfolio shocked at a range spanning an increase of 15% and a decrease of 15% (as is the case with listed single stock options and securities futures).

c. Margin Deficiency

The current rule requires a customer to satisfy a margin deficiency in a portfolio margin account within three business days by depositing additional securities or cash or effecting an offsetting hedge.[19] The current pilot also requires a broker-dealer to deduct from its net capital the amount of any portfolio margin call not met by the close of business on T+1 and until the

General Counsel and Director of Legal and Compliance, Fimat USA, LLC, to Nancy M. Morris, Secretary, Commission, dated May 11, 2006 (''Fimat Letter''); letter from Stuart J. Kaswell, Partner, Dechert LLP, Counsel for Federated Investors, Inc., to Nancy M. Morris, Secretary, Commission, dated May 10, 2006 (''Federated Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange Inc., to Jonathan G. Katz, Secretary, Commission, dated May 9, 2006 (''CME Letter''); letter from Gerard J. Quinn, Vice President and Associate General Counsel, SIA, to Nancy M. Morris, Secretary, Commission, dated April 21, 2006 (''SIA Extension Letter''); and e-mail from Stephen A. Kasprzak, Principal Counsel, Rule and Interpretive Standards, NYSE, dated April 21, 2006 (''Kasprzak e-mail'').

[8] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated July 20, 2006 (''NYSE Response'').

[9] The NYSE filed Amendment No. 1 in response to comments received and to make other clarifying changes to the proposed rule filing. *See* Section II. for a discussion of the changes in Amendment No. 1. A clean copy of the proposed rule, as amended by Amendment No. 1, is attached to this order as *Appendix A.*

[10] By separate order, the Commission also is approving a parallel rule filing by CBOE (SR–CBOE–2006–14). Exchange Act Release No. 54919; *see also supra* note 5.

[11] The list of eligible products under the pilot currently includes listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds, as well as single stock options and securities futures products.

[12] The margin rules specify the amount of equity a customer must maintain in his or her margin account with respect to securities positions financed by the broker-dealer. The equity protects the broker-dealer in the event the customer defaults on the obligation to re-pay the financing and the broker-dealer is forced to liquidate the position at a loss.

[13] For example, under the pilot, a portfolio of single stock futures and listed equity options would be shocked at 10 equidistant points along a range bounded on one end by a 15% increase in the market value of the instrument and at the other end by a 15% decrease (*i.e.*, at +/−3%, +/−6%, +/−9%, +/−12% and +/−15%).

[14] Currently, the only model that qualifies is the OCC's Theoretical Intermarket Margining System (TIMS).

[15] For example, the current required initial and maintenance margin requirements for an equity security are 50% and 25%, respectively. The market movement range to calculate the potential gains and losses under the proposed portfolio margin rule for equity securities is +/−15%.

[16] The multiplier for a standard listed option is fixed by the options market on which the options series is traded. For example, a cash settled equity option generally has a multiplier of 100. Therefore, the minimum margin for one options contract would be $37.50. The multipliers for different securities and futures products may vary.

[17] Margin equity securities include certain foreign equity securities and options on foreign equity securities. *See* 12 CFR 220.2

[18] The Commission approved listed single stock options and securities futures products (excluding narrow-based indexes) as eligible products on July 11, 2006. *See* supra note 3.

[19] The original pilot required margin calls to be met by T+1. The current requirement of meeting margin calls within three business days was approved in SR-NYSE–2005–93. *See* Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006).

call is satisfied. The proposal would now further require the broker-dealer to have in place procedures to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and to take appropriate action when warranted.[20]

d. $5 Million Equity Requirement

The current pilot requires customers that are not broker-dealers or futures firms to maintain minimum account equity of $5 million if they opt to include portfolios of broad-based securities index products in their accounts.[21] The proposed rule change would eliminate the $5 million account equity requirement for all portfolio margin accounts, except those holding unlisted derivatives.[22]

e. Risk Management Methodology

The pilot requires member broker-dealers to monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing potential risk to the firm's capital. This risk analysis methodology must be made available to the Exchange upon request. The proposed rule change strengthens these requirements by providing that, the member broker-dealer must file the risk analysis methodology with the Exchange (or the firm's Designated Examining Authority, if not the Exchange)[23] and submit it to the Commission prior to implementation. The proposed rule change also requires the inclusion of additional procedures and guidelines as part of the methodology.[24]

f. Cross-Margin Account

The proposed rule change would eliminate the requirement that portfolios with futures positions be held in a separate cross-margin account. Under the proposal, a customer would be permitted to use a single securities margin account for all eligible products. The Exchange and commenters have indicated that maintaining and monitoring two separate margin accounts would be operationally difficult and that it would be more efficient to hold all positions in one securities account.

g. Hedged Positions

Under the pilot, an underlying security in a portfolio margin account must be removed from the account if it is no longer offset by an option position. The amendments propose to eliminate the requirement to remove instruments that are no longer offset by options positions. The Exchange made this change in response to comments that all positions eligible for a portfolio margin account, including underlying securities, should receive equal treatment. Moreover, the Exchange noted that it would be operationally difficult to move positions in and out of the portfolio margin account based on whether they are currently being offset.

h. Discussion of Changes to the Proposed Rule Change in Amendment No. 1

The Exchange filed Amendment No. 1 to the proposed rule change in response to comments received, to make conforming changes to the CBOE rule filing[25] and to otherwise clarify certain terms and definitions. The following summarizes the changes made in Amendment No. 1 to the proposed rule change. In Amendment No. 1, the Exchange:

- Clarifies certain definitions and conforms others to the CBOE filing;
- Adds language allowing a customer to use excess equity in a regular margin account to meet a margin deficiency in a portfolio margin account without having to transfer any funds or securities where the portfolio margin account is a sub-account of the regular margin account;
- Adds language allowing positions not eligible for portfolio margin treatment to be carried in the portfolio margin account for their collateral value, subject to the margin requirements of a regular margin account;
- Adds language permitting shares of a money market mutual fund to be held in a portfolio margin account (subject to applicable margin requirements), provided certain requirements are met;
- Clarifies the restrictions with respect to day trading[26] in a portfolio margin account; and
- Eliminates the sample risk disclosure statement and acknowledgement in the rule text.[27]

III. Summary of Comments Received and NYSE Response

The Commission received a total of 8 comment letters to the proposed rule change.[28] The comments, in general, were supportive. One commenter stated that it strongly supports ''the significant step forward represented by the currently proposed changes.''[29] Another commenter stated that the portfolio margining of securities products will ''help U.S. brokers and exchanges compete more effectively with their overseas counterparts * * * and thereby increase the strength and liquidity of U.S. markets.''[30] Each commenter, however, recommended changes to specific provisions of the proposed rule change.

Several commenters[31] submitted comments regarding the ability to use portfolio margin methodologies other than the method prescribed in the rule to calculate customer margin requirements. One commenter stated that the Commission has experience in approving proprietary market risk models for consolidated supervised entities (CSEs) and OTC derivatives dealers.[32] In its response, the Exchange acknowledged that proprietary models may prove to be effective and efficient in managing risk.[33] The Exchange stated, however, that initially, regulators should gain experience with portfolio margining through the rule's specified methodology and that in the longer term, proprietary risk models could be considered as alternatives.

One commenter suggested that futures positions in a portfolio margin account be held in a separate futures account, while securities positions be held in a securities account.[34] The commenter referred to this approach as the ''two

[20] The current pilot requires that member firms not permit a customer to make a practice of meeting a portfolio margin deficiency through liquidation.

[21] The $5 million account equity requirement for such customers was eliminated to the extent they limited their accounts to portfolios of listed options and securities futures. *See* SR–NYSE–2005–93, *supra* note 3.

[22] *See* proposed Rule 431(g)(4)(C).

[23] Amendment No. 1 to the proposed rule amended the rule language to state that the written risk methodology must be filed with the Exchange, rather than approved by the Exchange, as proposed, in the March 2, 2006 rule filing.

[24] The current pilot also requires member firms to notify, and receive approval from the Exchange, prior to opening portfolio margin accounts for customers. The proposed rule modifies this requirement by requiring approval from a member firm's DEA, if it is not the Exchange.

[25] *See supra* note 5.

[26] NYSE proposed to amend the rule text to allow a customer that establishes and maintains at least $5 million in equity to engage in day trading without the restrictions of NYSE's day trading rules, if the member firm has the ability to monitor the intra-day risk associated with day trading. Further, if a participant has less than $5 million equity, the day trading restrictions will apply, unless the position or positions day traded were part of a hedge strategy.

[27] Instead the Exchange will send out an Information Memo with the sample disclosure language. The Exchange made this change to avoid having to file a proposed rule change each time in the risk disclosure document is changed.

[28] *See supra* note 7. Two of these comment letters related to the extension of the comment period for the proposed rule change. *See* SIA Extension Letter and Kasprzak e-mail.

[29] *See* SIA Letter.

[30] *See* Fimat Letter.

[31] *See* SIA Letter and OCC Letter; *see also* CME Letter (discussing SPAN).

[32] *See* SIA Letter.

[33] *See* NYSE Response, *supra* note 8.

[34] *See* CME Letter.

pot'' model.[35] The commenter stated that it favors this ''two pot'' approach because it believes that it more easily accommodates differences in customer protection and capital requirements of the Commission and the Commodity Futures Trading Commission (''CFTC'').[36] Commenters, in general, favored a single portfolio margin securities account (referred to as the ''one pot'' approach).[37] One commenter stated that the ''disadvantages of a two pot model outweigh its advantages.''[38] The Exchange stated that it believes that a one pot approach will provide for more efficient margining, reduce broker-dealer/FCM liquidity risk and reduce operational inefficiencies.

Three commenters expressed the need for the Commission and the CFTC to continue working towards eliminating the legal and regulatory impediments to cross-margining futures and securities products.[39] In response, the Exchange stated that it will continue to work with the Commission and the CFTC on the regulatory issues related to holding securities and futures in a portfolio.

One commenter stated that portfolio margining should be expanded to include nonequity securities, interest rate derivatives, collateralized debt obligations and other similar non-equity related products, and foreign currency derivatives.[40] This commenter also requested that nonequity securities be permitted to be held in the portfolio margin account for collateral purposes only, subject to the other margin requirements of NYSE Rule 431.[41] The Exchange noted that it agrees with the commenter to the extent that nonequity securities may serve as collateral in the portfolio margin account.[42] The Exchange also stated that once the SROs and broker-dealers gain more experience with portfolio margining, the Exchange may consider whether nonequity products should be eligible for portfolio margining.

One commenter sought clarification as to whether broker-dealers and their customers could use shares of money market funds as collateral for portfolio margining.[43] The Exchange noted that it believes the rule currently permits the use of money market funds in a portfolio margin account, and clarified this issue through changes to the rule text in Amendment No. 1 to the proposed rule change.[44]

One commenter objected to the $0.375 per contract minimum margin requirement, and offered alternative lower minimums.[45] In response to this comment, the Exchange noted that the $.375 per contract minimum provides a cushion against significant market movements. The Exchange also noted that it is concerned about potential illiquidity in the market and the creation of gap risk in the event both sides of a hedge cannot be closed out simultaneously.

Several commenters objected to the proposed prohibition on day trading in a portfolio margin account.[46] The Exchange noted that the day trading prohibition is not intended to prohibit intraday trading in an account that contains a large portfolio of hedged instruments and, in response to the comments, amended the day trading rule language.[47]

Finally, the Exchange encouraged the Commission to move forward in approving the amendments.[48]

IV. Discussion and Commission Findings and Accelerated Approval of Amendment No. 1

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[49] In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[50] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements and will better align margin requirements with actual risk.

Under a portfolio margin system, offsets are fully realized, whereas under the Exchange's current margin rules, positions are margined independent of each other and offsets between them do not figure into the total margin requirement. A portfolio margin system recognizes the offsetting gains from positions that react favorably in market declines, while market rises are tempered by offsetting losses from positions that react negatively. Consequently, a portfolio margin approach can have a neutralizing effect on the volatility of margin requirements. Thus, a portfolio margin system may better align a customer's total margin requirement with the actual risk associated with the customer's positions taken as a whole. The Commission further notes portfolio margining may alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility.

Moreover, the Commission notes that approving the proposed rule change would enhance portfolio margining by permitting more products to be margined under this methodology. This is consistent with the amendments to Regulation T made by the FRB in 1998, which sought to advance the use of portfolio margining.[51] The Commission also believes that this expanded program for portfolio margining will serve to advance the development of even more risk-sensitive approaches to margining customer positions, including the use of internal models as advocated by commenters. The Commission intends to work with the NYSE and CBOE towards this objective after it gains experience with the portfolio margining system of this proposal.

The Commission believes that while the portfolio margining system in the proposed rule will have the effect of reducing customer margin (in most cases), the methodology is relatively conservative in that it requires positions to be shocked at specified market move ranges (*e.g.*, +/−15% for individual equities) that represent potential future stress events. Essentially the same portfolio methodology has been used by broker-dealers to calculate haircuts on options positions for net capital purposes.[52] Furthermore, the proposed requirement that a firm receive pre-approval from the Exchange prior to offering portfolio margining to its

[35] *Id.*

[36] *See* CME Letter.

[37] *See* OCC and CBOE Letters.

[38] *See* CBOE Letter.

[39] See SIA, Fimat and OCC Letters.

[40] *See* SIA Letter.

[41] *See* SIA Letter.

[42] *See* Amendment No. 1.

[43] *See* Federated Letter.

[44] *See* NYSE Response; *see also* Amendment No. 1 (adding language regarding use of money market mutual funds in a portfolio margin account).

[45] *See* SIA Letter.

[46] *See* SIA and Fimat Letters.

[47] *See* Amendment No. 1.

[48] *See* NYSE Response.

[49] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f(b)(5).

[51] Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers,'' 63 FR 2806 (January 16, 1998); *see also* 12 CFR 220.1(b)(3)(i); *see also* letter from the FRB to James E. Newsome, Acting Chairman, Commodity Futures Trading Commission, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001. The FRB concluded the letter by writing ''the Board anticipates that the creation of securities futures products will provide another opportunity to develop more risk-sensitive, portfolio-based approaches for all securities, including securities options and securities futures products.'' *Id.*

[52] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

customers, coupled with the requirement for enhanced risk management procedures, is designed to ensure that only those firms with adequate controls would be eligible to implement a customer portfolio margining program.[53]

Accelerated Approval of Amendment No. 1

The Exchange also has requested that the Commission approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that the changes in Amendment No. 1 to the proposed rule change do not raise significant new or unique issues from those previously raised in the earlier portfolio margin rule filings.[54] The changes proposed by the Exchange in Amendment No. 1 are designed to ensure consistency with the companion CBOE proposed rule filing and to respond to comments received as a result of the **Federal Register** notice.[55] The Commission believes that these proposed changes strengthen the proposed rule change.

Accordingly, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that it is consistent with Section 19(b)(2) of the Act[56] to approve Amendment No. 1 to the Exchange's proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

Uniform Effective Date

The Commission believes that approving the amendment on an accelerated basis will permit the NYSE to begin the process of approving broker-dealers to implement portfolio margining and would allow firms to begin to make the necessary changes and upgrades to their systems, as well as their policies and procedures, in order to accommodate customer portfolio. The Commission, however, believes that if some firms receive NYSE approval to begin offering customer portfolio margining to customers before other member firms, these other firms would be at a competitive disadvantage. Therefore, the Commission has determined to set a uniform effective date of April 2, 2007 for the proposed rule change, as amended. As stated above, the Commission believes that setting a uniform effective date will avoid placing some members firms at a competitive disadvantage and reduce confusion in the marketplace.

V. Solicitation of Comments of Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–13 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–2006–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–NYSE–2006–13 and should be submitted on or before January 8, 2007.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change (File No. SR–NYSE–2006–13), is hereby approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis, both on a pilot basis to expire on July 31, 2007. The effective date will be April 2, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

Exhibit A—Margin Requirements

Rule 431. (a) through (f) unchanged.

Portfolio Margin

(g) As an alternative to the ''strategy-based'' margin requirements set forth in sections (a) through (f) of this Rule, member organizations may elect to apply the portfolio margin requirements set forth in this section (g) to all margin equity securities [1], listed options, unlisted derivatives, and security futures products (as defined in Section 3(a)(56) of the Securities Exchange Act of 1934 (the ''Exchange Act'')), provided that the requirements of section (g)(6)(B)(1) of this Rule are met.

In addition, a member organization, provided that it is a Futures Commission Merchant (''FCM'') and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this section (g) to combine an eligible participant's related instruments as defined in section (g)(2)(E), with listed index options, options on exchange traded funds (''ETF''), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts (''IRAs'').

(1) Member organizations must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member organization's capital over a

[53] The proposed rules also would continue to require a minimum per contract charge of $.375. The Commission also notes that the proposed rules contain a leverage test under which a broker-dealer cannot permit the amount of portfolio margin required of its customers to exceed 10 times the firm's net capital.

[54] *See supra* note 3.

[55] *See supra* notes 5 and 7.

[56] 15 U.S.C. 78s(b)(2).

[57] 15 U.S.C. 78s(b)(2).

[1] For purposes of this section (g) of the Rule, the term ''margin equity security'' utilizes the definition at section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System, excluding a nonequity security.

specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with the New York Stock Exchange (''Exchange''), or the member organization's designated examining authority (''DEA''), if other than the Exchange, and submitted to the Securities and Exchange Commission (''SEC'') prior to the implementation of portfolio margining. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include in the written risk analysis methodology procedures and guidelines for:

(A) Obtaining and reviewing the appropriate account documentation and financial information necessary for assessing the amount of credit to be extended to eligible participants.

(B) The determination, review and approval of credit limits to each eligible participant, and across all eligible participants, utilizing a portfolio margin account,

(C) Monitoring credit risk exposure to the member organization from portfolio margin accounts, on both an intra-day and end of day basis, including the type, scope and frequency of reporting to senior management,

(D) The use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate,

(E) The regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group,

(F) Managing the impact of credit extended related to portfolio margin accounts on the member organization's overall risk exposure,

(G) The appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded, and

(H) Determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product.

Moreover, management must periodically review, in accordance with written procedures, the member organization's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this section (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) Definitions.—For purposes of this section (g), the following terms shall have the meanings specified below:

(A) For purposes of portfolio margin requirements the term ''equity'', as defined in section (a)(4) of this Rule, includes the market value of any long or short positions held in an eligible participant's account.

(B) The term ''listed option'' means any equity-based or equity index-based option traded on a registered national securities exchange or automated facility of a registered national securities association.

(C) The term ''portfolio'' means any eligible product, as defined in section (g)(6)(B)(1), grouped with its underlying instruments and related instruments.

(D) The term ''product group'' means two or more portfolios of the same type (see table in section (g)(2)(G) below) for which it has been determined by Rule 15c3–1a under the Exchange Act that a percentage of offsetting profits may be applied to losses at the same valuation point.

(E) The term ''related instrument'' within a security class or product group means broad-based index futures and options on broad-based index futures covering the same underlying instrument. The term ''related instrument'' does not include security futures products.

(F) The term ''security class'' refers to all listed options, security futures products, unlisted derivatives, and related instruments covering the same underlying instrument and the underlying instrument itself.

(G) The term ''theoretical gains and losses'' means the gain and loss in the value of individual eligible products and related instruments at ten equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:

Portfolio type	Up/down market move (high & low valuation points)
High Capitalization, Broad-based Market Index [2]	+6%/−8%
Non-High Capitalization, Broad-based Market Index [3]	+/−10%
Any other eligible product that is, or is based on, an equity security or a narrow-based index	+/−15%

(H) The term ''underlying instrument'' means a security or security index upon which any listed option, unlisted derivative, security future, or broad-based index future is based.

(I) The term ''unlisted derivative'' means any equity-based or equity index-based unlisted option, forward contract, or security-based swap that can be valued by a theoretical pricing model approved by the SEC.

(3) Approved Theoretical Pricing Models.—Theoretical pricing models must be approved by the SEC.

(4) Eligible Participants.—The application of the portfolio margin provisions of this section (g) is limited to the following:

(A) Any broker or dealer registered pursuant to Section 15 of the Exchange Act;

(B) Any member of a national futures exchange to the extent that listed index options hedge the member's index futures; and

(C) Any person or entity not included in sections (g)(4)(A) and (g)(4)(B) above approved for uncovered options and, if transactions in security futures are to be included in the account, approval for such transactions is also required. However, an eligible participant under this section (g)(4)(C) may not establish or maintain positions in unlisted derivatives unless minimum equity of at least five million dollars is established and maintained with the member organization. For purposes of this minimum equity requirement, all securities and futures accounts carried by the member organization for the same eligible participant may be combined provided ownership across the accounts is identical. A guarantee pursuant to section (f)(4) of this Rule is

[2] In accordance with section (b)(1)(i)(B) of Rule 15c3–1a (Appendix A to Rule 15c3–1) under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1a(b)(1)(i)(B).

[3] See footnote above.

not permitted for purposes of the minimum equity requirement.

(5) Opening of Accounts.

(A) Member organizations must notify and receive approval from the Exchange or the member organization's DEA, if other than the Exchange, prior to establishing a portfolio margin methodology for eligible participants.

(B) Only eligible participants that have been approved to engage in uncovered short option contracts pursuant to Exchange Rule 721, or the rules of the member organization's DEA, if other than the Exchange, are permitted to utilize a portfolio margin account.

(C) On or before the date of the initial transaction in a portfolio margin account, a member organization shall:

(1) Furnish the eligible participant with a special written disclosure statement describing the nature and risks of portfolio margining which includes an acknowledgement for all portfolio margin account owners to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account is provided (see Exchange Rule 726(d)), and

(2) Obtain the signed acknowledgement noted above from the eligible participant and record the date of receipt.

(6) Establishing Account and Eligible Positions.

(A) For purposes of applying the portfolio margin requirements prescribed in this section (g), member organizations are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for an eligible participant.

A margin deficit in the portfolio margin account of an eligible participant may not be considered as satisfied by excess equity in another account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained. However, if a portfolio margin account is carried as a sub-account of a margin account, excess equity in the margin account (determined in accordance with the rules applicable to a margin account other than a portfolio margin account) may be used to satisfy a margin deficit in the portfolio margin sub-account without having to transfer any funds and/or securities.

(B) Eligible Products.

(1) For eligible participants as described in sections (g)(4)(A) through (g)(4)(C), a transaction in, or transfer of, an eligible product may be effected in the portfolio margin account. Eligible products under this section (g) consist of:

(i) A margin equity security (including a foreign equity security and option on a foreign equity security, provided the security is deemed to have a ''ready market'' under SEC Rule 15c3–1 or a ''no-action'' position issued thereunder, and a control or restricted security, provided the security has met the requirements in a manner consistent with SEC Rule 144 or an SEC ''no-action'' position issued thereunder, sufficient to permit the sale of the security, upon exercise or assignment of any listed option or unlisted derivative written or held against it, without restriction).

(ii) A listed option on an equity security or index of equity securities,

(iii) A security futures product,

(iv) An unlisted derivative on an equity security or index of equity securities,

(v) A warrant on an equity security or index of equity securities,

(vi) A related instrument as defined in section (g)(2)(E).

(7) Margin Required.—The amount of margin required under this section (g) for each portfolio shall be the greater of:

(A) the amount for any of the ten equidistant valuation points representing the largest theoretical loss as calculated pursuant to section (g)(8) below, or

(B) for eligible participants as described in section (g)(4)(A) through (g)(4)(C), $.375 for each listed option, unlisted derivative, security future product, and related instrument, multiplied by the contract's or instrument's multiplier, not to exceed the market value in the case of long contracts in eligible products.

(C) Account guarantees pursuant to section (f)(4) of this Rule are not permitted for purposes of meeting margin requirements.

(D) Positions other than those listed in section (g)(6)(B)(1) above are not eligible for portfolio margin treatment. However, positions not eligible for portfolio margin treatment (except for ineligible related instruments) may be carried in a portfolio margin account, provided the member organization has the ability to apply the applicable strategy based margin requirements promulgated under this Rule. Shares of a money market mutual fund may be carried in a portfolio margin account, also subject to the applicable strategy based margin requirements under this Rule provided that:

(1) The customer waives any right to redeem shares without the member organization's consent, s

(2) The member organization (or, if the shares are deposited with a clearing organization, the clearing organization) obtains the right to redeem shares in cash upon request,

(3) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request, and

(4) The member organization complies with the requirements of Section 11(d)(1) of the Exchange Act and Rule 11d1–2 thereunder.

(8) Method of Calculation.

(A) Long and short positions in eligible products including underlying instruments and related instruments, are to be grouped by security class; each security class group being a ''portfolio''. Each portfolio is categorized as one of the portfolio types specified in section (g)(2)(G) above as applicable.

(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in section (g)(2)(G) above. For purposes of determining the theoretical gains and losses at each valuation point, member organizations shall obtain and utilize the theoretical values of eligible products as described in this section (g) rendered by an approved theoretical pricing model.

(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point. Offsets between portfolios within the eligible product groups, as described in section (g)(2)(G), may then be applied as permitted by Rule 15c3–1a under the Exchange Act.

(D) After applying the offsets above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(9) Portfolio Margin Minimum Equity Deficiency.

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant as described in section (g)(4)(C), declines below the five million dollar minimum equity required, if applicable, and is not restored to at least five million dollars within three business days by a deposit of funds and/or securities, member organizations are prohibited from accepting new opening orders beginning on the fourth business day, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until,

(1) Equity of five million dollars is established or,

(2) All unlisted derivatives are liquidated or transferred from the

portfolio margin account to the appropriate securities account.

(B) Member organizations will not be permitted to deduct any portfolio margin minimum equity deficiency amount from Net Capital in lieu of collecting the minimum equity required.

(10) Portfolio Margin Deficiency

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant, as described in section (g)(4)(A) through (g)(4)(C), is less than the margin required, the eligible participant may deposit additional funds and/or securities or establish a hedge to meet the margin requirement within three business days. After the three business day period, member organizations are prohibited from accepting new opening orders, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. In the event an eligible participant fails to hedge existing positions or deposit additional funds and/or securities in an amount sufficient to eliminate any margin deficiency after three business days, the member organization must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to the account equity.

(B) If the portfolio margin deficiency is not met by the close of business on the next business day after the business day on which such deficiency arises, member organizations will be required to deduct the amount of the deficiency from Net Capital until such time as the deficiency is satisfied.

(C) Member organizations will not be permitted to deduct any portfolio margin deficiency amount from Net Capital in lieu of collecting the margin required.

(D) The Exchange, or the member organization's DEA, if other than the Exchange, may grant additional time for an eligible participant to meet a portfolio margin deficiency upon written request, which is expected to be granted in extraordinary circumstances only.

(E) Member organizations should not permit an eligible participant to make a practice of meeting a portfolio margin deficiency by liquidation. Member organizations must have procedures in place to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and the member organization is expected to take appropriate action when warranted. Liquidations to eliminate margin deficiencies that are caused solely by adverse price movements may be disregarded.

(11) Determination of Value for Margin Purposes.—For the purposes of this section (g), all eligible products shall be valued at current market prices. Account equity for the purposes of sections (g)(9)(A) and (g)(10)(A) shall be calculated separately for each portfolio margin account.

(12) Net Capital Treatment of Portfolio Margin Accounts.

(A) No member organization that requires margin in any portfolio margin account pursuant to section (g) of this Rule shall permit the aggregate portfolio margin requirements to exceed ten times its Net Capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day, cease opening new portfolio margin accounts until compliance is achieved.

(B) If, at any time, a member organization's aggregate portfolio margin requirements exceed ten times its Net Capital the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the principal office of the Securities and Exchange Commission in Washington, D.C., the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to the Exchange, or the member organization's DEA, if other than the Exchange.

(13) Day Trading Requirements.—The day trading restrictions promulgated under section (f)(8)(B) of this Rule shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided a member organization has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under section (f)(8)(B), provided the member organization has the ability to apply the applicable day trading requirements under this Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A ''hedge strategy'' for the purpose of this rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Member organizations are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements.

(14) Requirements to Liquidate

(A) A member organization is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry portfolio margin accounts, all portfolio margin accounts with positions in related instruments, if the member organization is:

(1) Insolvent as defined in section 101 of title 11 of the United

States Code, or is unable to meet its obligations as they mature;

(2) the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(3) not in compliance with applicable requirements under the Exchange Act or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of eligible participant's securities; or

(4) unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

(B) Nothing in this section (14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

(15) Member organizations must ensure that portfolio margin accounts are in compliance with all other applicable Exchange rules promulgated in Rules 700 through 795.

* * * * *

Delivery of Options Disclosure Document and Prospectus

Rule 726 (a) through (c) unchanged.

Portfolio Margining Disclosure Statement and Acknowledgement

(d) The special written disclosure statement describing the nature and risks of portfolio margining, and acknowledgement for an eligible participant signature, required by Rule 431(g)(5)(C) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as in the prescribed Exchange format and has received the prior written approval of the Exchange.

[FR Doc. E6–21474 Filed 12–15–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54810A; File No. SR–NYSE–2005–90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Allow Certain Institutional Customers To Elect Not To Receive Account Statements

December 8, 2006.

Correction

In FR Doc. No. E6–20227, beginning on page 69165 for Wednesday, November 29, 2006, a request for comment on Amendment No. 2 was inadvertently omitted. Accordingly, the following should be inserted immediately before the Conclusion of the document:

''Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether such amendment 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–NYSE–2005–90 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–2005–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–90 and should be submitted on or before January 8, 2007.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21479 Filed 12–15–06; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–54914; File No. SR–Phlx–2006–81]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Maximum Number of Quoting Participants Permitted in a Particular Option on the Exchange

December 11, 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 December 5, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. 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 Phlx proposes to amend Phlx Rule 507,[3] which governs the assignment of options to Streaming Quote Traders (''SQTs'')[4] and Remote Streaming Quote Traders (''RSQTs''),[5] by adding commentary to the rule establishing a maximum number of quoting participants that may be assigned to a particular equity option at any one time.

The text of the proposed rule change is available on the Phlx's Web site at *http://www.phlx.com,* at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 purpose of the proposed rule change is to enable the Exchange to manage its quotation traffic and bandwidth capacity by limiting the number of streaming quote market participants that may be assigned to a particular option at a given point in time. The proposed amendments to Phlx Rule 507 would establish: (i) A maximum number of quoters (''MNQ'')

[3] Phlx Rule 507 sets forth the process by which the Committee assigns or reassigns options to eligible Streaming Quote Traders and Remote Streaming Quote Traders. *See* Phlx Rule 507.

[4] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[5] An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

in equity options based on each option's monthly trading volume; (ii) a process for recalculating the MNQ based upon changes in an option's monthly trading volume; (iii) an increase to the MNQ due to exceptional circumstances; (iv) the process by which the Exchange will notify market participants of changes to the MNQ; and (v) additional criteria relating to the process by which the Exchange will assign SQT and/or RSQT applicants in options in the event that there are more applicants for assignment in a particular option than there are positions.

The Exchange proposes to limit the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Proposed Commentary .02 to Phlx Rule 507 sets forth tiered MNQ levels providing for 20 participants for the top 5% most actively traded options; 15 participants for next 10% most actively traded options, and 10 market participants for all other options. The ranking is based upon the preceding month's national volumes.

The MNQ would be recalculated within the first five days of each month based on the previous month's trading volume (''new MNQ''). Proposed Commentary .03 to Phlx Rule 507 provides the process by which the Exchange will administer a decrease in the previous month's MNQ. The Exchange will immediately implement the new MNQ if the number of assigned participants in the option on the last day of the month equals or is less than the new MNQ. Under circumstances in which the number of assigned participants is greater than the new MNQ, the option will have an ''increased'' MNQ equal to the number of assigned participants quoting electronically in that option on the last day of the month. The ''increased'' MNQ will automatically decrease if an assigned participant changes or ceases the assignment in the option. The ''increased'' MNQ will continue to decrease until the number of assigned participants equals the new MNQ, at which point the number of assigned participants in the option may not exceed the new MNQ.

The Exchange will be able to increase the MNQ in exceptional circumstances. The Exchange's Options Allocation, Evaluation and Securities Committee (''OAESC'') [6] may increase the MNQ when the circumstances warrant. Proposed Commentary .04 to Phlx Rule 507 describes the events that may be considered ''exceptional'' including substantial trading volume (whether actual or expected), a major news event or corporate event. The Exchange may reduce the MNQ following the cessation of the exceptional circumstances, but the Exchange must follow the same procedures for decreases to the MNQ outlined above. When relying on this provision, the Exchange would submit a rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Act.[7]

The Exchange will inform market participants of changes to the MNQ via Exchange circular. The Exchange may increase the MNQ levels (meaning the 20, 15, and 10 number established in Commentary .02(a)–(c)) by submitting to the Commission a rule filing pursuant to Section 19(b)(3)(A) of the Act.[8] The Exchange may also decrease the MNQ levels upon Commission approval of a rule filing submitted pursuant to 19(b)(2) of the Act.

The Exchange is also proposing to amend Phlx Rule 507 by adding additional criteria for the OAESC to consider when determining whether to assign an option to a member in the situation where there are more applicants for assignment in a particular option than there are positions available.

In this situation, proposed paragraph (b)(iii) of Phlx Rule 507 would require the OAESC to consider: (i) The financial and technical resources available to the applicant; (ii) the applicant's experience and expertise in market making or options trading; and (iii) the applicant's prior performance as a specialist, SQT or RSQT, based on evaluations conducted pursuant to Phlx Rule 510, which includes quantified measures of performance.

The purpose of this provision is to enable the OAESC to use these criteria to select the most qualified applicant in the event that there are more applicants for assignment in a particular option than there are positions available. The Exchange believes that the consideration of financial and technical capacity, as well as prior performance, will assist the OAESC in determining the most beneficial assignment of options for the Exchange and the public.

Finally, the Exchange represents that members that are assigned in a particular option as of the date of Commission approval of this proposed rule change will be guaranteed a position as a quoting participant in the particular option.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by allowing the Exchange to manage resources by fairly allocating limited bandwidth capacity.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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:

[6] *See* Phlx By-Law Article X, Section 10–7. The OAESC has jurisdiction over, among other things: The appointment of specialists on the options and foreign currency options trading floors; allocation, retention and transfer of privileges to deal in options on the trading floors; and administration of the 500 series of Phlx rules.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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–Phlx–2006–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2006–81. 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 at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2006–81 and should be submitted on or before January 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–21449 Filed 12–15–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2006–0104]

Rescission of Social Security Ruling 88–10c, Bowen v. Galbreath

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Ruling SSR 88–10c.

EFFECTIVE DATE: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Marg Handel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4639 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability and supplemental security income programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

On June 23, 1988 we issued SSR 88–10(c) to reflect the Supreme Court's decision in *Galbreath* v. *Bowen,* 485 U.S. 74 (1988), in which the Court held that the relevant statutes did not permit withholding past-due Supplemental Security Income benefits for attorney's fees in title XVI cases. As the Court noted at the end of its decision, the earlier Congressional decision not to extend attorney fee withholding to title XVI would stand ''[u]ntil Congress [saw] fit to override its original decision, by amending Title XVI in a way that manifests an intent to allow withholding.''

In the Social Security Protection Act of 2004 (SSPA), Public Law 108–203, Congress enacted such legislation. Section 302 of the SSPA amended section 1631(d)(2) of the Social Security Act to extend the attorney fee withholding and direct payment procedures to claims under title XVI. We began paying fees directly to attorneys in title XVI cases effectuated on or after February 28, 2005, the date the amendments made by section 302 took effect. While this provision will only be effective for 5 years, we believe that SSR 88–10(c) should be rescinded for this period and we will later determine if there is a need to reinstate it.

(Catalog of Federal Domestic Assistance Programs No. 96.006, Supplemental Security Income)

Dated: December 12, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. E6–21484 Filed 12–15–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for McClellan Palomar Airport, Carlsbad, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by San Diego County, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Public Law96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 26, 2005, the FAA determined that the noise exposure maps submitted by San Diego County under Part 150 were in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program for McClellan Palomar Airport is December 5, 2006.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Los Angeles Airports District Office, Airport Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, California, 90261, Mailing Address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: 310/725–3637. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for McClellan Palomar Airport, effective April 7, 2004. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. § 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise

Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of 14 CFR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Hawthorne, California.

San Diego County submitted to the FAA on September 13, 2004, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 1, 2002 through March 24, 2006. The McClellan Palomar Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on April 26, 2005. Notice of this determination was published in the **Federal Register** on May 10, 2005 (70 FR 24671).

The McClellan Palomar Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (2004 to beyond the year 2009). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. § 47504 (formerly section 104(b) of the Act). The FAA began its review of the program on June 20, 2006, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained thirty-two (32) proposed actions for noise abatement, land use management and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program was approved, by the Manager of the Airports Division, Western-Pacific Region, effective December 5, 2006.

Outright approval was granted for seven (7) of the 10 noise abatement measures, all six (6) land use management measures and twelve (12) program management measures. The approved measures included such items as: Continue the existing published air traffic pattern altitudes; Continue the existing published ''Alpha Departure'' voluntary noise abatement procedure (VNAP); Continue the existing VNAP, as published on the airport Web site; Continue the existing designation of Runway 24 as the calm wind runway as published in the Airport/Facility Directory; Continue the existing policy discouraging jet aircraft training due to noise abatement and traffic congestion as published in the Airport/Facility Directory; Continue the existing VNAP, as published on the airport's Web site; Amend ''Quiet Hours'' to include all aircraft except emergency flight operations. Approved Land Use Management Measures include: Provide the recommended Noise Information Notification Area (NINA) boundary to San Diego Geographic Information Source (SanGIS) in both electronic and hard copy formats; Provide the updated Noise Exposure Maps to SanGIS in electronic format, notify San Diego County and the City of Carlsbad that updated Noise Exposure Maps are available through SanGIS and encourage their use in updating the Noise Elements fo their General Plans; Rezone the undeveloped area designated E–A (APN 212–040–56) within the 60 CNEL to ''P–M Planned Industrial'' zone; Real estate disclosure within the CRQ's established Airport Influence Area should continue; Provide the updated NEMs, AIA, and NINA to SanGIS in electronic format, encourage the California Board of Realtors, San Diego North County Board, and the Building Industry Association—Sales and Marketing Council, North County Division to visit SanGIS Web site for the most updated NEMs, AIA and NINA and work with the aforementioned organizations to develop an ''Airport Fact Book'' for property sales agents; Provide San Diego County Regional Airport Authority (SDCRAA) with copies of the Final NEM and NCP documents.

Approved Program Management measures include: Hire a dedicated Noise Abatement Officer/Appoint a Permanent Environmental Noise Specialist; The Palomar Airport Advisory Committee should continue to act as a forum for discussion of noise abatement actions; update Maps identifying the noise-sensitive areas around the airport; Produce an Airport Noise Information Booklet; Develop an Official Web site to disseminate VNAP and other noise-related information; Continue to coordinate with the Department of Public Works Public Information Officer to disseminate information to the news media; Continue attending and/or participating in aviation association meetings to expand awareness of VNAP and other noise related issues; Coordinate with the

Department of Public Works Public Information officer to periodically distribute VNAP press releases to aviation media; Periodically provide updated VNAP information for distribution by Fixed Base Operators; Erect monument signs on airport property along El Camino Real and Palomar Airport Road to inform drivers of the existence and location of the airport; Produce signs, stickers, etc., using VNAP logo and prominently display and utilize as appropriate; Conduct biannual VNAP training classes and Implement the recently adopted ''Fly Friendly Program.''

FAA disapproved the following Noise Abatement measures: When traffic volume permits, CRQ ATCT should instruct pilots to delay the left turn from Runway 24 until aircraft is west of I–5. This measure would adversely impact the efficiency of navigable airspace at CRQ, further deviation from protected routes would place IFR aircraft at risk. Work with FAA to develop a GPS/RNAV departure procedure to emulate the ''Alpha Departure'' VNAP. This measure was disapproved pending submission of additional information to make an informed decision. The NCP did not quantify this measure's noise reduction benefits.

FAA took no action on the following Noise Abatement Measure: Consider joining Sound Initiative, A Coalition for Quieter Skies. FAA action on this measure would conflict with anti-lobbying restrictions on Federal agencies.

FAA disapproved the following Program Management Measures: Upgrade GEMS software to ANOMS8 and upgrade computer hardware as necessary to support operations of ANOMS8. If eligible for AIP funding, hardware should be upgraded at existing NMTs and two additional NMTs should be installed at CRQ. This measure was disapproved for the purposes of part 150 with respect to Airport Improvement Program funding. Section 189 of Public Law 108–176, Vision 100-Century of Reauthorization Act of 2003 specifically prohibits FAA approval of part 150 program measures that require AIP funding to mitigate aircraft noise outside of DNL (CNEL) 65 through Fiscally Year 2007; When Feasible, CRQ ATCT should encourage the use of the VNAP. This measure was disapproved because implementation of this measure by the ATCT would adversely affect air traffic workload and efficiency; Conduct the recommended workload study. This measure was disapproved because it is outside of the scope of 14 CFR part 150.

These determinations are set forth, in detail, in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on December 5, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the San Diego County Public Works Department. The Record of Approval will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/.*

Issued in Hawthorne, California on December 11, 2006.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–9740 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Saint Louis County for Spirit of St. Louis Airport under the provisions of 49 U.S.C. 47501 et. seq (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Spirit of St. Louis Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 10, 2007

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 12, 2006. The public comment period ends February 10, 2007.

FOR FURTHER INFORMATION CONTACT: Mark H. Schenkelberg, 901 Locust, Kansas City, MO 64106, 816–329–2645. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Spirit of St. Louis Airport are in compliance with applicable requirements of Part 150, effective December 12, 2006. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 10, 2007. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

St. Louis County submitted to the FAA on November 6, 2006, noise exposure maps, descriptions and other documentation that were produced during the FAR Part 150 Airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Louis County. The specific documentation determined to constitute the noise exposure maps includes:

1. Existing Noise Exposure Map (2001).
2. Future Noise Exposure Map (2009).

The FAA has determined that these maps for Spirit of St. Louis Airport are in compliance with applicable requirements. This determination is effective on December 12, 2006. FAA's

determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilies are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Spirit of St. Louis Airport, also effective on December 12, 2006. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 10, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Central Region Airports Division, 901 Locust, Kansas City, MO 64106

Richard E. Hrabko, Director of Aviation, Spirit of St. Louis, 18270 Edison Avenue, Chesterfield, MO 63005

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Dated: Issued in Kansas City, Missouri, December 12, 2006.

George A. Hendon,

Manager, Central Region Airports Division.

[FR Doc. 06–9752 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–43]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2006–26279–1 by any of the following methods:

- *Web Site: http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stegeman (816–329–4140), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Frances Shaver (202–267–9681), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 11, 2006.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–26279–1.

Petitioner: Cessna Aircraft Company.

Sections of 14 CFR Affected: 14 CFR part 23, §§ 23.25, 23.29, 23.235, 23.471, 23.473, 23.477, 23.479, 23.481, 23.483, 23.485, 23.493, 23.499, 23.723, 23.725, 23.726, 23.727, 23.959, 23.1583(c)(1) and (2), Appendix C23.1, Appendix D23.1 through Amendment 23–55.

Description of Relief Sought: To allow Cessna Aircraft Company to obtain a type certificate for the Cessna Model 525C with parallel rules of Title 14 CFR part 25.

[FR Doc. E6–21454 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26261]

Notice of Request for Comments on Renewal of a Currently Approved Information Collection: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This information collection renewal will be used to ensure that motor carriers of property and passengers maintain the appropriate levels of financial responsibility to operate on public highways. The Agency published a **Federal Register** notice allowing for a 60-day comment period on the ICR in August 2006 (71 FR 48967, Aug. 22, 2006). FMCSA did not receive any comments in response to this notice.

DATES: Please send your comments by January 17, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Haller, Commercial Enforcement, Department of Transportation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590–0001. Telephone: 202–385–2422; e-mail *Stephanie.haller@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Extension of a currently-approved information collection.

Respondents: Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

Estimated Number of Respondents: 143,728 [138,768 property carriers + 4,960 passengers carriers = 143,728].

Estimated Time per Response: The FMCSA estimates it takes two minutes for an insurance company to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability (Forms MCS–90/90B; for both property and passenger carriers) or the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B for both property and passenger carriers); one minute for the insurance company to file the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) with FMCSA; one minute for the insurance company to provide Forms MCS–90/90B to the carrier; and one minute to place either document (Forms MCS–90/90B and MCS–82/82B) on board the vehicle (foreign-domiciled motor carriers only). These endorsements (Forms MCS–90/90B and MCS–82/82B) are maintained at the motor carrier's principal place of business (see 49 CFR 387.7(d)).

Expiration Date: December 31, 2006.

Frequency of Response: Upon creation, change, or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 4,529 hours [151.4 hours for motor carriers of passengers + 4,377.4 hours for motor carriers of property = 4,528.8 or rounded to the nearest hour 4,529].

Background

The Secretary of Transportation is responsible for implementing regulations which establish the minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage, and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information embraced within these documents.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: December 11, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–21455 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Solicitation of Applications for Fiscal Year (FY) 2007, Commercial Motor Vehicle (CMV) Operator Safety Training Grant Opportunity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces that it has published an opportunity to apply for FY 2007 CMV Operator Safety Training Grant Opportunity funding on the grants.gov Web site (*http://www.grants.gov*). Section 4134 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) establishes the CMV Operator Safety Training Grant Opportunity program. The legislation requires grant recipients to train drivers and future drivers in the safe operation of CMVs, as defined in Section 31301 of Title 49, United States Code. Priority will be given to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States. Eligible awardees also can include State governments, local governments, and accredited post-secondary educational institutions (public or private) such as colleges, universities, vocational-technical schools and truck driver training schools. To apply for funding, applicants must be registered with grants.gov. Registration with grants.gov may take two to five days before the system will allow you to apply for grants using the grants.gov Web site (*http://www.grants.gov/applicants/get_registered.jsp*). Submit application in accordance with the instructions provided. Applications for grant funding must be submitted electronically to the FMCSA through the

grants.gov Web site. The CFDA number for MCSAP is 20.235.

DATES: FMCSA will initially consider funding of applications submitted by January 31, 2007 by qualified applicants. If additional funding remains available, applications submitted after January 31, 2007 will be considered on a case-by-case basis. Funds will not be available for allocation until such time as FY2007 appropriations legislation is passed and signed into law. Funding is subject to reductions resulting from obligation limitations or rescissions as specified in SAFETEA–LU or other legislation.

FOR FURTHER INFORMATION CONTACT: Mr. Art L. Williams, Federal Motor Carrier Safety Administration, Office of Safety Programs, State Programs Division (MC–sESS), 202–366–3695, 400 Seventh Street SW., Room 8314, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., EST., Monday through Friday, except Federal holidays.

Issued on: December 11, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–21458 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–EX–P

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2006–26143]

National Emergency Medical Services Advisory Council to the Secretary of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of establishment of an advisory committee.

SUMMARY: The Secretary of Transportation announces the establishment of a National Emergency Medical Services (EMS) Advisory Council (NEMSAC) to provide advice and recommendations regarding EMS matters to the U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA). NHTSA's Office of Emergency Medical Services will serve as sponsor of the Advisory Council for the Secretary. The purpose of this notice is to inform interested parties of the establishment of NEMSAC and invite the submission to NHTSA of nominations/applications for membership, as well as comments on the strategies or issues that should be considered by NEMSAC.

DATES: Comments and applications or nominations for membership on NEMSAC must be received February 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Drew Dawson, Director, NHTSA Office of Emergency Medical Services, (202) 366–9966 or via e-mail at *drew.dawson@dot.gov;* or Ms. Allison Rusnak, Office of the Chief Counsel, (202) 366–1834 or via e-mail at *allison.rusnak@dot.gov,* 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments and we recommend that you periodically check the docket for new material. We will consider late comments [75 days from publication].

Background

The National Emergency Medical Services Advisory Council will serve as a forum to provide to NHTSA advice and recommendations on a broad range of issues related to EMS. The DOT has determined that the establishment of NEMSAC falls under the terms of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II.

A. Notice of Establishment of an Advisory Council

In accordance with the requirements of FACA, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to announce the establishment of an advisory committee to provide NHTSA advice and recommendations regarding a broad range of EMS issues. The Secretary has determined that the establishment of NEMSAC is necessary and in the public interest.

B. Name of Committee

National Emergency Medical Services Advisory Council.

C. Purpose and Objective

The NEMSAC will be a nationally recognized council of EMS representatives and consumers to provide advice and recommendations regarding EMS to NHTSA. The issues that NEMSAC will consider include: National EMS needs assessment and strategic planning; development of standards, guidelines, benchmarks, and data collection relating to EMS; development of methods for improving community-based EMS; strengthening EMS systems through enhanced workforce development, education, training, exercises, equipment, medical oversight; improved coordination and support of EMS activities among Federal programs; and other issues or topics as determined by NHTSA.

The NEMSAC does not exercise program management or regulatory development responsibilities, and makes no decisions directly affecting the programs on which it provides advice. The NEMSAC provides a forum for the development, consideration, and communication of information from a knowledgeable and independent perspective of a strategy for advancing EMS systems nationwide.

D. Balanced Membership Plans

Advisory council members shall represent a cross-section of the diverse agencies, organizations, and individuals involved in EMS activities and programs in the U.S. The NEMSAC shall be composed of not more than 26 members, each of whom shall be appointed by the Secretary of Transportation. Twenty-four of these members will represent the perspectives of particular components of the EMS community. The Council's broad-based membership will assure that it has sufficient EMS system expertise and geographic and demographic diversity to accurately reflect the EMS community as a whole. NHTSA seeks applications and nominations for

members within the EMS community from a wide array of national organizations and the public. Members will be selected for their individual expertise and to reflect a balanced representation of interests from across the EMS community, but no member will represent a specific organization.

To the extent practical, the final council membership shall assure representation from the following:

- Volunteer EMS
- Fire-based (career) EMS
- Private (career non-fire) EMS
- Hospital-based EMS
- Tribal EMS
- Air Medical EMS
- Local EMS service director/administrators
- EMS Medical Directors
- Emergency Physicians
- Trauma Surgeons
- Pediatric Emergency Physicians
- State EMS Directors
- State Highway Safety Directors
- EMS Educators
- Public Safety Call-taker/Dispatcher (911)
- EMS Data Managers
- EMS Researchers
- Emergency Nurses
- Hospital Administration
- Public Health
- Emergency Management
- State Homeland Security Directors
- Consumers (not directly affiliated with an EMS or healthcare organization)
- State or local legislative bodies (*e.g.* city/county councils; state legislatures)

This document gives notice to potential participants of the process and affords them the opportunity to apply for membership on NEMSAC. The application procedure is set forth below. In addition, NHTSA invites commentors to suggest or nominate potential members.

The NHTSA is aware that there are many more potential organizations and participants than there are membership positions on NEMSAC. It is important to recognize that interested parties who are not selected for NEMSAC membership can make valuable contributions to the work of NEMSAC in several ways. For example, the person or organization may request to be placed on the NEMSAC mailing list, submit written comments to the advisory council, and attend NEMSAC meetings. Time will be set aside during each meeting for the purpose of permitting public comment, consistent with NEMSAC's need for sufficient time to complete its deliberations.

E. Applications for Membership

Each application for membership or nomination to the advisory council must include the following:

(1) A brief resume or letter (no more than one page) demonstrating the applicant or nominee's knowledge of EMS projects or programs and why he or she is interested in serving on the advisory council (please note, resumes or letters will be posted in the public docket and therefore should not contain personal information such as date of birth, etc).

(2) The name of the applicant or nominee and which interest(s)/component(s) of the EMS community (identified above in Section D) he or she would represent.

(3) Evidence that the applicant or nominee represents those interest(s)/component(s) of the EMS community (identified above in Section D).

(4) A written commitment that the applicant or nominee would participate in good faith. Since all comments and/or applications for membership or nominations for membership on the advisory council will be posted on the Public Docket, we encourage you to include only that information you are willing to provide for the public docket and submit your application electronically using the docket number provided on this notice through the DOT online Document Management System found at: *http://dms.dot.gov/submit.*

Every effort will be made to select advisory council members who are objective. A balanced membership is needed and weight will be given to a variety of factors including, but not limited to, geographical distribution, gender, minority status, organization, and expertise.

Members of the advisory council may receive travel and per diem, as allowed by Federal regulations and U.S. Department of Transportation policy.

F. Duration

Two years from the establishment of the advisory council charter.

Issued on: December 13, 2006.

Mary E. Peters,

Secretary.

[FR Doc. E6–21522 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Forum on Human Factors Research Necessary To Support Advanced Vehicle Safety Technologies; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting notice; correction.

SUMMARY: NHTSA published a document in the **Federal Register** of November 20, 2006, concerning a meeting notice for a forum on Human Factors Research Necessary to Support Advanced Vehicle Safety Technologies. The document did not contain the Docket Number.

FOR FURTHER INFORMATION CONTACT: Michael Perel, 202–366–5675.

Correction

Federal Register of November 20, 2006, on page 67203, in the first column, correct the ''NHTSA Docket Number'' caption to read: NHTSA Docket No. NTSA–2006–26286.

Dated: December 7, 2006.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 06–9735 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Applications for Funding Under Intelligent Transportation Systems Operational Testing To Mitigate Congestion Program

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Transportation (DOT).

ACTION: Notice of solicitation for applications for funding under the U.S. Department of Transportation's Intelligent Transportation Systems—Operational Testing to Mitigate Congestion Program.

SUMMARY: In May 2006, the U.S. Department of Transportation (the Department) announced its National Strategy to Reduce Congestion on America's Transportation Network (the Congestion Initiative), a bold and comprehensive national program to reduce congestion on the Nation's roads, rails, runways, and waterways. One major component of the Congestion Initiative is the Urban Partnership

Agreement (UPA). By separate notice in the **Federal Register**, the Department has solicited metropolitan areas to enter into UPAs to demonstrate strategies with a combined track record of effectiveness in reducing traffic congestion. See Applications for Urban Partnership Agreements as Part of Congestion Initiative, (71 FR 71231) dated December 8, 2006. To support this national strategy, the Department intends to award cooperative agreements to one or more successful jurisdictions to operationally test, demonstrate, and evaluate region-wide innovative technology based congestion mitigation strategies.

The purpose of this notice is to solicit proposals by metropolitan areas to the Intelligent Transportation Systems Operational Testing to Mitigate Congestion (ITS-OTMC) Program for funding the implementation of innovative congestion-reducing technologies. The Department may provide successful jurisdictions up to $100 million over three years through the ITS-OTMC Program in support of innovative technology-based strategies to reduce congestion.

This notice is one of three solicitations being issued by the Department in connection with the Congestion Initiative. See below ''**SUPPLEMENTARY INFORMATION**: Coordination with Other Congestion Initiative Solicitations.''

DATES: Applicants wishing to receive funding under the ITS–OTMC Program must submit their applications on or before April 30, 2007. Late-filed applications to the ITS–OTMC Program will be considered to the extent practical.

Application Submission: Applicants wishing to apply for funding under the ITS–OTMC Program may file their applications online at *http://www.grants.gov* under Funding Opportunity Number DTFH61–07–RA–00111. The grant synopsis is available at *http://www.grants.gov.* The full announcement is expected to be available on *http:www.grants.gov* no later than January 15, 2007.

FOR FURTHER INFORMATION CONTACT: Please address questions concerning this notice to Brian Cronin, Intelligent Transportation Systems Joint Program Office, Research and Innovative Technology Administration, at (202) 366–8841 or via e-mail at *brian.cronin@dot.gov.* Please address questions concerning the required SF 424 form to Sarah Tarpgaard, Office of Acquisition Management, Federal Highway Administration, at (202) 366–5750 or via e-mail at *sarah.tarpgaard@dot.gov.* Please address legal questions to Grace Reidy, Esq., Office of the Chief Counsel, Federal Highway Administration, at (202) 366–6226 or via e-mail at *grace.reidy@dot.gov.* RITA and FHWA offices are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for RITA and the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except on Federal holidays.

SUPPLEMENTARY INFORMATION:

A. The Department's Congestion Initiative and Urban Partnership Agreement

Crisis of Congestion. Traffic congestion affects virtually every aspect of peoples' lives—where people live, work, shop, and how much they pay for goods and services. According to 2003 figures, in certain metropolitan areas the average rush hour driver loses as many as 93 hours per year to travel delay—the equivalent of more than two weeks of work, amounting annually to a virtual ''congestion tax'' as high as $1,598 per traveler in wasted time and fuel.[1] Nationwide, congestion imposes costs on the economy of over $65 billion per year,[2] a figure that has more than doubled since 1993, and that would be even higher if it accounted for the significant cost of unreliability to drivers and businesses, the environmental impacts of idle-related auto emissions, or increased gasoline prices.

Traffic congestion also has a substantial negative impact upon the quality of life of many American families. In a 2005 survey, for example, 52 percent of Northern Virginia commuters reported that their travel times to work had increased in the past year,[3] leading 70 percent of working parents to report having insufficient time to spend with their children and 63 percent of respondents to report having insufficient time to spend with their spouses.[4] Nationally, in a 2005 survey conducted by the National League of Cities, 35 percent of U.S. citizens reported traffic congestion as the most deteriorated living condition in their city over the past five years; 85 percent responded that traffic congestion was as bad or worse than the previous year.[5] Similarly, in a 2001 survey conducted by the U.S. Conference of Mayors, 79 percent of Americans from ten metropolitan areas reported that congestion has worsened over the past five years; 50 percent believe it has become ''much worse.''[6]

The Urban Partnership Agreement. In May 2006, the Department announced its Congestion Initiative, a bold and comprehensive national program to reduce congestion on the Nation's roads, rails, runways, and waterways. One major component of the Congestion Initiative is the UPA. Through UPAs, the Department plans to partner with certain metropolitan areas or ''Urban Partners'' to demonstrate four strategies with a combined track record of effectiveness in reducing traffic congestion. The four strategies are known as the ''Four Ts'', which are:

1. *Tolling:* Implementing a broad congestion pricing or variable toll demonstration;
2. *Tansit:* Creating or expanding express bus services, bus rapid transit (BRT) or other innovative commuter transit services, which would benefit from the free-flow traffic conditions generated by pricing;
3. *Telecommuting:* Securing agreements from major area employers to establish or expand telecommuting and flex scheduling programs; and
4. *Technology & Operations:* Using cutting edge technological and operational approaches to improve transportation system performance.

In return for their commitment to adopt innovative, system-wide solutions to traffic congestion, the Department, to the maximum extent possible, would support its Urban Partners with the Department's financial resources (including a combination of grants, loans, and borrowing authority), regulatory flexibility and dedicated expertise and personnel.

Congestion Pricing. The most innovative—and often misunderstood—component of the UPA is congestion pricing. Congestion pricing leverages the principles of supply and demand to manage traffic. It does this by charging drivers a user fee that varies by traffic volumes or time of day, thus managing highway resources in a manner that promotes free-flow traffic conditions on highways at all times. Congestion pricing achieves free-flow conditions by shifting purely discretionary rush hour highway travel to other transportation modes or to off-peak periods, taking advantage of the fact that many rush hour drivers on a typical urban highway

[1] Texas Transportation Institute (''TTI''), 2005 Urban Mobility Report, May 2005 (*http://tti.tamu.edu/documents/mobility_report_2005.pdf*), Tables 1 and 2.

[2] TTI, 2005 Urban Mobility Report, p. 1.

[3] Northern Virginia Transportation Alliance 2005 Survey (*http://www.nvta.org/content.asp?contentid=1174*).

[4] Virginia Department of Transportation.

[5] National League of Cities survey of cities (2005).

[6] U.S. Conference of Mayors survey on traffic congestion (2001).

are not commuters. By removing a fraction of the vehicles from a congested rush hour roadway, congestion pricing enables the system to flow much more efficiently, allowing more cars to move through the same physical space. Similar variable charges have been successfully utilized in other industries (airline tickets, cell phone rates, and electricity, for example), and there is a consensus among economists that congestion pricing represents the single most viable approach to reducing traffic congestion.

Congestion pricing benefits drivers and businesses by reducing delays and stress, increasing the predictability of trip times, and allowing for more deliveries per hour. It benefits mass transit by improving transit speeds and the reliability of transit service, increasing transit ridership, and lowering costs for transit providers. It benefits State and local governments by improving the quality of transportation services without tax increases or large capital expenditures, providing additional revenues for funding transportation, retaining businesses and expanding the tax base. It saves lives by shortening incident response times for emergency responders. And it benefits society as a whole by reducing fuel consumption and vehicle emissions, allowing for more efficient land use decisions, reducing housing market distortions, and expanding opportunities for civic participation.

Congestion pricing is no longer simply a theory; it has demonstrated positive results both in the U.S. and around the world. Successful American applications of congestion pricing include California's SR–91 between Anaheim and Riverside, portions of I–15 outside of San Diego, and Express Lanes on I–394 between downtown Minneapolis and the western suburbs, all of which have enabled congestion-free rush hour commuting and proven popular with drivers of all income levels. Internationally, congestion pricing has yielded dramatic reductions in traffic congestion and increases in travel speeds in Singapore, London, and Stockholm. Notably, a small reduction in vehicles can yield dramatic improvements in traffic, as demonstrated by a British study, which projected that a 9 percent drop in traffic could yield a 52 percent drop in congestion delay.[7] This same dynamic plays out in metropolitan areas every August, as family vacations lead to a minor decrease in rush hour drivers, which substantially reduces area traffic congestion.

Transit. Another critical congestion-reducing strategy to be incorporated into UPAs is increasing the quality and capacity of peak-period transit service in order to offer a more attractive alternative to automobile travel and to accommodate peak-period commuters who elect to switch to transit in response to the adoption of congestion pricing.

Congestion pricing and public transportation convey mutual benefits-road pricing benefits public transportation by improving transit speeds and the reliability of transit service, increasing transit ridership, lowering costs for transit providers, and expanding the source of revenue that may be used for transit, while public transportation benefits road pricing by absorbing commuters who shift their travel from automobile to bus or rail. By replacing congested traffic with free-flowing conditions on major routes, congestion pricing will improve the speed and productivity of current express bus services, making them more attractive to commuters while reducing their operating costs. Reducing congestion will also facilitate rapid deployment of innovative, high-performance BRT operations in major corridors, which require only modest investments in new vehicles and passenger facilities that may be eligible for financial support through the Department's various funding mechanisms. Improving the performance and variety of peak-period transit commuting options through a combination of congestion pricing and limited capital investment will provide significant benefits to current transit riders, while improving transit's effectiveness in reducing peak-period auto travel and providing the expanded passenger-carrying capacity necessary to accommodate shifts to transit commuting induced by the imposition of congestion pricing.

Telecommuting. The third critical congestion-reducing strategy for Urban Partners to adopt is promoting increased use of telecommuting and flexible work scheduling, in order to reduce peak-period commuting and shift some commuting travel to ''shoulder'' or off-peak hours. Telecommuting can eliminate some peak-period commuting travel by using computer and electronic communications technology to enable certain employees to work from their homes or nearby telecommuting centers on predetermined (often regularly scheduled) workdays, or in some cases on a full-time basis. Flexible work schedules allow employees to shift their commute trips from the peak period to less congested hours. The most promising means to achieve these objectives is for public officials representing Urban Partners to secure agreements from major employers in their metropolitan areas to establish or expand telecommuting programs, and to offer flexible work schedules to the maximum number of their employees. The Department and local transportation planning agencies can offer technical and logistical support to employers for designing, implementing, and monitoring the effectiveness of telecommuting programs and flexible work scheduling.

Technology. Technology makes possible congestion pricing, which differs from traditional tolling in two material respects: (1) Instead of charging a fixed fee, congestion pricing manages traffic by charging drivers a user fee that varies by traffic volumes or time of day, thus balancing supply and demand; and (2) unlike traditional tolling, congestion fees are collected electronically at highway speeds. With variable pricing, technology affords highway managers the flexibility of setting user fees by time of day or ''dynamically''—by increasing or decreasing fees depending on traffic volumes to maximize throughput and the free flow of traffic. Technology facilitates this variability by enabling the collection of user fees at highway speeds through the use of transponders, Global Positioning Systems (GPS), or cameras. With transponders, or ''tags,'' tolls may be collected as vehicles pass under overhead antennae. With GPS technology, like that used on Germany's autobahns, an in-vehicle device records charges based on the vehicle's location, and periodically uploads a summary of charges to a processing center along with payments. Technology can also provide options for occasional users of these roads to prepay for their trip via kiosks or the internet.

In addition, technological advancements may enhance the quality of transit service deployed to reduce urban congestion. These technology-based improvements may include lane-keeping devices or longitudinal control designed to enhance spatial efficiency on existing highways, precision docking, signal priority systems for buses, contactless fare collection, real-time travel information (bus arrival times, schedules, etc.), advanced traveler information systems, parking alerts and automatic vehicle locator systems.

[7] Department of Transport, U.K., Feasibility Study of Road Pricing in the U.K.: A Report to the Secretary of State for Transport, Road Price Steering Group, Chapter 4, Figure 3.

B. Coordination With Other Congestion Initiative Solicitations

This solicitation is one of three solicitations being issued by the Department in connection with this component of the Congestion Initiative. Published separately in the **Federal Register**, the other two solicitations are:

1. Solicitation of Applications for Urban Partnerships as Part of the Congestion Initiative. See Applications for Urban Partnership Agreements as Part of Congestion Initiative (71 FR 71231), dated December 8, 2006. Through UPAs, the Department plans to partner with certain metropolitan areas or ''Urban Partners'' in order to demonstrate strategies with proven effectiveness in reducing traffic congestion.

2. Solicitation of Applications to the Value Pricing Pilot (VPP) Program. See Solicitation of Applications to the VPP Program to be published by the Department later this month in the **Federal Register**. The VPP Program, as reauthorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005, Section 1604 (a)), supports implementation of a variety of pricing-based approaches for managing congestion on highways. The solicitation for the VPP Program will align the program with the Congestion Initiative to support metropolitan areas in implementing broad congestion pricing strategies in the near term.

Please note: Applicants for funding under the ITS–OTMC and/or VPP Programs that also wish to become an Urban Partner must respond to each solicitation separately. However, the Department will accept identical copies of a single application as long as it satisfies the requirements of each relevant solicitation.

C. The Department's ITS Program

Since enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, Dec. 18, 1991), the Department has been administering the ITS Program. A primary objective of the ITS Program is the research, development and operational testing of systems and strategies to reduce congestion in urban areas (SAFETEA–LU, Section 5305). As a result, the program has focused considerable attention on the development of various products oriented towards congestion mitigation, such as electronic toll collection, advanced real-time adaptive traffic signals, transit signal priority systems, innovative surveillance systems, improved incident detection and response systems, advanced transit management systems, and multi-modal traveler information systems. These and other congestion-mitigation strategies have been shown to be very effective in improving overall traffic operations and reducing congestion. In reauthorizing the ITS Program, SAFETEA–LU, section 5306, requires the Secretary to continue to invest in technologies and systems that can aid in reducing metropolitan congestion by not less than five percent by 2010. Given the increasing demand on the Nation's surface transportation system, this ambitious goal will require bold, innovative approaches.

D. The ITS–OTMC Program

Objective. The overall objective of the ITS–OTMC Program is to facilitate, in connection with the Congestion Initiative, the operational testing of innovative and aggressive congestion reduction strategies incorporating ITS systems that can demonstrate measurable reductions in congestion levels in the testing areas. In its discretion, the Department may provide up to $100 million over three years through the ITS–OTMC Program which the Department established as part of the ITS Program. In order to support the objectives of the Congestion Initiative, the Department is seeking applications for the operational testing and evaluation of innovative uses of technology to address congestion on a specific facility or facilities, such as a corridor, an urban area or region. Accordingly, qualifying projects must be expected to directly result in significant, broad, and near-term congestion relief. Projects that the Department will consider may include demand management pricing strategies, advanced traffic signal control, innovative incident detection and management strategies, integrated corridor management, parking management tied to transit service, high occupancy/toll (HOT) lanes, managed lanes, ramp control, lane-keeping devices or longitudinal control designed to enhance spatial efficiency on existing highways, precision docking, signal priority systems for buses, contactless fare collection, real-time travel information (bus arrival times, schedules, emergency information to first-responders, etc.), advanced traveler information systems,[8] parking alerts or automatic vehicle locator systems.

The Department encourages the submission of project proposals that contain technologies which support pricing strategies. Projects that use technology to support and combine congestion mitigation strategies (such as congestion pricing, expansion of transit capacity, and telecommuting) are encouraged. Project applications should demonstrate that proposed strategies will be implemented in a relatively short time frame (e.g., within 12 to 18 months from the date of procurement).

Project Costs Eligible for Grant Funding. The Department will provide up to the statutorily allowable 80 percent share of the estimated costs of an approved project. Funds available for the ITS–OTMC Program are intended to support the implementation costs of the proposed operational testing. Costs of planning, testing, managing, operating, demonstrating, monitoring, evaluating, and reporting are eligible for reimbursement. The Department will evaluate the allowability of proposed costs in accordance with OMB Circular A–87 Cost Principles for State and Local Governments.

1. *Pre-Implementation Planning and Design Costs.* Eligible pre-implementation costs include: planning, public participation, consensus building, marketing, impact assessment, modeling, financial planning, development of concepts of operations, technology assessments and specifications, and environmental work and other pre-implementation work that relates to the establishment of a project participating in the ITS–OTMC Program.[9]

2. *Implementation Costs.* Eligible costs include those for equipment, installation, managing, operating, demonstrating evaluating, and reporting on the ITS–OTMC Program, including administrative and operational costs, enforcement costs, costs of monitoring and evaluating project operations, and costs of continuing public relations activities during the period of implementation.

Who is Eligible to Apply? Competition is limited to State or local governments or public authorities, such as State departments of transportation, transit authorities and tolling agencies. Although project agreements must be with the aforementioned public entities, those entities may partner with private

[8] Advanced traveler information systems include web or wireless access to route-specific travel time and toll information; route planning assistance using historical records of congestion by time of day; and communications technologies that gather traffic- and incident-related data from a few vehicles traveling on a roadway and then publish that information to drivers via mobile phones, in-car units or dynamic message signs.

[9] While planning and design costs are eligible expenses, the expectation is that these projects have been well thought out and that the proposing jurisdiction has already completed the preliminary planning to quickly move to deployment.

tolling authorities, for-profit companies, and non-profit organizations.

E. Contents of Application for ITS–OTMC Program

Below is the minimum set of application requirements. The full set of application requirements will be detailed in the full announcement which will be available by January 15, 2007, on *http://www.grants.gov* under Funding Opportunity Number DTFH61–07–RA–00111. An application shall consist of the following materials:

- Standard Form (SF) 424
- SF 424A
- SF 424B
- SF LLL
- *Grants.gov* Lobbying Form
- Attachments Form (each as further described below):
  - Part I: Background, Problem and Technical Approach
  - Part II: Demonstration Value
  - Part III Budget Application Detail

Part I: Background, Problem and Technical Approach. This section should include the following information:

1. The name, title, e-mail address and phone number of the person who will act as the point of contact on behalf of the applicant;
2. A description of the partner agency, authority, or authorities requesting funding;
3. The Congressional District or Districts in which the project will be implemented;
4. Identification of the lead agency and a description of the roles for each public agency or agencies that will be responsible for operating, maintaining, and enforcing the operational testing project, if applicable;
5. A management and staffing plan for all partner agencies;
6. A description of the ITS congestion mitigation technologies to be operationally tested;
7. Identification of the facilities that will be covered by the operational test;
8. A plan, including timeline broken down by phases, for implementing ITS congestion mitigation technologies;
9. A description of the anticipated effects of the ITS congestion mitigation technologies on reducing congestion, altering travel behavior, and encouraging the use of multiple transportation modes;
10. Plans for monitoring and evaluating operational testing projects, including plans for collection and analysis, before and after assessment, and long term monitoring and documenting of project effects; [10]
11. Plans for meeting all Federal, State, and local legal and administrative requirements for project implementation, including relevant Federal-aid planning and environmental requirements;
12. A discussion of previous public involvement, including public meetings, in the demonstration of the proposed ITS operational test to mitigate congestion. Any expressions or declarations of support from public officials, industry, or the public. Future plans for involving key affected parties, coalition building, and media relations, and more broadly for ensuring adequate public and private sector involvement prior to implementation (applicants are encouraged to provide more than just letters of support, but instead reference any implemented policies and/or legislation that will enable successful implementation); and
13. A description of private entities, if any, involved in the project and the applicants arrangements therewith, including any cost sharing or debt retirement arrangements associated with revenues.

Part II: Operational Testing Value. This section should describe the ''Operational Testing value'' of the proposed project. Operational Testing value is the extent to which the project demonstrates to other states, metropolitan areas, and other jurisdictions the potential of ITS technology to solve congestion problems. Operational Testing value is enhanced by taking advantage of the complementarities among different congestion mitigation strategies (such as congestion pricing, expansion of transit capacity, and telecommuting).

The application should describe how the various parts of the overall congestion reduction strategy interact to enhance their overall effectiveness in reducing congestion. The application should also discuss what elements of the applicant's strategy are novel, and how the applicant believes these elements hold promise to reduce congestion in other metropolitan areas.

Part III: Budget. This section should contain the following information: [11]

1. A budget itemized by task, phase and funding year;
2. A finance and revenue plan, including a budget for capital and operating costs; a description of all funding sources, planned expenditures, and proposed uses of revenues; and a clear tabulation of Federal funds requested and proposed match.[12]

F. ITS–OTMC Program Selection Criteria

Proposals will be evaluated based on (i) the project's operational testing value, (ii) the project's estimated impact on congestion, (iii) the project's technical merit, and (iv) the project's management approach and schedule, and (v) whether the jurisdiction in which the project is located has been designated an Urban Partner. The overall budget, as well as the level of funding match being proposed, will also be considered in the evaluation. Priority will be given to acceptable proposals submitted by Urban Partners.

G. Number of Awards and Funding

A maximum total amount of $100 million in Federal funds may be obligated over three years to the selected ITS–OTMC projects. Final budgets will be negotiated upon selection.

H. Miscellaneous

Successful applicants will enter into a cooperative agreement with the Department. The cooperative agreement will define the project scope, schedule and budget. Cooperative agreements between the Department and successful applicants will be subject to the Department's regulations at 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, metropolitan and statewide planning requirements located at 23 U.S.C. 135(c)(1), (e)(2)(B), (f)(1)(B)(ii)(I) and (II), (f)(3)(A) and (B), and 49 U.S.C. 5323(1).

(Authority: Pub. L. 109–59).

Issued on: December 12, 2006.

John A. Bobo, Jr.,

Administrator, Research and Innovative Technology Administration.

[FR Doc. E6–21460 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–22–P

[10] The Department will be selecting an independent evaluator for all projects selected. The recipient shall agree to support the independent evaluator in collecting and providing access to the necessary data.

[11] If such information is not fully developed at the time an application is submitted, an application may still be considered by the Department in its discretion.

[12] Please note: Federal funds are restricted to 80 percent of total project costs. A minimum of 20 percent of the total cost of the project must be from non-Federally derived funding sources and must consist of either cash, substantial equipment or facilities contributions that are wholly utilized as an integral part of the project or personnel services dedicated full-time to the proposed operational test for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-Federally derived funding may come from state, local government, or private sector partners.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day notice of intent to seek extension of approval: Waybill Compliance Survey.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of approval for the currently approved Waybill Compliance Survey. This information collection is described in detail below. Comments are requested concerning (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Waybill Compliance Survey.

OMB Control Number: 2140–0010.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Regulated railroads that did not submit carload waybill sample information to the STB in the previous year.

Number of Respondents: 120.

Estimated Time Per Response: .5 hours.

Frequency: Annually.

Total Burden Hours (annually including all respondents): 60.

Total ''Non-hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred to the STB the responsibility for the economic regulation of common carrier rail transportation, including the collection and administration of the Carload Waybill Sample. Under 49 CFR 1244, a railroad terminating 4500 or more carloads, or terminating at least 5% of the total revenue carloads that terminate in a particular state, in any of the three preceding years is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines. The information in the Waybill Sample is used to monitor traffic flows and rate trends in the industry. The Board needs to collect information in the Waybill Compliance Survey—information on carloads of traffic terminated each year by U.S. railroads—in order to determine which railroads are required to file the Waybill Sample. In addition, information collected in the Waybill Compliance Survey, on a voluntary basis, about the total operating revenue of each railroad helps to determine whether respondents are subject to other statutory or regulatory requirements. Accurate determinations regarding the size of a railroad helps the Board minimize the reporting burden for smaller railroads. The Board has authority to collect this information under 49 U.S.C. 11144 and 11145 and under 49 CFR 1244.2.

DATES: Comments on this information collection should be submitted by February 16, 2007.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, Room 614, 1925 K Street, NW., Washington, DC 20423, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Waybill Compliance Survey, OMB control number 2140–0010.''

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: Mac Frampton at (202) 565–1541 or at *hugh.frampton@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: December 18, 2006.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21473 Filed 12–15–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 12, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 17, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1551

Type of Review: Extension.

Title: Revenue Procedure 97–36, Revenue Procedure 97–38, Revenue Procedure 97–39, and Revenue Procedure 2002–9, Changes in Methods of Accounting.

Description: The information collected in the four revenue procedures is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 222,454 hours.

OMB Number: 1545–1851

Type of Review: Extension.

Title: REG–124312–02 (Final) Golden Parachute Payments.

Description: These regulations deny a deduction for excess parachute payments. A parachute payment is a payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if

certain requirements are met (such as shareholder approval and disclosure requirements).

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 12,000 hours.

OMB Number: 1545–1096

Title: Excise Tax Program Order Blank for Forms and Publications.

Type of Review: Extension.

Form: 9117.

Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–1143

Title: Notification of Distribution From a Generation-Skipping Trust.

Type of Review: Extension.

Form: 706–GS(D–1).

Description: Form 706–GS(D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 348,800 hours.

OMB Number: 1545–1558

Title: Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1; and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

Form: 1138.

Type of Review: Extension.

Description: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under section 1.475(c)–1, subject to specified terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance in a question and answer format.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1145

Title: Generation-Skipping Transfer Tax Return For Terminations.

Type of Review: Extension.

Form: 706–GS(T).

Description: Form 706–GS(T) is used by trustees to compute and report the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated Total Burden Hours: 684 hours.

OMB Number: 1545–1701

Title: Revenue Procedure 2000–37 Reverse Like-kind Exchanges.

Type of Review: Extension.

Description: The revenue procedure provides a safe harbor for reverse like-kind exchanges under which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under Sec. 1031 of the Internal Revenue Code.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 3,200 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–21504 Filed 12–15–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before February 16, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Lewis Angel, Technology Program Manager, Information Technology Risk Management, (202) 906–5645, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS, including whether the information will have practical utility;

b. The accuracy of OTS's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

e. Whether the estimates need to be adjusted based upon the institutions' experience regarding the number of actual security breaches that occur.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

OMB Number: 1550–0110.

Form Number: N/A.

Description: On March 29, 2005, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the Agencies) published the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (70 FR 15736) (Guidance). The Guidance interprets the requirements of section 501(b) of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801, and the Interagency Guidelines Establishing Information Security Standards (Security Guidelines) [1] to include the development and implementation of a response program to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The Guidance states that every financial institution should develop and implement a response program designed to address incidents of unauthorized access to customer information maintained by the institution or its service provider, and describes the appropriate elements of a financial institution's response program, including customer notification procedures.

OTS is proposing to extend OMB approval of the following information collection. This submission involves no change to the regulation or to the information collection requirements.

Type of Review: Renewal.

Affected Public: Business or other for-profit; individuals.

Number of Respondents: 852.

Estimated Time per Response:

Developing Notices: 20 hours × 8 = 160 hours. 24 hours × 852 = 20,448 hours.

Notifying Customers: 29 hours × 17 = 435 hours.

Total Estimated Annual Burden = 20,883 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: December 12, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6–21464 Filed 12–15–06; 8:45 am]

BILLING CODE 6720–01–P

[1] 12 CFR part 570, app. B (OTS).

Federal Register

Monday,
December 18, 2006

Part II

Environmental Protection Agency

40 CFR Part 62

Federal Plan Requirements for Other Solid Waste Incineration Units Constructed on or Before December 9, 2004; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–HQ–OAR–2006–0364; FRL–8254–9]

RIN 2060–AN43

Federal Plan Requirements for Other Solid Waste Incineration Units Constructed on or Before December 9, 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 16, 2005, the EPA promulgated emission guidelines (EG) for existing ''other'' solid waste incineration (OSWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing OSWI units subject to the EG to submit plans to the EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the EG in Indian country. State plans are due from States with OSWI units subject to the EG on December 16, 2006. If a State or Tribe with existing OSWI units does not submit an approvable plan, sections 111(d) and 129 of the CAA require the EPA to develop, implement, and enforce a Federal plan for OSWI units located in that State or Tribal area within 2 years after promulgation of the EG (December 16, 2007). This action proposes a Federal plan to implement EG for OSWI units located in States and Indian country without effective State or Tribal plans. On the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to OSWI units covered by the State or Tribal plan.

DATES: Comments must be received on or before February 16, 2007.

Public Hearing. If anyone contacts EPA by January 8, 2007 requesting to speak at a public hearing, EPA will hold a public hearing on January 22, 2007. If you are interested in attending the public hearing, contact Ms. Dorothy Apple at (919) 541–4487 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0364, by one of the following methods:

Web site: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: Send your comments via electronic mail to *a-and-r-docket@epa.gov.* Attention: Docket ID No. EPA–HQ–OAR–2006–0364.

Mail: Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0364. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0364. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0364. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment 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.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

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, 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. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

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 make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Ms. Martha Smith, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2421; e-mail address: *smith.martha@epa.gov.* For technical information, contact Ms. Mary Johnson, Energy Strategies Group, Sector Policies Program Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5025; e-mail address: *johnson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments for EPA?
II. Background Information
  A. What is the regulatory development background for this proposed rule?
  B. What associated regulatory activity preceded this proposed rule?

C. What impact does the EPA's granting of a request for reconsideration have on this Federal plan?
III. Affected Facilities
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IV. Elements of the OSWI Federal Plan
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VI. OSWI That Have or Will Shut Down
A. Units That Plan To Close Rather Than Comply
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VII. Implementation of the Federal Plan and Delegation
A. Background of Authority
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C. Mechanisms for Transferring Authority
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E. OSWI Federal Plan and Indian Country
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IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by the proposed rules are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The OSWI Federal plan would affect the following categories of sources:

Category	NAICS* code	Examples of potentially regulated entities
Any State, local, or Tribal Government using a VSMWC unit as defined in the regulations.	562213, 92411	Solid waste combustion units burning municipal waste collected from the general public and from residential, commercial, institutional, and industrial sources.
Institutions using an IWI unit as defined in the regulations	922, 6111, 623, 7121	Correctional institutions, primary and secondary schools, camps and national parks.
Any Federal Government Agency using an OSWI unit as defined in the regulations.	928	Department of Defense (labs, military bases, munitions facilities).
Any college or university using an OSWI unit as defined in the regulations.	6113, 6112	Universities, colleges and community colleges.
Any church or convent using an OSWI unit as defined in the regulations.	8131	Churches and convents.
Any civic or religious organization using an OSWI unit as defined in the regulations.	8134	Civic associations and fraternal associations.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rules. To determine whether your facility would be regulated by the proposed rules, you should examine the applicability criteria in CAA sections 62.15460 through 62.15500 of the proposed Federal plan. If you have any questions regarding the applicability of the proposed rules to a particular entity, contact either of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, c/o OAQPS Document Control Officer (Mail Drop C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0364. 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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult either of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

Docket. The docket number for the proposed Federal plan (40 CFR part 620, subpart KKK) is Docket ID No. EPA–HQ–OAR–2005–0364.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rules is available on the WWW through the Technology Transfer Network Website (TTN Web). Following signature, EPA will post a copy of the proposed rules on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

A. What is the regulatory development background for this proposed rule?

Section 129 of the CAA requires EPA to develop emission guidelines for, among other things, unspecified ''other categories of solid waste incineration units'', herein referenced as OSWI units. The EPA proposed emission guidelines for OSWI units on December 9, 2004, and promulgated them on December 16, 2005 (70 FR 74870), to be codified at 40 CFR part 60, subpart FFFF. In writing Section 129 of the CAA, Congress looked first to the States as the preferred implementers of emission guidelines for existing OSWI units. To make these emission guidelines enforceable, States with existing OSWI units must have submitted to EPA within one year following promulgation of the emission guidelines (by December 16, 2006) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 16, 2007). The EPA sees the Federal plan as an interim measure to ensure that congressionally mandated emission standards are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing OSWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no OSWI units in the State. No plan is required for States that do not have any OSWI units.

As discussed in section VII.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover OSWI units in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no OSWI units are located in the Tribal area. No plan is required for Tribes that do not have any OSWI units. OSWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan becomes approved and effective covering those OSWI units.

This action proposes a Federal plan for OSWI units that are not covered by an approved State or Tribal plan as of December 16, 2006. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing OSWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 16, 2007, for OSWI units). The EPA is proposing this Federal plan now so that a promulgated Federal plan will be in place at the earliest possible date, thus ensuring timely implementation and enforcement of the OSWI emission guidelines. In addition, EPA's timing allows a State or Tribe the opportunity to take delegation of the Federal plan in lieu of writing a State plan.

B. What associated regulatory activity preceded this proposed rule?

Regulations have been developed for each of the listed categories of solid waste incineration unit except for the ''other categories of solid waste incineration units.'' This notice proposes regulations for these ''other'' (or OSWI) units. Several previous notices have been published regarding OSWI regulatory development (58 FR 31358, June 2, 1993; 58 FR 58498, November 2, 1993; 65 FR 67367, November 9, 2000). In the November 9, 2000 notice, EPA revised the OSWI regulatory schedule to promulgate regulations by November 2005. This was subsequently incorporated into a consent decree, requiring that EPA propose regulations for the OSWI source category by November 30, 2004, and promulgate by November 30, 2005. We proposed regulations on December 9, 2004. On December 16, 2005, we promulgated EG for OSWI constructed on or before December 9, 2004 (70 FR 74870), which are to be implemented via today's proposed rulemaking.

C. What impact does the EPA's granting of a request for reconsideration have on this Federal plan?

On February 14, 2006, subsequent to EPA's promulgation of the final rule establishing the New Source Performance Standards (NSPS) and the Emission Guidelines (EG) for OSWI units, the Sierra Club filed a petition for reconsideration, pursuant to section 307(d)(7)(B) of the CAA.[1] On June 28, 2006 (71 FR 36726–36730), EPA granted reconsideration of one issue raised by the Sierra Club. In granting reconsideration on this issue, EPA agreed to undertake further notice and comment proceedings related to whether sewage sludge incinerators should be regulated under CAA section 129.[2] EPA's granting reconsideration on an issue does not stay, vacate or otherwise influence the effective date of the OSWI regulations. Specifically, CAA section 307(d)(7)(B) provides that ''reconsideration shall not postpone the effectiveness of the rule,'' except that ''the effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months.'' In this case, neither EPA nor the court stayed the effectiveness of the final OSWI regulations in connection with the reconsideration petition. Because the existing OSWI regulations remain in effect, EPA's obligation under CAA section 129(b)(3) to promulgate a Federal Plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.[3] Therefore, EPA is complying with its statutory obligations by issuing today's proposed Federal Plan for OSWI units.

If, after reconsidering any issues raised in the petition for reconsideration, EPA revises the OSWI rules, EPA plans to make corresponding changes to the final Federal Plan. Thus, by this notice, we are informing the public that EPA is reconsidering this same issue (*e.g.*, involving sewage sludge incinerators) as it pertains to the OSWI Federal Plan as well, and if the Federal Plan is finalized after EPA final action on reconsideration, it too will reflect EPA's final decision on the issue.

[1] The Sierra Club also filed a petition for review in the D.C. Circuit, challenging the final OSWI rule. *Sierra Club* v. *EPA*, No. 06–1066 (D.C. Cir.). That case is being held in abeyance while EPA undertakes its reconsideration proceeding.

[2] EPA will respond to other issues raised in the petition for reconsideration no later than when it takes final action on the sewage sludge issue, which EPA expects to be no later than January 2007.

[3] Similarly, the obligations of States and sources are unaffected by EPA's reconsidering one issue.

III. Affected Facilities

A. What is an OSWI unit?

The term OSWI unit means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in proposed 40 CFR part 62, subpart KKK. Seventeen types of combustion units, which are listed in CAA section 62.15845 of proposed subpart KKK are conditionally exempt from specific provisions of the proposed Federal plan.

B. Does the Federal plan apply to me?

The proposed Federal plan will apply to you if you are the owner or operator of an OSWI unit, including any OSWI air curtain incinerator (ACI), not covered by an approved and effective State or Tribal plan as of the date of promulgation of the Federal plan. The Federal plan proposed herein would cover your OSWI unit until EPA should approve a State or Tribal plan that would cover your OSWI unit and that plan should become effective.

If you began the construction of your OSWI unit on or before December 9, 2004, it is considered an existing OSWI unit and could be subject to the Federal plan. If you began the construction of your OSWI unit after December 9, 2004, it is considered a new OSWI unit and is subject to the new source performance standards (NSPS). If you began reconstruction or modification of your OSWI unit prior to June 16, 2006, it is considered an existing OSWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your OSWI unit on or after June 16, 2006, it is considered a new OSWI unit and is subject to the NSPS.

Your existing OSWI unit would be subject to this Federal plan if on the effective date of the Federal plan, EPA has not approved a State or Tribal Plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in CAA sections 62.15460 through 62.15500 of proposed subpart KKK.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to an OSWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval of the plan.

The EPA's promulgation of an OSWI Federal plan will not preclude States or Tribes from submitting a plan. If a State or Tribe submits a plan after promulgation of the OSWI Federal plan final rule, EPA will review and approve or disapprove the State or Tribal plan. If EPA approves a plan, then the Federal plan would no longer apply to OSWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. If an OSWI unit were overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual OSWI unit were not covered by an approved and effective State or Tribal plan, the OSWI unit would be subject to this Federal plan.

C. How do I determine if my OSWI unit is covered by an approved and effective State or Tribal plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of sections 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, 40 CFR part 62 is updated once per year. Thus, if 40 CFR part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of 40 CFR part 62.

EPA REGIONAL CONTACTS FOR OSWI

Region	Contact	Phone/fax	States and protectors
I	EPA New England, Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023.	617–918–1650, 617–918–1505 (fax)	CT, ME, MA, NH, RI, VT.
II	U.S. EPA Region 2, Air Compliance Branch, 290 Broadway, New York, NY 10007.	212–637–4080, 212–637–3998 (fax)	NJ, NY, Puerto Rico, Virgin Islands.
III	U.S. EPA Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029.	215–814–3438, 215–814–2134 (fax)	DE, DC, MD, PA, VA, WV.
IV	U.S. EPA Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104.	404–562–9105, 404–562–9095 (fax)	AL, FL, GA, KY, MS, NC, SC, TN.
V	U.S. EPA Region 5, Air Enforcement and Compliance Assurance Branch (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590.	312–353–2088, 312–353–2018 (fax)	IL, IN, MN, OH, WI.
VI	U.S. EPA Region 6, Chief, Toxics Enforcement Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733.	214–665–7224, 214–665–7446 (fax)	AR, LA, NM, OK, TX.
VII	U.S. EPA Region 7, Air Permitting and Compliance Branch (ARTD/APCO–2119F), 901 N. 5th Street, Kansas City, KS 66101.	913–551–7020, 913–551–7844 (fax)	IA, KS, MO, NE.
VIII	U.S. EPA Region 8, Air and Radiation Program Air Technical Assistance Unit (Mail Code 8P—AR), 999 18th Street, Suite 200, Denver, CO 80202.	303–312–6526, 303–312–6064 (fax)	CO, MT, ND, SD, UT, WY.
IX	U.S. EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415–947–4200, 415–744–1076 (fax)	AZ, CA, HI, NV, American Samoa, Guam.
X	U.S. EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	206–553–1602, 206–553–0110 (fax)	AK, ID, OR, WA.

IV. Elements of the OSWI Federal Plan

Because EPA is proposing a Federal plan to cover OSWI units located in States and areas of Indian Country where plans are not in effect, EPA has elected to include in this proposal the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of OSWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. See 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this proposed OSWI Federal plan. The table below lists each element and identifies where it is located or codified.

ELEMENTS OF THE OSWI FEDERAL PLAN

Legal authority and enforcement mechanism	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of Affected MWC Units	Docket EPA–HQ–OAR–2003–0156.
Inventory of Emissions	Docket EPA–HQ–OAR–2003–0156.
Emission Limits	40 CFR 62.15575–62.15605.
Compliance Schedules	40 CFR 62.15505–62.15515.
Operator Training and Qualification	40 CFR 62.15535–62.15570.
Waste Management Plan	40 CFR 62.15520–62.15530.
Record of Public Hearings	Docket EPA–HQ–OAR–2003–0156.
Testing, Monitoring, Recordkeeping, and Reporting	40 CFR 62.15610, 40 CFR 15665–62.15710, 40 CFR 62.15715–62.15780.
Progress Reports	Section IV.J. of this preamble.

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. CAA Section 129(b)(3) requires EPA to develop, implement, and enforce a Federal plan within 2 years after the date the relevant emission guidelines are promulgated (by December 16, 2007). Compliance with the emission guidelines cannot be later than 5 years after the relevant emission guidelines are promulgated (by December 16, 2010 for OSWI units).

2. EPA's Legal Authority in Indian Country

Section 301 of the CAA provides EPA with the authority to administer Federal programs in Indian country. See CAA sections 301 (a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VII.E of this preamble for a more detailed discussion of EPA's authority to administer the OSWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of the CAA to implement the emission guidelines in those States and areas of Indian country not covered by an approved plan. As discussed in section VII of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected OSWI Units

The proposed Federal plan includes an inventory of OSWI units affected by the emission guidelines. (See 40 CFR part 60.25(a).) Docket No. EPA–HQ–OAR–2003–0156 contains an inventory of the OSWI units that may potentially be covered by this proposed Federal plan in the absence of State or Tribal plans. This inventory contains 248 OSWI units in 26 States. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the OSWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the OSWI units listed in the inventory memorandum in Docket No. EPA–HQ–OAR–2003–0156. Any OSWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory. States, Tribes, or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

C. Inventory of Emissions

The proposed Federal plan includes an emissions estimate for OSWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each known OSWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the OSWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the OSWI emission guidelines and the Federal plan. Refer to the inventory memorandum in Docket No. EPA–HQ–OAR–2003–0156 for the complete emissions inventory and details on the emissions calculations.

D. Emission Limitations

The proposed Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be ''at least as protective as'' those in the emission guidelines. The emission limitations in this proposed OSWI Federal plan are the same as those contained in the EG. Section V of this preamble discusses the emission limitations and operating limits. The EG promulgated December 16, 2005, had a technical error which is being corrected through a technical amendment. Due to the uncertainty of the publication date for the amendment, the technical error will not appear in the proposal of this Federal plan. The correct opacity measurement averaging time appears in

this proposal. This possible discrepancy between the EG and Federal Plan is in Table 2 of the rule in the EG and Table 1 of the rule in the Federal Plan.

E. Compliance Schedules

Typically, State or Federal plans include increments of progress for units that need more than one year from State plan approval to comply, or in the case of the Federal plan, more than one year after promulgation of the final Federal plan. (See 40 CFR part 60.24(e)(1).) The purpose of increments of progress is to ensure that each affected unit needing more time to comply is making progress toward meeting the emission limits.

Section 129(f) of the CAA specifies the dates by which affected facilities must comply with EG. Existing units must be in compliance with the guidelines as expeditiously as practicable after approval of a State plan, but no later than three years after the effective date of State plan approval or five years after promulgation of the guidelines, whichever is earlier. To proceed in an expeditious manner, we are proposing to implement the EG within that same time frame.

For the EG, we are incorporating the full compliance time allowed by CAA section and to include final compliance as the sole increment of progress. The OSWI units are small and are located at small municipalities and institutions that do not always have full-time environmental staff. They will need time to investigate the regulatory, technical, cost, financing, and economic implications of control techniques and alternative waste disposal options available to their facility. The EPA wants to allow sufficient time for owners and operators of OSWI units to investigate, plan, and carry out activities for compliance or, as expected in most cases, a closure of their waste combustion units and an orderly transition to the use of alternative waste disposal methods. Our compliance schedule was developed to allow small sources maximum flexibility in accomplishing final compliance by a date 3 years after publication of a final rule for the Federal plan.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than the date sixty days after the initial performance test. This date is 240 days after the final compliance date.

G. Testing, Monitoring, Recordkeeping, and Reporting

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR part 60.25).) Testing, monitoring, recordkeeping, and reporting requirements are consistent with 40 CFR part 60 subpart FFFF, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. CAA sections 62.15535 through 62.15570 of the proposed subpart KKK contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provides opportunity for public participation in adopting the plan. (See 40 CFR part 60.23(c).) If requested to do so, EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket No. EPA–HQ–OAR–2006–0364. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

Under the Federal plan, the EPA Regional Offices will prepare annual progress reports to show progress of OSWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

V. Summary of OSWI Federal Plan

A. Might the proposed rules apply to me?

The proposed OSWI Federal rules could apply to you if you own or operate either of the following at a location not subject to an approved State or Tribal plan:

(1) An incineration unit with a capacity less than 35 tpd burning municipal solid waste (MSW) (as defined in CAA sections 129 and 62.15850 of 40 CFR part 62 subpart KKK); or

(2) An incineration unit located at an institutional facility burning institutional waste (as defined in CAA section 62.15850 of 40 CFR part 62 subpart KKK) generated at that facility.

Requirements for air curtain incineration units that would otherwise be VSMWC or IWI units, but for the fact that they burn certain materials, are discussed later in this preamble. If your incineration unit is currently meeting emission limitations and other requirements of another CAA section 129 regulation (i.e., small or large municipal waste combustion (MWC) units; hospital, medical, infectious waste incineration (HMIWI) units; or commercial and industrial solid waste incineration (CISWI) units), the proposed OSWI rules would not apply to you. Likewise, if an institutional combustion unit is covered under the CAA section 112 national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters (boilers NESHAP), it would not be subject to the proposed OSWI rules. Certain types of combustion units listed in CAA section 62.15485 of 40 CFR part 62 subpart KKK also would be excluded from the final OSWI rules.

If you began construction of your incineration unit on or before December 9, 2004, it is considered an existing unit and would be subject to the proposed Federal plan. If you began construction of your incineration unit after December 9, 2004, it is considered a new unit and is subject to the NSPS (40 CFR part 60, subpart EEEE). If you began reconstruction or modification of your incineration unit prior to June 16, 2006, it would be considered an existing unit and subject to the Federal plan. Likewise, if you begin reconstruction or modification of your incineration unit on or after June 16, 2006, it is

considered a new unit and is subject to the NSPS.

B. What emission limitations would apply?

As the owner or operator of an existing OSWI unit, you would be required to meet the proposed emission limitations as specified in the table below. See CAA section V.F of this preamble for a discussion of the compliance schedule.

EMISSION LIMITS FOR EXISTING OSWI UNITS

For these pollutants	You must meet these emission limits [a]	And determine compliance using these methods [b c]
Cd	18 micrograms per dry standard cubic meter (µg/dscm)	EPA Method 29.
CO	40.0 parts per million dry volume (ppmdv)	EPA Methods 10, 10A or 10B.
Dioxins/Furans (total mass basis)	33 nanograms per dry standard cubic meter (ng/dscm)	EPA Method 23.
HCl	15.0 ppmdv	EPA Method 26A.
Pb	226 µg/dscm	EPA Method 29.
Hg	74 µg/dscm	EPA Method 29.
Opacity	10%	EPA Method 9.
NO_X	103 ppmdv	EPA Methods 7, 7A, 7C, 7D, or 7E.[d]
PM	0.013 grains per dry standard cubic foot (gr/dscf)	EPA Method 5 or 29.
SO_2	3.1 ppmdv	EPA Method 6 or 6C.[e]

[a] All emission limits (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.
[c] Compliance with the CO emission limit is determined on a 12-hour rolling average basis using continuous emission monitoring system data. Compliance for the other pollutants' emission limits is determined by stack testing.
[d] ASME PTC 19–10–1981—Part 10 is an acceptable alternative to only Methods 7 and 7C.
[e] ASME PTC 19–10–1981—Part 10 is an acceptable alternative to only Method 6.

C. What operating limits would apply?

If you use a wet scrubber to comply with the emission limits, you would be required to establish the maximum and minimum site-specific operating limits indicated in Table 1 of this preamble. You would then be required to operate the OSWI unit so that the charge rate does not exceed the established maximum charge rate. You would be required to operate the wet scrubber so that the pressure drop or amperage, scrubber liquor flow rate, and scrubber liquor pH do not fall below the minimum established operating limits.

TABLE 1.—OPERATING LIMITS FOR EXISTING OSWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour.
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes.
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes.
Scrubber liquor pH	Minimum pH	Every 15 minutes.

Note: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a 24-hour basis.

If you use an air pollution control device other than a wet scrubber to comply with the emission limits, you would be required to petition the EPA for approval of other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The information you must include in your petition is described in 40 CFR 62.15595 of proposed subpart KKK.

D. What would be the requirements for OSWI air curtain incinerators?

The final OSWI rules establish opacity limitations for air curtain incineration units that would otherwise meet the definitions of IWI or VSMWC units, but burn only:

- 100 percent wood wastes;
- 100 percent clean lumber;
- 100 percent yard waste; or
- 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

The opacity limit is 10 percent. However, 35 percent opacity is allowed during startup periods that are within the first 30 minutes of operation. Air curtain incinerators burning only these materials must meet the opacity limits and certain monitoring, recordkeeping, and reporting requirements, and must apply for and obtain a title V operating permit.

Air curtain incinerators burning other institutional waste or municipal waste must meet the requirements of the final OSWI rules including all emission limits in table 1 of this preamble and the associated testing, permitting, monitoring, recordkeeping, and reporting requirements.

E. What other requirements would apply?

As the owner or operator of an OSWI unit, you would be required to meet the following additional requirements.

Waste Management Plan:

- Submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

Operator Training and Qualification Requirements:

- Qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course.

Testing Requirements:

- Conduct initial performance tests for Cd, CO, dioxins/furans, HCl, Pb, Hg, NO_X, opacity, PM, and SO_2 and

establish operating limits (i.e., maximum or minimum values for operating parameters).

• Conduct annual performance tests for all nine pollutants and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limits for three consecutive performance tests).

Monitoring Requirements:

• Continuously monitor CO emissions.

• If using a wet scrubber to comply with the emission limits, continuously monitor the following operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH.

• If using something other than a wet scrubber to comply with the emission limits, monitor other operating parameters, as approved by the EPA.

Recordkeeping and Reporting Requirements:

• Maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, the siting analysis (for new units only), and operator training and qualification. Each record must be kept on site for at least 2 years. The records may be kept off site for the remaining 3 years.

• Submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters.

• Submit annual compliance reports and semiannual reports of any deviations from the emission limits, operating limits, or other requirements.

• Apply for and obtain a title V operating permit.

F. What is the proposed compliance schedule?

Each incineration unit will be required to reach final compliance by the date 3 years after publication of the final rule in the **Federal Register**. In addition, the owner or operator will need to comply with the operator training and qualification requirements and inspection requirements by the date 1 year after publication of the final rule in the **Federal Register**, regardless of when the OSWI unit reaches final compliance.

To achieve final compliance, the owner or operator of each OSWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the OSWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

G. How did EPA determine the compliance schedule?

Section 129(f) of the CAA specifies the dates by which affected facilities must comply with the EG. Existing units must be in compliance with the guidelines as expeditiously as practicable after approval of a State plan, but no later than three years after the effective date of State plan approval or five years after promulgation of the guidelines, whichever is earlier.

EPA chose to include the full compliance time allowed by CAA section 129 in the EG and proposes to do the same in the proposed Federal plan for OSWI units. The OSWI units are small and are located at small municipalities and institutions that do not always have full-time environmental staff. They will need time to investigate the regulatory, technical, cost, financing, and economic implications of control techniques and alternative waste disposal options available to their facility. The EPA wants to allow sufficient time for owners and operators of OSWI units to investigate, plan, and carry out activities for compliance or, as expected in most cases, a closure of their waste combustion units and an orderly transition to the use of alternative waste disposal methods.

VI. OSWI That Have or Will Shut Down

A. Units That Plan To Close Rather Than Comply

If you plan to permanently close your currently operating incineration unit, you must do so by the date three years after publication of the final rule for this Federal plan in the **Federal Register**. If you close your OSWI unit after the date one year after publication of the final rule in the **Federal Register**, but before the date three years after publication of the final rule in the **Federal Register**, then you must comply with the operator training and qualification requirements by the date one year after publication of the final rule in the **Federal Register.** In addition, while still in operation, you are subject to the same requirements for title V operating permits that apply to units that will not shut down.

B. Inoperable Units

In cases where an OSWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the OSWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. An OSWI unit that has been rendered inoperable would not be covered by the Federal plan. The OSWI owner or operator may do the following to render an OSWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. OSWI Units That Have Shut Down

OSWI units that are known to have already shut down (but are not known to be inoperable) are included in the source inventory for the proposed Federal plan and will be identified in any State or Tribal plan submitted to EPA.

1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive incineration unit plans to restart before the final compliance date, the owner or operator must meet any requirements for operator training or obtaining title V operating permits that apply to units planning to meet the final compliance date.

2. Restarting After the Final Compliance Date

Before restarting, such OSWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications. Performance testing to demonstrate compliance would be required within 30 days after restarting. An incineration unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

VII. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are enforceable once EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates OSWI units in a State or Tribal area that does not have an EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. See section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local

agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the OSWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with the intent of Congress.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum (''EPA Indian Policy,'' signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See generally* ''Good Practices Manual for Delegation of NSPS and NESHAP'' (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State. The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or Tribe and EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**; thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

The following authorities are withheld by the EPA Administrator and not transferred to the State or Tribe:

(1) Approval of alternatives to the emission limitations in Table 1 of the proposed rule and operating limits established under 40 CFR 62.15585 and Table 2 of the proposed rule.

(2) Approval of petitions for specific operating limits in 40 CFR 62.15595 the proposed rule.

(3) Approval of major alternatives to test methods.

(4) Approval of major alternatives to monitoring.

(5) Approval of major alternatives to recordkeeping and reporting.

(6) The status report requirements in 40 CFR 62.15570(c)(2) the proposed rule.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After OSWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the OSWI units covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those OSWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to OSWI units covered by such a plan, and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State or Tribe Takes Delegation of the Federal Plan

EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, OSWI inspections, and preparation of draft notices of violation, but will not include any retained authorities.

EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254), provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, EPA may choose to delegate a partial Federal plan (i.e., to

delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

D. Implementing Authority

The EPA delegated authority within the Agency to the EPA Regional Administrators to implement the OSWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator.

E. OSWI Federal Plan and Indian Country

The term ''Indian country,'' as used in this preamble, means (1) all land 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) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The OSWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing OSWI units in Indian country. However, eligible Indian tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. See 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the OSWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (See 40 CFR part 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (See 40 CFR part 49.6).

2. EPA Implementation

The CAA also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the Tribal Authority Rule. See 63 FR at 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a OSWI plan under section 111(d) of the CAA.

3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with EPA's implementation of the Federal Operating Permits program in Indian country (see 64 FR 8247 (February 19, 1999).)

VIII. Title V Operating Permits

All existing OSWI units and air curtain incinerators to be regulated by the proposed OSWI Federal plan will have to apply for and obtain a title V operating permit. These title V operating permits assure compliance with all applicable Federal requirements for regulated incineration units, including all applicable CAA section 129 requirements. (See 40 CFR 70.6(a)(1), 40 CFR 70.2, 40 CFR 71.6(a)(1), and 40 CFR 71.2.)

The permit application deadline for a CAA section 129 source applying for a title V operating permit depends on when the source first becomes subject to the relevant title V permits program. If your existing incineration unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted by the earlier of the following dates:

(1) 12 months after the effective date of any applicable EPA-approved CAA section 111(d)/129 plan (i.e., an approved State or Tribal plan that implements the OSWI emission guidelines);

(2) 12 months after the effective date of any applicable Federal plan; or

(3) December 16, 2008.

For any existing incineration unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable CAA section 111(d)/129 plan is approved by EPA and becomes effective. (See CAA sections 129(e), 503(c), 503(d), and 502(a) and 40 CFR parts70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

If your incineration unit is subject to title V as a result of some triggering requirement(s) other than those mentioned above (for example, a unit may be a major source or part of a major source), then you may be required to apply for a title V operating permit for that unit prior to the deadlines specified above. If more than one requirement triggers a source's obligation to apply for a title V operating permit, the 12-month timeframe for filing a title V permit application is triggered by the

requirement which first causes the source to be subject to title V. (See CAA section 503(c) and 40 CFR parts 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

For additional background information on the interface between CAA section 129 and title V, including EPA's interpretation of CAA section 129(e), as well as information on submitting title V permit applications, updating existing title V permit applications and reopening existing title V permits, see the final Federal Plan for Commercial and Industrial Solid Waste Incinerators, October 3, 2003 (68 FR 57518, 57532), as well as the ''Summary of Public Comments and Responses'' document in EPA's OSWI emission guidelines docket (EPA–HQ–OAR–2003–0156).

Title V and Delegation of a Federal plan

We have previously stated our position that issuance of a Title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan. Legally, delegation of a standard or requirement results in a delegated State or Tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a Federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.[4] Although a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or Tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or Tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or Tribe.

As mentioned above, a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 Federal plan.[5] Some States or Tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or Tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or Tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.[6] In practical terms, without approval of a State or Tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and Tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements, and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or Tribe's part 70 program. As a result, prior to a State or Tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or Tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or Tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. See the section IV.J. of this preamble titled ''Progress Reports''.

It is important to note that the EPA is not using its authority under 40 CFR part 70.4(i)(3) to request that all States and Tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or Tribe's authority to incorporate section 111/129 requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the information collection requirements in the proposed rules have been previously submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has been assigned OMB control number 2060–0562 for the proposed rule and the emission guideline (ICR No. 2164.02 for 40 CFR part 60 subpart FFFF). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 566–1672.

[4] If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, e.g., alternative methods of demonstrating compliance.

[5] The EPA interprets the phrase ''assure compliance'' in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. *See* definition of ''applicable requirement'' in 40 CFR 70.2. *See also* 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

[6] It is important to note that an AG's opinion submitted at the time of initial title V program approval is sufficient if it demonstrates that a State or Tribe has adequate authority to incorporate CAA section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 16, 2005. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State or Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The proposed rules contain monitoring, reporting, and recordkeeping requirements. Information specified in the emission guidelines would be used by States or EPA to identify existing units subject to the State or Federal plans that implement the emission guidelines, and to ensure that these units comply with their emission limits and other requirements. Records and reports would be necessary to enable EPA or States to identify waste incineration units that may not be in compliance with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Average annual hours	Labor costs	Capital costs	O&M costs	Total annual costs
Industry	3,803	$174,703	$0	$0	$174,703
Implementing agency	383	17,611	0	0	17,611

EPA expects the emission guidelines to affect a maximum of 248 OSWI units over the first 3 years. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years, because compliance with the emission guidelines is not required until 5 years after promulgation of the emission guidelines (or 3 years after the effective date of approval of a State or Federal plan to implement the guidelines). Costs in the first 3 years include time to review the guidelines and the State or Federal plan. The implementing agency will not incur any capital or start-up costs.

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 our regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of the proposed rules on small entities, small entity is defined as follows:

1. A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than $6.5 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards;

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; or

3. a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The economic impacts on small entities will not be significant because the cost of the proposed rules is expected to range from negligible to actual cost savings. EPA expects that the majority of these entities may realize a cost savings under the likely response to the proposed rules.

Alternative waste disposal methods, such as land filling, are available for OSWI units. During development of the underlying EG, our analysis using model plants and a supplemental analysis using site-specific data both supported the idea that the annual cost to landfill waste will typically be less than the annual cost of using an OSWI unit for waste disposal. Thus, the likely response to the proposed Federal implementation plan will be for small entities that own and operate OSWI units to close the units and use an alternative waste disposal method. More detailed information about these analyses is available in the docket for the underlying EG (see Revised Economic Analysis for Other Solid Waste Incineration (OSWI) Units, November 2005; and Impacts of Other Solid Waste Incinerator Rule on Affected Small Entities, November 2005 in Docket ID No. EPA–HQ–OAR–2003–0156).

The Small Business Administration's Office of Advocacy (SBA) expressed concerns that EPA's certification that the proposed emission guidelines would not have a significant economic impact on a substantial number of small entities is not based on an adequate analysis of IWI units operated by small entities. In response to SBA's public comment, we conducted further detailed analyses (as

summarized in this preamble and available in the docket) and sent small entity outreach surveys requesting information regarding the use of solid waste incinerators at schools to eight entities (identified by SBA) associated with schools. All responses from the small entity outreach survey, with one exception, indicate that incinerators are not being used by the respondents. The one exception regards an institution that owns/operates pathological waste incinerators, which are excluded from regulation under the standards and guidelines.

Although the underlying EG rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rules on small entities. The final EG rules provide various exclusions for some sources that may find it unreasonably costly to comply with the rules or utilize alternative disposal options. These exclusions should provide relief for many small entities for which a reasonable disposal alternative is unavailable. In addition, to ensure that affected sources were aware of the proposed rules, EPA sent fact sheets to 361 existing OSWI units in our inventory and an additional 125 fact sheets to trade organizations and interest groups that represented potential OSWI unit owners/operators. The fact sheets explained the proposed regulations, the anticipated costs and impacts to their facilities, and how they could submit comments. None of the facilities or interest groups submitted comments on the proposed OSWI rules or on the cost or other impacts EPA anticipated due to the rulemaking and, in fact, about one-third of the 361 facilities informed us that they no longer own or operate an incineration unit. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the proposed rules. 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 EPA 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, EPA must develop a small government agency plan under section 203 of the UMRA. 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In the preamble promulgating the emissions guidelines, we presented our expectation that most OSWI units would close and utilize an economical alternative waste disposal method rather than complying with the final rules, rendering the cost impacts negligible. Thus, the final EG, and by extension the proposed Federal plan, are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rules contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulations do not unfairly apply to small governments. Therefore, the proposed rules are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Also, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rules do not have federalism implications. They 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. The proposed rules will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to the proposed rules.

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

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The proposed rule does not have Tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed rules.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

EPA 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 EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rules are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks. Also, the proposed rules are not ''economically significant.''

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rules involve technical standards. The EPA proposes to use EPA Methods 1, 2, 3A, 3B, 4, 5, 6 or 6C, 7 or 7A, 7C, 7D, or 7E, 9, 10, 10A or 10B, 23, 26A, and 29 of 40 CFR part 60, appendix A.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7D, 9, and 10A. The search and review results have been documented and are placed in the docket for the OSWI emission guidelines.

One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the proposed rules. The voluntary consensus standard ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the emission guidelines and the proposed rules for its manual methods for measuring the nitrogen oxide, oxygen, and sulfur dioxide content of exhaust gas. These parts of ASME PTC 19–10–1981–Part 10 are acceptable alternatives to Methods 3B, 6, 7, and 7C.

The search for emissions measurement procedures identified 29 voluntary consensus standards applicable to the proposed rules. The EPA determined these 29 standards identified for measuring emissions of Cd, CO, dioxins/furans, HCl, Hg, Pb, PM, NO_X, and SO_2 subject to the emission limits were impractical alternatives to EPA test methods for the purposes of the proposed rules. Therefore, EPA does not intend to adopt the standards for this purpose. (See Docket ID No. EPA–HQ–OAR–2003–0156 for further information on the methods.)

Four of the 29 voluntary consensus standards identified in this search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; ISO/DIS 12039, ''Stationary Source Emissions-Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen-Automated Methods'' for EPA Method 3A; and ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury'' for EPA Method 29 (portion for Hg only).

Tables 2 and 4 of subpart FFFF of 40 CFR part 60 list the EPA testing methods from the underlying EG that would be included in the proposed rules. Under 40 CFR part 60.8(b) and 60.13(i) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 8, 2006.

Stephen L. Johnson,

Administrator.

40 CFR part 62 is proposed to be amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 62.13 is amended by revising paragraph (e) to read as follows:

§ 62.13 Federal plans.

* * * * *

(e) The substantive requirements of the other solid waste incineration units Federal plan are contained in subpart KKK of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

3. Part 62 is amended by adding a new subpart KKK to read as follows:

Subpart KKK—Federal Plan Requirements for Other Solid Waste Incineration Units That Commenced Construction on or Before December 9, 2004

Sec.

Introduction

62.15450 What is the purpose of this subpart?
62.15455 What are the principal components of this subpart?

Applicability

62.15460 Am I subject to this subpart?
62.15470 Can my OSWI unit be covered by both a State plan and this subpart?
62.15475 How do I determine if my OSWI unit is covered by an approved and effective State or Tribal plan?
62.15480 If my OSWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?
62.15485 Can my combustion unit be exempt from this subpart?
62.15495 When must I submit any records required pursuant to an exemption allowed under § 62.15485?
62.15500 Are air curtain incinerators regulated under this subpart?

Compliance Schedule and Increments of Progress

62.15505 When must I comply with this subpart if I plan to continue operation of my OSWI unit?
62.15510 What must I do if I plan to permanently close my OSWI unit and not restart it?
62.15515 What must I do if I close my OSWI unit and then restart it?

Waste Management Plan

62.15520 What is a waste management plan?
62.15525 When must I submit my waste management plan?

62.15530 What should I include in my waste management plan?

Operator Training and Qualification

62.15535 What are the operator training and qualification requirements?
62.15545 When must the operator training course be completed?
62.15550 How do I obtain my operator qualification?
62.15555 How do I maintain my operator qualification?
62.15560 How do I renew my lapsed operator qualification?
62.15565 What site-specific documentation is required?
62.15570 What if all the qualified operators are temporarily not accessible?

Emission Limitations and Operating Limits

62.15575 What emission limitations must I meet and by when?
62.15585 What operating limits must I meet and by when?
62.15595 What if I do not use a wet scrubber to comply with the emission limitations?
62.15605 What happens during periods of startup, shutdown, and malfunction?

Performance Testing

62.15610 How do I conduct the initial and annual performance test?
62.15615 How are the performance test data used?

Initial Compliance Requirements

62.15620 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?
62.15630 By what date must I conduct the initial performance test?

Continuous Compliance Requirements

62.15635 How do I demonstrate continuous compliance with the emission limitations and the operating limits?
62.15645 By what date must I conduct the annual performance test?
62.15650 May I conduct performance testing less often?
62.15660 May I conduct a repeat performance test to establish new operating limits?

Monitoring

62.15665 What continuous emission monitoring systems must I install?
62.15675 How do I make sure my continuous emission monitoring systems are operating correctly?
62.15685 What is my schedule for evaluating continuous emission monitoring systems?
62.15690 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?
62.15700 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?
62.15705 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?
62.15710 Is there a minimum amount of operating parameter monitoring data I must obtain?

Recordkeeping and Reporting

62.15715 What records must I keep?
62.15725 Where and in what format must I keep my records?
62.15730 What reports must I submit?
62.15740 What information must I submit following my initial performance test?
62.15745 When must I submit my annual report?
62.15750 What information must I include in my annual report?
62.15755 What else must I report if I have a deviation from the operating limits or the emission limitations?
62.15760 What must I include in the deviation report?
62.15765 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?
62.15770 Are there any other notifications or reports that I must submit?
62.15775 In what form can I submit my reports?
62.15780 Can reporting dates be changed?

Air Curtain Incinerators That Burn 100 Percent Wood Waste, Clean Lumber and/or Yard Waste

62.15785 What is an air curtain incinerator?
62.15790 When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?
62.15795 What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?
62.15800 What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?
62.15805 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber and yard waste?
62.15810 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber and yard waste?
62.15815 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
62.15820 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Title V Operating Permits

62.15825 Am I required to apply for and obtain a title V operating permit for my existing unit?
62.15830 When must I submit a title V permit application for my existing unit?

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Subpart KKK—Federal Plan Requirements for Other Solid Waste Incineration Units That Commenced Construction on or Before December 9, 2004

Introduction

§ 62.15450 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from other solid waste incineration (OSWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111 and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, ''you'' means the owner or operator of an OSWI unit or air curtain incinerator subject to this subpart.

§ 62.15455 What are the principal components of this subpart?

This subpart contains the twelve major components listed in paragraphs (a) through (l) of this section.

(a) Compliance schedule.
(b) Waste management plan.
(c) Operator training and qualification.
(d) Emission limitations and operating limits.
(e) Performance testing.
(f) Initial compliance requirements.
(g) Continuous compliance requirements.
(h) Monitoring.
(i) Recordkeeping and reporting.
(j) Definitions.
(k) Equations
(l) Tables.

Applicability

§ 62.15460 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an OSWI unit as defined in § 62.15850, or an air curtain incinerator subject to this subpart as defined in § 62.15785. OSWI units are very small municipal waste combustion units and institutional waste incineration units as defined in § 62.15850. Units subject to this subpart meet the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your incineration unit commenced on or before November December 9, 2004.

(2) Your incineration unit is not exempt under § 62.15485.

(3) Your incineration unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your incineration unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If the owner or operator of an incineration unit subject to this subpart makes changes that meet the definition of modification or reconstruction on or after June 16, 2006, that unit becomes subject to subpart EEEE of 40 CFR part 60 (New Source Performance Standards for Other Solid Waste Incineration Units) and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing incineration unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart EEEE of 40 CFR part 60.

§ 62.15470 Can my OSWI unit be covered by both a State plan and this subpart?

(a) If your OSWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your OSWI unit until the EPA approves a State plan that covers your OSWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your OSWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your OSWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.15475 How do I determine if my OSWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if the EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

§ 62.15480 If my OSWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart are not limited to the inventory of sources listed in Docket No. EPA–HQ–OAR–2006–0364 for the Federal plan. If your incineration unit meets the applicability criteria in § 62.15460, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

§ 62.15485 Can my combustion unit be exempt from this subpart?

This subpart exempts the types of units described in paragraphs (a) through (q) of this section from complying with the requirements of this subpart except for the requirements specified in this section.

(a) *Cement kilns.* The unit is excluded if it is regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(b) *Co-fired combustors.* The unit, that would otherwise be considered a very small municipal waste combustion unit, is excluded if the owner/operator of the unit meets the following five requirements:

(1) Has a Federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) Notifies the Administrator that the unit qualifies for the exclusion.

(3) Provides the Administrator with a copy of the Federally enforceable permit.

(4) Records the weights, each calendar quarter, of municipal solid waste and of all other fuels combusted.

(5) Keeps each report for 5 years. These records must be kept on site for at least 2 years, but may be kept off site for the remaining 3 years.

(c) *Cogeneration facilities.* The unit is excluded if it meets the three requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(d) *Commercial and industrial solid waste incineration units.* The unit is excluded if it is regulated under subparts CCCC or DDDD of part 60 or subpart III of part 62 and is required to meet the emission limitations established in those subparts.

(e) *Hazardous waste combustion units.* The unit is excluded if it meets either of the two criteria specified in paragraph (e)(1) or (2) of this section.

(1) The owner/operator of the unit is required to get a permit for the unit under section 3005 of the Solid Waste Disposal Act.

(2) The unit is regulated under 40 CFR part 63, subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(f) *Hospital/medical/infectious waste incinerators.* The unit is excluded if it is regulated under subparts Ce or Ec of part 60 (New Source Performance Standards and Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators) or subpart HHH of part 62 (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(g) *Incinerators and air curtain incinerators in isolated areas of Alaska.* The incineration unit is excluded if it is used at a solid waste disposal site in Alaska that is classified as a Class II or Class III municipal solid waste landfill, as defined in § 62.15850.

(h) *Rural institutional waste incinerators.* The incineration unit is excluded if it is an institutional waste incinerator, as defined in § 62.15850, and the application for exclusion described in paragraphs (h)(1) and (2) of this section has been approved by the Administrator.

(1) Prior to 1 year before the final compliance date, an application and supporting documentation demonstrating that the institutional waste incineration unit meets the two requirements specified in paragraphs (h)(1)(i) and (ii) of this section must be submitted to the Administrator for approval.

(i) The unit is located more than 50 miles from the boundary of the nearest Metropolitan Statistical Area,

(ii) Alternative disposal options are not available or are economically infeasible,

(2) The application described in paragraph (h)(1) of this section must be revised and resubmitted to the Administrator for approval every 5 years following the initial approval of the exclusion for your unit.

(3) If you re-applied for an exclusion pursuant to paragraph (h)(2) of this section and were denied exclusion by the Administrator, you have 3 years from the expiration date of the current exclusion to comply with the emission limits and all other applicable requirements of this subpart.

(i) *Institutional boilers and process heaters.* The unit is excluded if it is regulated under 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters).

(j) *Laboratory Analysis Units.* The unit is excluded if it burns samples of materials only for the purpose of chemical or physical analysis.

(k) *Materials recovery units.* The unit is excluded if it combusts waste for the primary purpose of recovering metals. Examples include primary and secondary smelters.

(l) *Pathological waste incineration units.* An institutional waste incineration unit or very small municipal waste combustion unit is excluded from this subpart if it burns 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.15850 and the owner/operator of the unit meets the criteria specified in paragraphs (l)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(m) *Small or large municipal waste combustion units.* The unit is excluded if it is regulated under 40 CFR part 60, subparts AAAA, BBBB, Ea, Eb, or Cb, and is required to meet the emission limitations established in those subparts. Also excluded are units regulated under 40 CFR part 62, subparts FFF or JJJ.

(n) *Small power production facilities.* The unit is excluded if it meets the three requirements specified in paragraphs (n)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(o) *Temporary-use incinerators and air curtain incinerators used in disaster recovery.* The incineration unit is excluded if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism and you comply with the requirements in § 62.15835.

(p) *Units that combust contraband or prohibited goods.* The incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.

(q) *Incinerators used for national security.* Your incineration unit is excluded if it meets the requirements specified in either (q)(1) or (2) of this section.

(1) The incineration unit is used solely during military training field exercises to destroy national security materials integral to the field exercises.

(2) The incineration unit is used solely to incinerate national security materials, its use is necessary to safeguard national security, you follow the exclusion request requirements in paragraphs (q)(2)(i) and (ii) of this section, and the Administrator has approved your request for exclusion.

(i) The request for exclusion and supporting documentation must demonstrate both that the incineration unit is used solely to destroy national security materials and that a reliable alternative to incineration that ensures acceptable destruction of national security materials is unavailable, on either a permanent or temporary basis.

(ii) The request for exclusion must be submitted to the Administrator prior to 1 year before the final compliance date.

§ 62.15495 When must I submit any records required pursuant to an exemption allowed under § 62.15485?

Owners or operators of sources that qualify for the exemptions in § 62.15485(b) and (l) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.15485(b) and (l) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.15485(b) and (l) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.15485(b) and (l) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least five years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

§ 62.15500 Are air curtain incinerators regulated under this subpart?

(a) Air curtain incinerators that burn less than 35 tons per day of municipal solid waste or air curtain incinerators located at institutional facilities burning any amount of institutional waste generated at that facility are subject to all requirements of this subpart, including the emission limitations specified in Table 1 of this subpart.

(b) Air curtain incinerators that burn only less than 35 tons per day of the materials listed in paragraphs (b)(1) through (4) of this section collected from the general public and from residential, commercial, institutional, and industrial sources; or, air curtain incinerators located at institutional facilities that burn only the materials listed in paragraphs (b)(1) through (4) of this section generated at that facility, are required to meet only the requirements in §§ 62.15785 through 62.15830 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

Compliance Schedule and Increments of Progress

§ 62.15505 When must I comply with this subpart if I plan to continue operation of my OSWI unit?

If you plan to continue operation and come into compliance with the requirements of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], then you must complete the requirements of paragraphs (a) through (f) of this section.

(a) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(b) You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 4 of this subpart.

(c) You must achieve final compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(d) You must conduct the initial performance test no later than [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(e) You must submit an initial test report including the results of the initial performance test no later than 60 days following the initial performance test.

(f) You must submit a notification to the Administrator stating whether final compliance has been achieved, postmarked within 10 business days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 10 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

§ 62.15510 What must I do if I plan to permanently close my OSWI unit and not restart it?

You must close the unit before the final compliance date on [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(2) While still in operation, your OSWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to an OSWI unit that will not be permanently closing. See §§ 62.15825 and 62.15830.

§ 62.15515 What must I do if I close my OSWI unit and then restart it?

(a) If you close your OSWI unit but will reopen it prior to [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must meet all the requirements of § 62.15505.

(b) If you close your OSWI unit and restart the unit after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] and resume operation, you must meet all of the requirements of § 62.15505(a), (b), (c), and (e) at the time you restart your OSWI unit. You must conduct the initial performance test within 30 days of restarting your OSWI unit. Upon restarting your OSWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected OSWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

Waste Management Plan

§ 62.15520 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 62.15525 When must I submit my waste management plan?

You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 4 of this subpart

§ 62.15530 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 62.15535 What are the operator training and qualification requirements?

(a) No OSWI unit can be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified OSWI unit operators are temporarily not accessible, you must follow the procedures in § 62.15570.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the 13 subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Methods to monitor pollutants (including monitoring of incinerator and control device operating parameters) and monitoring equipment calibration procedures, where applicable.

(viii) Actions to correct malfunctions or conditions that may lead to malfunction.

(ix) Bottom and fly ash characteristics and handling procedures.

(x) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(xi) Pollution prevention.

(xii) Waste management practices.

(xiii) Recordkeeping requirements.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 62.15545 When must the operator training course be completed?

The operator training course must be completed by the latest of the three dates specified in paragraphs (a) through (c) of this section.

(a) The final compliance date specified in § 62.15505.

(b) Six months after your OSWI unit startup.

(c) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

§ 62.15550 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.15535(c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.15535(c)(2).

§ 62.15555 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 62.15560 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.15555.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.15550(a).

§ 62.15565 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all OSWI unit operators that addresses the nine topics described in paragraphs (a)(1) through (9) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the operating limits established under this subpart.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.15520 through 62.15530.

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the latest of three dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(ii) Six months after your OSWI unit startup.

(iii) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of OSWI unit operators who have completed review of the information in paragraph (a) of this section as required by paragraph (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 62.15535, met the criteria for qualification under § 62.15550, and maintained or renewed their qualification under § 62.15555 or § 62.15560. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 62.15570 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the three criteria specified in paragraphs (a) through (c) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed review of the information specified in § 62.15565(a) within the past 12 months. You do not need to notify the Administrator or include this as a deviation in your annual report.

(b) When all qualified operators are not accessible for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed a review of the information specified in § 62.15565(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.15570.

(c) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (c)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the EPA every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the EPA to continue operation of the OSWI unit. You must submit the first status report 4 weeks after you notify the EPA of the deviation under paragraph (c)(1) of this section. If the EPA notifies you that your request to continue operation of the OSWI unit is disapproved, the OSWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.15535(a).

(ii) You notify the EPA that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 62.15575 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart on the date the initial performance test is required or completed, whichever is earlier. Section 62.15630 specifies the date by which you are required to conduct your performance test.

§ 62.15585 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraphs (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is the charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride and sulfur dioxide emission limitations.

(b) You must meet the operating limits established during the initial performance test beginning on the date [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

§ 62.15595 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber or limit emissions in some other manner to comply with the emission limitations under § 62.15575, you must petition the EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the EPA. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 62.15605 What happens during periods of startup, shutdown, and malfunction?

The emission limitations and operating limits apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

Performance Testing

§ 62.15610 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All performance tests must be conducted using the methods in Table 1 of this subpart.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of appendix A of 40 CFR part 60 must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of 40 CFR part 60 must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of 40 CFR part 60 must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 in § 62.15845(a).

(g) Method 26A of appendix A of 40 CFR part 60 must be used for hydrogen chloride concentration analysis, with the additional requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The probe and filter must be conditioned prior to sampling using the procedure described in paragraphs (g)(1)(i) through (iii) of this section.

(i) Assemble the sampling train(s) and conduct a conditioning run by collecting between 14 liters per minute (0.5 cubic feet per minute) and 30 liters per minute (1.0 cubic feet per minute) of gas over a 1-hour period. Follow the sampling procedures outlined in section 8.1.5 of Method 26A of appendix A of 40 CFR part 60. For the conditioning run, water can be used as the impinger solution.

(ii) Remove the impingers from the sampling train and replace with a fresh impinger train for the sampling run, leaving the probe and filter (and cyclone, if used) in position. Do not

recover the filter or rinse the probe before the first run. Thoroughly rinse the impingers used in the preconditioning run with deionized water and discard these rinses.

(iii) The probe and filter assembly are conditioned by the stack gas and are not recovered or cleaned until the end of testing.

(2) For the duration of sampling, a temperature around the probe and filter (and cyclone, if used) between 120 °C (248 °F) and 134 °C (273 °F) must be maintained.

(3) If water droplets are present in the sample gas stream, the requirements specified in paragraphs (g)(3)(i) and (ii) of this section must be met.

(i) The cyclone described in section 6.1.4 of Method 26A of appendix A of 40 CFR part 60.

(ii) The post-test moisture removal procedure described in section 8.1.6 of Method 26A of appendix A of 40 CFR part 60 must be used.

§ 62.15615 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 62.15620 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under section 60.8, to determine compliance with the emission limitations in Table 1 of this subpart of part 62 and to establish operating limits using the procedure in § 62.15585 or § 62.15595. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.15610.

§ 62.15630 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

Continuous Compliance Requirements

§ 62.15635 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for all of the pollutants in Table 1 of this subpart for each OSWI unit to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2 of this subpart and the procedures in § 62.15610.

(b) You must continuously monitor carbon monoxide emissions to determine compliance with the carbon monoxide emissions limitation. Twelve-hour rolling average values are used to determine compliance. A 12-hour rolling average value the carbon monoxide emission limit in Table 1 constitutes a deviation from the emission limitation.

(c) You must continuously monitor the operating parameters specified in § 62.15585 or established under § 62.15595. Three-hour rolling average values are used to determine compliance with the operating limits unless a different averaging period is established under § 62.15595. A 3-hour rolling average value (unless a different averaging period is established under § 62.15595) above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Operating limits do not apply during performance tests.

§ 62.15645 By what date must I conduct the annual performance test?

You must conduct annual performance tests within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 62.15650 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least three consecutive annual tests, and all performance tests for the pollutant over that period show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your OSWI unit continues to meet the emission limitation for the pollutant, you may choose to conduct performance tests for that pollutant every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for any pollutant, you must conduct annual performance tests for that pollutant until three consecutive annual performance tests for that pollutant all show compliance.

§ 62.15660 May I conduct a repeat performance test to establish new operating limits?

Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

Monitoring

§ 62.15665 What continuous emission monitoring systems must I install?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. You must monitor the oxygen concentration at each location where you monitor carbon monoxide.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13.

§ 62.15675 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure carbon monoxide and oxygen.

(b) Complete your initial evaluation of the continuous emission monitoring systems by the date not later than within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS PLUS 180 DAYS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your carbon monoxide and oxygen continuous emission monitoring systems. To validate carbon monoxide concentration levels, use EPA Method 10, 10A, or 10B of appendix A of part 60. Use EPA Method 3 or 3A to measure oxygen. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of 40 CFR part 60. Table 3 of this subpart shows the required span values and performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of 40 CFR part 60 for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§ 62.15685 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of 40 CFR part 60.

§ 62.15690 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for carbon monoxide are in parts per million by dry volume at 7 percent oxygen. Use the 1-hour averages of oxygen data from your continuous emission monitoring system to determine the actual oxygen level and to calculate emissions at 7 percent oxygen.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you have deviated from the data collection requirement regardless of the emission level monitored.

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations.

(f) If continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements, refer to Table 3 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

§ 62.15700 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

(a) Use Equation 1 in § 62.15845 to calculate emissions at 7 percent oxygen.

(b) Use Equation 2 in § 62.15845 to calculate the 12-hour rolling averages for concentrations of carbon monoxide.

§ 62.15705 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitations under § 62.15575, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times.

(b) You must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of any stack that could be used to bypass the control device. The measurement must include the date, time, and duration of the use of the bypass stack.

(c) If you are using a method or air pollution control device other than a wet scrubber to comply with the emission limitations under § 62.15575, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.15595.

§ 62.15710 Is there a minimum amount of operating parameter monitoring data I must obtain?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the OSWI unit is operating.

(b) You must obtain valid monitoring data for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(c) If you do not obtain the minimum data required in paragraphs (a) and (b) of this section, you have deviated from the data collection requirement regardless of the operating parameter level monitored.

(d) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 62.15715 What records must I keep?

You must maintain the 14 items (as applicable) as specified in paragraphs (a) through (n) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (8) of this section.

(1) The OSWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For OSWI units that establish operating limits for controls other than wet scrubbers under § 62.15595, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) All 1-hour average concentrations of carbon monoxide emissions.

(7) All 12-hour rolling average values of carbon monoxide emissions and all 3-hour rolling average values of continuously monitored operating parameters.

(8) Records of the dates, times, and durations of any bypass of the control device.

(c) Identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the pollutant emissions or operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 1 of this subpart or a deviation from the

operating limits in Table 2 of this subpart or a deviation from other operating limits established under § 62.15595 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) Calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §§ 62.15690 and 62.15710.

(g) For carbon monoxide continuous emissions monitoring systems, document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of 40 CFR part 60.

(h) Records of the calibration of any monitoring devices required under § 62.15705.

(i) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations and a description of the types of waste burned during the test.

(j) Records showing the names of OSWI unit operators who have completed review of the information in § 62.15565(a) as required by § 62.15565(b), including the date of the initial review and all subsequent annual reviews.

(k) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 62.15535, met the criteria for qualification under § 62.15550, and maintained or renewed their qualification under § 62.15555 or § 62.15560. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(l) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(m) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(n) The information listed in § 62.15565(a).

§ 62.15725 Where and in what format must I keep my records?

(a) You must keep each record on site for at least two years. You may keep the records off site for the remaining three years.

(b) All records must be available in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 62.15730 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 62.15740 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.15620, as applicable.

(b) The values for the site-specific operating limits established in § 62.15585 or § 62.15595.

(c) The waste management plan, as specified in §§ 62.15520 through 62.15530.

§ 62.15745 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.15740. You must submit subsequent reports no more than 12 months following the previous report.

§ 62.15750 What information must I include in my annual report?

The annual report required under § 62.15745 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.15755 through 62.15765.

(a) Company name and address.

(b) Statement by the owner or operator, with their name, title, and signature, certifying the truth, accuracy, and completeness of the report. Such certifications must also comply with the requirements of 40 CFR part 70.5(d) or 40 CFR part 71.5(d).

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.15585 or § 62.15595.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the emission limitations or operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.15715(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.15650(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.15650(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than two weeks.

§ 62.15755 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted showed a deviation from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 62.15760 What must I include in the deviation report?

In each report required under § 62.15755, for any pollutant or operating parameter that deviated from the emission limitations or operating limits specified in this subpart, include the seven items described in paragraphs (a) through (g) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(g) The dates, times, and durations of any bypass of the control device.

§ 62.15765 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the EPA every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the EPA to continue operation of the OSWI unit.

(b) If your unit was shut down by the EPA, under the provisions of § 62.15570(c)(2), due to a failure to provide an accessible qualified operator, you must notify the EPA that you are resuming operation once a qualified operator is accessible.

§ 62.15770 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by § 60.7.

§ 62.15775 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 62.15780 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and/or Yard Waste

§ 62.15785 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart, air curtain incinerators include both firebox and trench burner units.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (4) of this section are required to meet only the requirements in §§ 62.15785 through 62.15820 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 62.15790 When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?

You must achieve compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. You must submit a notification to the Administrator postmarked within 10 business days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**.

§ 62.15795 What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?

(a) If you close your incinerator and re-start it, but will reopen it prior to the final compliance date in your State plan, you must achieve compliance by [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(b) If you close your incinerator but will restart it after your final compliance date, you must meet the emission limitations in § 62.15805 on the date your incinerator restarts operation.

§ 62.15800 What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?

You must close the unit before [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

§ 62.15805 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in paragraph (a) of this section apply at all times except during malfunctions.

§ 62.15810 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Use Method 9 of appendix A of 40 CFR part 60 to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 within 180 days after [A DATE WILL BE INSERTED WHICH WILL BE THREE YEARS AFTER THE DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register.**

(c) After the initial test for opacity, conduct annual tests no more than 12 months following the date of your previous test.

(d) If the air curtain incinerator has been out of operation for more than 12 months following the date of your previous test, then you must conduct a test for opacity upon startup of the unit.

§ 62.15815 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Keep records of results of all initial and annual opacity tests in either paper copy or computer-readable format that can be printed upon request, unless the Administrator approves another format, for at least five years. You must keep each record on site for at least two years. You may keep the records off site for the remaining three years.

(b) Make all records available for submittal to the Administrator or for an inspector's review.

(c) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(d) Submit initial and annual opacity test reports as electronic or paper copy

on or before the applicable submittal date.

(e) Keep a copy of the initial and annual reports for a period of five years. You must keep each report on site for at least two years. You may keep the reports off site for the remaining three years.

§ 62.15820 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Yes. If your air curtain incinerator is subject to this subpart, you are required to apply for and obtain a title V operating permit as specified in §§ 62.15825 and 62.15830.

Title V Operating Permits

§ 62.15825 Am I required to apply for and obtain a title V operating permit for my existing unit?

Yes. If you are subject to the requirements of this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 62.15485.

§ 62.15830 When must I submit a title V permit application for my existing unit?

(a)(1) If your existing unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1)(i) through (iii) of this section. (*See* sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR parts 70.5(a)(1)(i) and 40 CFR part 71.5(a)(1)(i).)

(i) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 State or Tribal plan.

(ii) [A DATE WILL BE INSERTED WHICH WILL BE ONE YEAR AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(iii) December 16, 2008.

(2) For any existing incineration unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 State or Tribal plan is approved by the EPA and becomes effective.

(b) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraph (a) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR part 70.3(a) and (b), 40 CFR parts 70.5(a)(1)(i), 40 CFR parts 71.3(a) and (b), and 40 CFR parts 71.5(a)(1)(i).)

(c) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR parts 70.5(a)(2) or 40 CFR part 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (*See* sections 503(d) and 502(a) of the Clean Air Act and 40 CFR parts 70.7(b) and 40 CFR part 71.7(b).)

Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

§ 62.15835 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (a) through (c) of this section.

(a) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(b) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the EPA that the temporary-use incinerator or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (b)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(c) If you submitted the notification containing the information in paragraph (b)(2) by the date specified in paragraph (b)(1), you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

Delegation of Authority

§ 62.15840 What authorities are withheld by the EPA?

The following authorities are withheld by the EPA and not transferred to the State or Tribe:

(a) Approval of alternatives to the emission limitations in Table 1 of this subpart and operating limits established under § 62.15585 and Table 2 of this subpart.

(b) Approval of petitions submitted pursuant to the requirements of § 62.15595 establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(c) Approval of major alternatives to test methods established under § 62.15610 and Table 1 of this subpart.

(d) Approval of major alternatives to monitoring requirements established under §§ 62.15665 through 62.15710 and Table 2 of this subpart.

(e) Approval of major alternatives to recordkeeping and reporting requirements of this subpart.

(f) Approval of requests submitted pursuant to the requirements in § 62.15570(c)(2)}.

Equations

§ 62.15845 What equations must I use?

(a) *Percent oxygen.* Adjust all pollutant concentrations to 7 percent oxygen using Equation 1 of this section.

$$C_{adj} = C_{meas} * (20.9 - 7)/(20.9 - \%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen

C_{meas} = pollutant concentration measured on a dry basis

(20.9–7) = 20.9 percent oxygen–7 percent oxygen (defined oxygen correction basis)

20.9 = oxygen concentration in air, percent

$\%O_2$ = oxygen concentration measured on a dry basis, percent

(b) *Capacity of a very small municipal waste combustion unit.* For very small municipal waste combustion units that can operate continuously for 24-hour periods, calculate the unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For very small municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your very small municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your very small municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For very small municipal waste combustion units with a design not based on heat input capacity, use the maximum design charging rate.

(c) *Capacity of a batch very small municipal waste combustion unit.* Calculate the capacity of a batch OSWI unit as the maximum design amount of municipal solid waste it can charge per batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the OSWI unit can combust 24/16, or 1.5 batches, in 24 hours.

(d) *Carbon monoxide pollutant rate.* When hourly average pollutant rates (E_h) are obtained (e.g., CEMS values), compute the rolling average carbon monoxide pollutant rate (E_a) for each 12-hour period using the following equation:

$$E_a = \frac{1}{12}\sum_{j=1}^{12} E_{hj} \qquad \text{(Eq. 2)}$$

Where:

E_a = Average carbon monoxide pollutant rate for the 12-hour period, ppm corrected to 7 percent O_2.

E_{hj} = Hourly arithmetic average pollutant rate for hour ''j,'' ppm corrected to 7 percent O_2.

Definitions

§ 62.15850 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and 40 CFR part 60, subpart A (General Provisions).

Administrator means the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task.

Air curtain incinerator means an incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart only, air curtain incinerators include both firebox and trench burner units.

Auxiliary fuel means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

Batch OSWI unit means an OSWI unit that is designed such that neither waste charging nor ash removal can occur during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Class II municipal solid waste landfill means a landfill that meets four criteria:

(1) Accepts, for incineration or disposal, less than 20 tons per day of municipal solid waste or other solid wastes based on an annual average;

(2) Is located on a site where there is no evidence of groundwater pollution caused or contributed to by the landfill;

(3) Is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill; and

(4) Serves a community that meets one of two criteria:

(i) Experiences for at least three months each year, an interruption in access to surface transportation, preventing access to a Class I municipal solid waste landfill; or

(ii) Has no practicable waste management alternative, with a landfill located in an area that annually receives 25 inches or less of precipitation.

Class III municipal solid waste landfill is a landfill that is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill, and

that accepts, for disposal, either of the following two criteria:

(1) Ash from incinerated municipal waste in quantities less than one ton per day on an annual average, which ash must be free of food scraps that might attract animals; or

(2) Less than five tons per day of municipal solid waste, based on an annual average, and is not located in a place that meets either of the following criteria:

(i) Where public access is restricted, including restrictions on the right to move to the place and reside there; or

(ii) That is provided by an employer and that is populated totally by persons who are required to reside there as a condition of employment and who do not consider the place to be their permanent residence.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

Collected from means the transfer of material from the site at which the material is generated to a separate site where the material is burned.

Contained gaseous material means gases that are in a container when that container is combusted.

Continuous emission monitoring system or CEMS means a monitoring system for continuously measuring and recording the emissions of a pollutant from an OSWI unit.

Continuous OSWI unit means an OSWI unit that is designed to allow waste charging and ash removal during combustion.

Deviation means any instance in which a unit that meets the requirements in § 62.15460, or an owner or operator of such source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any unit that meets requirements in § 62.15460 and is required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

EPA means the Administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.

Institutional facility means a land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

Institutional waste means solid waste (as defined in this subpart) that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit: Whose design does not provide for energy recovery (as defined in this subpart); operated without energy recovery (as defined in this subpart); or operated with only waste heat recovery (as defined in this subpart). Institutional waste also means solid waste (as defined in this subpart) combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.

Institutional waste incineration unit means any combustion unit that combusts institutional waste (as defined in this subpart), and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste incineration units include field-erected, modular, cyclonic burn barrel, and custom built incineration units operating with starved or excess air, and any air curtain incinerator that is a distinct operating unit of the institutional facility that generated the institutional waste (except those air curtain incinerators listed in § 62.15500(b).

Intermittent OSWI unit means an OSWI unit that is designed to allow waste charging, but not ash removal, during combustion.

Low-level radioactive waste means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Metropolitan Statistical Area means any areas listed as metropolitan statistical areas in OMB Bulletin No. 05–02 entitled ''Update of Statistical Area Definitions and Guidance on Their Uses'' dated February 22, 2005 (available on the Web at *http://www.whitehouse.gov/omb/bulletins/*).

Modification or modified unit means an incineration unit you have changed on or after June 16, 2006 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(2) Any physical change in the OSWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Municipal solid waste means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of this subpart if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste, as determined by § 62.15485(c).

Municipal waste combustion unit means, for the purpose of this subpart, any setting or equipment that combusts municipal solid waste (as defined in this subpart) including, but not limited to, field-erected, modular, cyclonic burn barrel, and custom built incineration units (with or without energy recovery) operating with starved or excess air, boilers, furnaces, pyrolysis/combustion units, and air curtain incinerators

(except those air curtain incinerators listed in § 62.15500(b)).

Other solid waste incineration (OSWI) unit means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this subpart. Unit types listed in § 62.15485 as being excluded from the subpart are not OSWI units subject to this subpart. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

Particulate matter means total particulate matter emitted from OSWI units as measured by Method 5 or Method 29 of appendix A of 40 CFR part 60.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Reconstruction means rebuilding an incineration unit and meeting two criteria:

(1) The reconstruction begins on or after June 16, 2006.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the unit (not including land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber. For continuous OSWI, shutdown shall commence no less than 2 hours after the last charge to the incinerator. For intermittent OSWI, shutdown shall commence no less than 4 hours after the last charge to the incinerator. For batch OSWI, shutdown shall commence no less than 5 hours after the high-air phase of combustion has been completed.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Standard conditions, when referring to units of measure, means a temperature of 68° F (20° C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the OSWI unit. For batch OSWI, startup means the period of time between activation of the system and ignition of the waste.

Very small municipal waste combustion unit means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in § 62.15845.

Waste heat recovery means the process of recovering heat from the combustion flue gases by convective heat transfer only.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

(4) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes.

(2) Clean lumber.

Tables to Subpart KKK of Part 62

TABLE 1 OF SUBPART KKK OF PART 62.—EMISSION LIMITATIONS

[As stated in § 62.15575, you must comply with the following]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
1. Cadmium	18 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.

TABLE 1 OF SUBPART KKK OF PART 62.—EMISSION LIMITATIONS—Continued

[As stated in § 62.15575, you must comply with the following]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
2. Carbon monoxide	40 parts per million by dry volume	3-run average (1 hour minimum sample time per run during performance test), and 12-hour rolling averages measured using CEMS [b].	Method 10, 10A, or 10B of appendix A of 40 CFR part 60 and CEMS.
3. Dioxins/furans (total basis)	33 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 23 of appendix A of 40 CFR part 60.
4. Hydrogen chloride	15 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Method 26A of appendix A of 40 CFR part 60.
5. Lead	226 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.
6. Mercury	74 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of 40 CFR part 60.
7. Opacity	10 percent	6-minute average (observe over three 1-hour test runs; i.e., thirty 6-minute averages).	Method 9 of appendix A of 40 CFR part 60.
8. Oxides of nitrogen	103 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 7, 7A, 7C, 7D, or 7E of appendix A of part 60. ASME PTC 19.10–1981—Part 10 is an acceptable alternative to Method 7 and 7C only (IBR, see § 60.17(h)).
9. Particulate matter	0.013 grains per dry standard cubic foot.	3-run average (1 hour minimum sample time per run).	Method 5 or 29 of appendix A of 40 CFR part 60.
10. Sulfur dioxide	3.1 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 6 or 6C of appendix A of 40 CFR part 60, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 6 only.

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] Calculated each hour as the average of the previous 12 operating hours.

TABLE 2 OF SUBPART KKK OF PART 62.—OPERATING LIMITS FOR INCINERATORS AND WET SCRUBBERS

[As stated in § 62.15585, you must comply with the following]

For these operating parameters	You must establish these operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
1. Charge rate	Maximum charge rate	Continuous	Every hour	Daily for batch units. 3-hour rolling for continuous and intermittent units. [a]
2. Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling. [a]
3. Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling. [a]
4. Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling. [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART KKK OF PART 62.—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

[As stated in § 62.15675, you must comply with the following]

For the following pollutants	Use the following span values for your CEMS	Use the following performance specifications (P.S.) in appendix B of 40 CFR part 60 for your CEMS	If needed to meet minimum data requirements, use the following alternate methods in appendix A of 40 CFR part 60 to collect data
1. Carbon Monoxide	125 percent of the maximum hourly potential carbon monoxide emissions of the waste combustion unit.	P.S.4A	Method 10.
2. Oxygen	25 percent oxygen	P.S.3	Method 3A or 3B, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 3B only.

TABLE 4 OF SUBPART KKK OF PART 62.—SUMMARY OF REPORTING REQUIREMENTS

[As stated in § 62.15730, you must comply with the following]

Report	Due date	Contents	Reference
1. Initial test report	a. No later than 60 days following the initial performance test.	i. Complete test report for the initial performance test; and	§ 62.15740.
		ii. The values for the site-specific operating limits.	§ 62.15740.
2. Waste management plan	a. No later than 60 days following the initial performance test.	i. Reduction or separation of recyclable materials; and	§§ 62.15520 through 62.15530.
		ii. Identification of additional waste management measures and how they will be implemented.	§§ 62.15520 through 62.15530.
3. Annual report	a. No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	i. Company Name and address;	§§ 62.15745 through 62.15750.
		ii. Statement and signature by the owner or operator;	§§ 62.15745 through 62.15750.
		iii. Date of report;	§§ 62.15745 through 62.15750.
		iv. Values for the operating limits;	§§ 62.15745 through 62.15750.
		v. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period;	§§ 62.15745 through 62.15750.
		vi. Highest and lowest recorded 12-hour averages, as applicable, for carbon monoxide emissions and highest and lowest recorded 3-hour averages, as applicable, for each operating parameter recorded for the calendar year being reported;	§§ 62.15745 through 62.15750.
		vii. Information for deviations or malfunctions recorded under § 62.15715(b)(6) and (c) through (e);	§§ 62.15745 through 62.15750.
		viii. If a performance test was conducted during the reporting period, the results of the test;	§§ 62.15745 through 62.15750.
		ix. If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2934(a) or (b) were met; and	§§ 62.15745 through 62.15750.
		x. Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours but less than 2 weeks.	§§ 62.15745 through 62.15750.

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Monday,
December 18, 2006

Part III

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Statewide Longitudinal Data Systems for Fiscal Year (FY) 2007; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.372A]

Institute of Education Sciences; Notice Inviting Applications for Grants to Support Statewide Longitudinal Data Systems for Fiscal Year (FY) 2007

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces a competition for grants to support statewide longitudinal data systems. The Director takes this action under the Educational Technical Assistance Act of 2002 (Act), Title II of Public Law 107–279. The intent of these grants is to support the design, development, and implementation of statewide longitudinal data systems.

SUPPLEMENTARY INFORMATION: *Purpose of the Program:* The purpose of the program is to provide financial assistance to State educational agencies (SEAs) for the development of longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data, consistent with the Elementary and Secondary Education Act of 1965, as amended. These data systems will respond to the multiple information needs of key stakeholders, support State and local decision-making and facilitate needed research to improve student academic achievement and close achievement gaps.

Eligible Applicants: Eligible applicants are limited to SEAs.

Applications Available: December 22, 2006.

Request for Applications and Other Information: Information regarding program and application requirements for this competition is contained in the Request for Applications package (RFA) that will be available on December 15, 2006, at the following Web site: *http://ies.ed.gov/funding.*

Information regarding selection criteria and review procedures will also be posted at this Web site.

Letter of Intent: A letter indicating a potential applicant's intent to submit an application is optional but encouraged. The letter of intent must be submitted electronically by January 18, 2007, using the instructions provided at the following Web site: *https://ies.constellagroup.com/*. Receipt of the letter of intent will be acknowledged by e-mail.

Deadline for Transmittal of Applications: March 15, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or by hand delivery if you qualify for an exception to the electronic submission, please refer to *Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Estimated Range of Awards: $1,000,000 to $6,000,000 for the entire project.

Project Period: Up to three years.

Fiscal Information: The number of awards made under this competition will depend upon the quality of the applications received. The size of the awards will depend upon the scope of the projects proposed.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 80, 81, 82, 84, 85, 97, 98, and 99. In addition, 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

Performance Measures

To evaluate the overall success of this program, the Institute will determine at the end of each grant whether the SEA has in operation a statewide longitudinal data system. Grantees will be expected to report in annual and final reports on the status of their development and implementation of these systems.

Submission Requirements

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Statewide Longitudinal Data Systems competition, CFDA Number 84.372A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Statewide Longitudinal Data Systems competition at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.372, not 84.372A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition

to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .PDF (Portable Document) format. If you upload a file type other than the file type specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kashka Kubzdela, U.S. Department of Education, 1990 K Street, NW., room 9014, Washington, DC 20006–5651. FAX: (202) 502–7475.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.372A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.372A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.372A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

For Further Information Contact: Kashka Kubzdela, U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., Room 9014, Washington, DC 20006–5651. Telephone: (202) 502–7411 or via Internet: *Kashka.Kubzdela@ed.gov*.

The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period will also be listed in the RFA for this competition that will be posted at: *http://ies.ed.gov/funding*.

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Dated: December 12, 2006.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

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General allocation and accounting regulations; tax-exempt bond proceeds; comments due by 12-26-06; published 9-26-06 [FR 06-08202]

Correction; comments due by 12-26-06; published 11-22-06 [FR E6-19789]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol, tobacco and other excise taxes:

Cigars and cigarettes; tax classification; comments due by 12-26-06; published 10-25-06 [FR 06-08835]

Alcoholic beverages:

Labeling and advertising, major food allergen labeling standards; comments due by 12-26-06; published 9-20-06 [FR 06-07963]

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. 4766/P.L. 109–394

Esther Martinez Native American Languages Preservation Act of 2006 (Dec. 14, 2006; 120 Stat. 2705)

S. 2250/P.L. 109–395

Congressional Tribute to Dr. Norman E. Borlaug Act of 2006 (Dec. 14, 2006; 120 Stat. 2708)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4] Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2005 Compilation and Parts 100 and 102)	(869–060–00003–8)	35.00	[1] Jan. 1, 2006
4	(869–060–00004–6)	10.00	Jan. 1, 2006
5 Parts:			
1–699	(869–060–00005–4)	60.00	Jan. 1, 2006
700–1199	(869–060–00006–2)	50.00	Jan. 1, 2006
1200–End	(869–060–00007–1)	61.00	Jan. 1, 2006
6	(869–060–00008–9)	10.50	Jan. 1, 2006
7 Parts:			
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27–52	(869–060–00010–1)	49.00	Jan. 1, 2006
53–209	(869–060–00011–9)	37.00	Jan. 1, 2006
210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
300–399	(869–060–00013–5)	46.00	Jan. 1, 2006
400–699	(869–060–00014–3)	42.00	Jan. 1, 2006
700–899	(869–060–00015–1)	43.00	Jan. 1, 2006
900–999	(869–060–00016–0)	60.00	Jan. 1, 2006
1000–1199	(869–060–00017–8)	22.00	Jan. 1, 2006
1200–1599	(869–060–00018–6)	61.00	Jan. 1, 2006
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1940–1949	(869–060–00021–6)	50.00	Jan. 1, 2006
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8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
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200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
10 Parts:			
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51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
11	(869–060–00031–3)	41.00	Jan. 1, 2006
12 Parts:			
1–199	(869–060–00032–1)	34.00	Jan. 1, 2006
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–060–00034–8)	61.00	Jan. 1, 2006
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
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600–899	(869–060–00037–2)	56.00	Jan. 1, 2006
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
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60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
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400–End	(869–060–00055–1)	26.00	[6] Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
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400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
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170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
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600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
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1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
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300–End	(869–060–00072–1)	45.00	[7] Apr. 1, 2006
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24 Parts:			
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200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
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1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
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26 Parts:			
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§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
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43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
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100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
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200–499	(869–060–00117–4)	46.00	July 1, 2006
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32 Parts:			
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630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
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125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
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300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
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200–299	(869–060–00132–8)	37.00	July 1, 2006
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37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
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18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
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52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
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60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
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100–135	(869–060–00158–1)	45.00	July 1, 2006
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150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
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*414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
*430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
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200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
*1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
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70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
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20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
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70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
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48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
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100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
*186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
*300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
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17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
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CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.